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Official Report

MEETING OF THE PARLIAMENT

Tuesday 20 May 2014

Session 4

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Scottish Parliament

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[The Presiding Officer *opened the meeting at 14:00*]

Time for Reflection

The Presiding Officer (Tricia Marwick): Good afternoon. The first item of business this afternoon is time for reflection. Our time for reflection leader is Mrs Madhu Jain, member of Interfaith Scotland and Hindu Mandir Glasgow.

Mrs Madhu Jain (Interfaith Scotland and Hindu Mandir Glasgow): Dear Presiding Officer and members of the Scottish Parliament, I thank you for providing me with the opportunity to address you today.

As human beings we are all the same, no matter our origin, background or religion. We are all one. God makes us appear different, but we think the same way and do the same things but in our own different ways.

Life these days is full of stress and daily life is becoming harder, but if we begin our day with five minutes to ourselves and relax our minds and say our prayers, remembering how God has blessed us with wonderful things, that will help. The Bhagavad Gita suggests that we do our duty to the best of our ability and learn to be satisfied with the result itself.

Learning to accept our own situation with a positive attitude can prevent a lot of mental turmoil. The world is organised to help us grow and let things fall into place. We just need to believe. We should speak honestly and positively and not in an agitating manner. Our speech should not be harsh and insensitive. If our speech causes others pain and distress, these acts will come back to us and take away our own peace. Therefore, if we attempt to bring peace to others, then the universe and God will send peace our way.

Om Shanti Om. The word shanti means peace: peace for all humankind; peace for all living and non-living beings; peace for the universe. Hindus not only pray for themselves or their own religion; they pray for everyone and everything and that is what our Vedas teach us to do.

Most of us create our own problems by interfering too often in others' affairs. God has created each one of us in a unique way. We need to respect that and respect others.

In life sometimes we become disappointed and disheartened. When I was young and studying, I was feeling very nervous and thought I could

never pass my exams. My father, who was a principal, told me that nothing is impossible and you can only keep trying—God will help you. Since then, I have kept that in my mind and, even in hard times when I feel I cannot do any more, I remember that nothing is impossible. We should all remember that nothing is impossible. Thank you.

Topical Question Time

14:04

Police (Carrying of Firearms)

1. Alison McInnes (North East Scotland) (LD): To ask the Scottish Government what its response is to reports of Police Scotland officers routinely carrying out duties while carrying firearms. (S4T-00700)

The Cabinet Secretary for Justice (Kenny MacAskill): The decision where and when to deploy resources has always been an operational matter for the chief constable, who has the power to make decisions about the necessary and proportionate use of firearms. That position has not changed with the introduction of a single force.

The vast majority of Scotland's police remain unarmed, but Police Scotland's dedicated firearms officers are available to protect the public 24 hours a day. They account for roughly 1.6 per cent of officers—or 275, as Assistant Chief Constable Bernie Higgins has specified—which includes supervisory officers and dedicated firearms officers. Those 275 officers are deployed on a shift-pattern basis and, consequently, only a small number will be deployed across our communities at any one time.

Those specialist officers are able to deal quickly with urgent and unexpected threats where delays could cost lives. Although operational policing is a matter for the chief constable, there is a scrutiny role for the Scottish Police Authority in reporting to Parliament on an annual basis and keeping the policing of Scotland under review.

Finally, post the establishment of Police Scotland, there is a role for the Police Investigations and Review Commissioner, who now has a duty if a firearm has been used—that is, if it has been taken out of its holder. The chief constable must refer the matter to the PIRC, who will make an assessment and decide whether a full investigation is required.

Alison McInnes: I think that we have all read the letter from ACC Higgins but, unlike the Cabinet Secretary for Justice, I am not reassured by it. Just as with stop and search, we in Parliament should be worried about the cabinet secretary handing the chief constable carte blanche. Prior to the single force, trained officers carried firearms only while they were responding to a clear threat to public safety and with the approval of a senior officer, which was rightly granted on a case-by-case basis following an assessment of the actual risk. Hundreds of officers have now been given blanket permission by the chief constable to carry guns while they undertake everyday duties and,

crucially, they no longer need the specific approval of a senior officer to fire those guns. The risk did not change on 1 April 2013; only the chief constable did.

The Presiding Officer (Tricia Marwick): We need a question, Ms McInnes.

Alison McInnes: Is the cabinet secretary comfortable with the fact that the requirement for the specific approval of a senior officer to carry and deploy arms, which was once a vital safeguard, has been removed?

Kenny MacAskill: The system that currently exists, which Ms McInnes finds so condemnable, is the same system that operated not only in Tayside and Strathclyde but in Northern Constabulary as at 1 March 2013, prior to the inception of Police Scotland. The chief constable has since implemented the practice across all Scotland. After all, it was accepted by more than half of Scotland when we had the eight forces.

In the society in which we live, it is necessary to have officers routinely available to deal with what can be human tragedies. We have seen such tragedies in other jurisdictions and, sadly, we have also been affected by them here. I think that, given that Scotland has a third of the United Kingdom's landmass, having 275 officers operating on a shift basis, who are a small fraction of the total number, is probably a proportionate response. Equally, I am reassured that both the SPA and the PIRC have a role.

The Presiding Officer: Your question must be brief, Ms McInnes.

Alison McInnes: There has been a substantial change of direction, which the Parliament, the Justice Committee and the local authority scrutiny bodies were not informed of, and I cannot find any evidence that the Scottish Police Authority was notified of it. However, media reports today suggest that the cabinet secretary knew from the start and decided to keep it quiet. So much for democracy. Can the cabinet secretary confirm the date on which he became aware of the change in policy? Does he agree that Parliament should have been informed?

Kenny MacAskill: I have been aware of the routine deployment of firearms officers ever since I was the shadow justice secretary. Indeed, I saw comments on the subject from Graeme Pearson when he was the director of the Scottish Drug Enforcement Agency before it morphed into the Scottish Crime and Drug Enforcement Agency. The routine use of firearms officers throughout Scotland has been with us since the establishment of the Parliament and probably prior to that, although I am not able to comment on that.

I was aware that, as we ran into the establishment of Police Scotland, three forces were already operating the procedure that is now the standard procedure in Scotland. Officers in those forces numbered over half of the establishment in Scotland. I repeat for Ms McInnes's benefit that those forces were Strathclyde Police, Tayside Police and Northern Constabulary. I was aware that, as at 1 April, the chief constable was going to ensure that we had a similar regime operating across all Scotland.

The Presiding Officer: A number of members wish to ask a supplementary question. The questions and answers need to be brief.

Graeme Pearson (South Scotland) (Lab): I am surprised by the cabinet secretary's casual attitude to the issue. The change is not about the number of officers but about the ability of officers to patrol routinely on our streets with sidearms without the need for authorisation on each individual occasion. That change is quite significant.

The Presiding Officer: We need a question, Mr Pearson.

Graeme Pearson: Will the cabinet secretary treat the change seriously and have it reviewed?

Kenny MacAskill: I have no intention of having the matter reviewed. I am perfectly satisfied with the role played by the Scottish Police Authority and the Justice Sub-Committee on Policing. I note that it was Mr Pearson, when he was director of the Scottish Crime and Drug Enforcement Agency, who wanted to change the operating procedure, so that he and his officers would have these powers.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): How many armed response officers are on duty at any one time in the Highlands and who is directly responsible for them? Does the cabinet secretary agree that nothing in principle prevents there being different policies on the carrying of arms in different parts of Scotland?

Kenny MacAskill: Those are matters for the chief constable and for discussion at local level. As I said in response to Alison McInnes, the procedure that Police Scotland operates was in fact invoked by Northern Constabulary prior to the establishment of the Police Service of Scotland. Issues concerning that matter may be appropriately raised with those who were there at the time.

I cannot give the precise number of armed response officers on duty in the Highlands. However, I can say that 275 authorised officers operate on shifts. Those shifts are more than simply day and night shifts, so the number

operating is significantly less than that figure. The officers are required to operate not simply in northern Scotland but throughout Scotland. Mr Thompson may choose to ask the divisional commander or the chief constable how many are operating daily in the Highlands. That number will be sufficient to deal with any threat. After all, a threat is as likely to occur in a rural area as it is in an urban environment.

Margaret Mitchell (Central Scotland) (Con): Will the cabinet secretary confirm whether the Scottish Police Authority was briefed about the new Scotland-wide firearms policy under the single police force one year ago or as soon as the policy was decided?

Kenny MacAskill: The Scottish Police Authority has made it quite clear that the decision falls within the chief constable of Scotland's responsibilities as it relates to the deployment of officers under his direction and control. It has stated:

"We are aware of the public comment on the issue and have received clarification from Police Scotland."

The SPA appears to be satisfied. I suggest that, if Ms Mitchell has any concerns about that, she should take up the matter with Vic Emery. As matters stand, Mr Emery is satisfied with the chief constable's action, and so too are the vast majority of the people of Scotland.

Patrick Harvie (Glasgow) (Green): The argument that the deployment of resources is an operational matter is exactly what we heard from Kenny MacAskill when Stephen House wanted all his officers to be armed with tasers. Why can the cabinet secretary not see that the move to more routine armed policing is not merely an operational matter but a change in the nature of our policing and that that deserves to be held to political scrutiny?

Kenny MacAskill: We do not have routine armed policing; we have the same situation that existed prior to the establishment of Police Scotland, and that was probably the situation prior to the establishment of this Parliament. Chief constables then and the chief constable now correctly agreed that there is a risk to communities and that we must have firearms officers able to be deployed. Those officers are available. Their number is less than 1.6 per cent of the constabulary, and the number used daily is a small fraction of that. That provides the balance to protect the people of Scotland from tragedies great and small by ensuring that the public are not routinely threatened. We have no routine armed police force in Scotland.

John Finnie (Highlands and Islands) (Ind): Was a community impact assessment undertaken in the Highlands and Islands before the decision to

deploy armed response vehicle officers overtly carrying firearms to routine non-firearms-related incidents?

Kenny MacAskill: I cannot answer that. Mr Finnie would have to ask the former chief constable of Northern Constabulary, Mr Graham, now retired, and the former board of the Northern Constabulary. It may be that he would want to speak to former board members; he may be acquainted with some of them.

Wealth Gap

2. John Mason (Glasgow Shettleston) (SNP):

To ask the Scottish Government, in light of the recent *Sunday Times* rich list figures showing a 19 per cent increase in the wealth of the 100 richest people in Scotland, what action it can take to narrow the gap between rich and poor people. (S4T-00701)

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Scotland is a wealthy country. By population, we are the 14th wealthiest country in the Organisation for Economic Co-operation and Development—wealthier than France, Germany, Japan and the United Kingdom. However, too many people in Scotland are not able to benefit from that wealth. Only this month, the Scottish Government published detailed analysis of UK Government data on wealth and assets in Scotland, which show that 30 per cent of households in Scotland have almost no wealth—that is, they do not own property, have a private pension or savings or own items such as cars and household goods.

The Scottish Government takes all the action that it can within its powers to ensure that we support individuals on low incomes. Measures that we have taken on the living wage and welfare reform mitigation were designed to tackle the poverty that has affected some of our citizens.

John Mason: If I understand that answer correctly, the Scottish Government has no real powers to tackle the gap between the rich and the poor. Will the cabinet secretary tell the Parliament what guarantees UK ministers have given him that significant powers to tackle the gap would be devolved in the event of a no vote in September?

John Swinney: John Mason summarised the position on the limitations of the powers of the Scottish Government. My first answer to him was that we will do everything that we can within our limited responsibilities, but the data that I mentioned, which the Government has published, clearly demonstrate that there are significant limitations on what the Scottish Government can do to tackle a major problem that affects our society. If we acquired a broader range of

responsibilities, we would be in a position to take a wider range of actions to tackle the inequality gap that exists between rich and poor in our society.

On the implications of a no vote, Mr Mason can read the comments that a variety of UK politicians have made, as I have done. Of course, the record demonstrates that UK ministers have been unwilling to give this Parliament effective powers to tackle inequality in our society. That is why we have to vote yes in the referendum in September.

John Mason: Will the cabinet secretary inform the Parliament about actions that an independent Scotland could take to tackle inequality?

John Swinney: There are choices to be made. The Government made clear in the white paper that we would choose not to support the continuation of investment in weapons of mass destruction and that we would change defence expenditure priorities, so that we could invest in projects and measures that would boost economic opportunities for people in Scottish society who are on low incomes, thereby improving the participation rate in the economy. As we all know, people who are active in the labour market and able to command good jobs can address the poverty with which they wrestle.

In addition, the Scottish Government would be determined to use the integrated range of powers in the benefits and employment systems to create opportunities that would encourage more and more people to participate in the labour market and secure the higher-quality employment that would enable them to work their way out of poverty.

Iain Gray (East Lothian) (Lab): The cabinet secretary could have supported living wage guarantees in the Procurement Reform (Scotland) Bill a couple of weeks ago, even if that meant pushing the boundaries of European law. He was willing to push those boundaries on minimum pricing for alcohol; why would he not do it to reduce the gap between rich and poor?

John Swinney: This Government was the first Administration ever to apply the living wage across the public sector employment for which it has responsibility. We have done that consistently since we introduced the measure.

On the Procurement Reform (Scotland) Bill, we went through the arguments with the Labour Party last week. We set out, with clear evidence from the European Commission, exactly why we could not legislate for the provision to which Iain Gray referred.

However, the Scottish Government included in the bill a range of provisions that are designed to motivate and encourage the greatest possible degree of private sector participation in following

its lead and delivering the living wage to people in a range of employment sectors in Scotland.

Gavin Brown (Lothian) (Con): Does the cabinet secretary support action on wage ratios?

John Swinney: Yes. In his review for the United Kingdom Government, Will Hutton indicated the growing disparity between lower-income individuals and higher-income individuals. The Scottish Government agrees with the analysis that he set out.

Revenue Scotland and Tax Powers Bill: Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-10079, in the name of John Swinney, on the Revenue Scotland and Tax Powers Bill. I say to members that we are extremely tight for time all afternoon.

14:20

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): The Revenue Scotland and Tax Powers Bill is the third of three Scottish tax bills that have been introduced in this parliamentary session. The first two are now on the statute book: the Land and Buildings Transaction Tax (Scotland) Act 2013 and the Landfill Tax (Scotland) Act 2014.

The bill that we are considering has two main purposes. First, it establishes revenue Scotland as the tax authority that will be responsible for collecting and managing the two devolved taxes when they come into operation on 1 April 2015. Secondly, it sets out in one place the statutory framework in which revenue Scotland will operate. That includes revenue Scotland's constitution, the relationship between the taxpayer and the tax authority, revenue Scotland's investigation and enforcement powers, and the new two-tier Scottish tax tribunals, which will hear appeals against decisions that revenue Scotland has taken. It also includes a robust and distinctive approach to tackling tax avoidance, about which I will say more in a few moments.

All the provisions in the bill are designed to facilitate the collection and management of the two devolved taxes for which the Scottish Parliament will become responsible on 1 April 2015. In the process, we are also putting in place an overarching statutory framework that could readily be adapted if the Parliament took on responsibility for further tax powers in due course. It is therefore very important that we get the bill correct.

I am grateful for the detailed and thoughtful scrutiny that the Finance Committee has given the bill at stage 1. The committee took evidence from a wide range of expert witnesses from the legal and tax professions, among others, and from a number of eminent academics, such as Professor James Mirrlees. The committee's report is extremely helpful. Its conclusions and recommendations will allow us to improve the bill at stage 2.

I am struck by the wide consensus across the political spectrum about the approach that we propose to adopt to the collection and

management of the devolved taxes and to combating tax avoidance as vigorously and effectively as possible. With that in mind, I will address some of the issues that the committee highlighted in its report.

Part 2 of the bill provides for the establishment of revenue Scotland as an office-holder in the Scottish Administration, which means that it will be directly accountable to the Parliament, not ministers. The bill sets out revenue Scotland's statutory functions and, in doing so, it emphasises the provision of a service to taxpayers as well as the collection of the devolved taxes.

The bill places a duty on revenue Scotland to prepare and publish a charter that sets out the standards of behaviour and values that will be expected of taxpayers and which taxpayers can expect of revenue Scotland. As recommended by the committee, I propose to lodge amendments at stage 2 that will require revenue Scotland to consult on the charter and any revisions that require to be made and will underline our intention for the obligations between the taxpayer and the tax authority to be matching and reciprocal.

A particular issue that the committee considered is whether revenue Scotland's chief executive should be a member of its board. As the bill stands, the chief executive is not to be a board member, because it is the board's responsibility to hold the chief executive to account. However, I know that views differ on that and that there are different models for operating such boards. If there was a consensus that the board would operate more effectively if the chief executive was a member of it, I would be happy to lodge amendments to that effect. I look forward to listening to members' perspectives and points in today's debate and at stage 2.

Part 4 establishes the tax tribunals, which will comprise a first tier and an upper tier under the leadership of a president. As colleagues will be aware, the Parliament recently passed the Tribunals (Scotland) Act 2014, which paves the way for the establishment of the new unified Scottish tribunals. The intention is that, in due course, the tax tribunals will become part of the new unified Scottish tribunals. However, it is necessary to have arrangements in place to hear appeals about the devolved taxes from 1 April 2015, so we need to establish self-standing tax tribunals for an interim period, until the new unified arrangements are fully operational.

Part 5 sets out a new general anti-avoidance rule—the GAAR. I have made it clear that we intend to take the toughest possible approach to tax avoidance in relation to any devolved taxes. I emphasise that I mean all tax avoidance, not just the more extreme cases of abuse, which are covered by the United Kingdom general anti-

abuse rule. I am pleased that the robust approach that we have adopted was unanimously endorsed by the Finance Committee. It is important that the Parliament sends out the strongest signal possible that artificial tax avoidance is not acceptable behaviour and that effective action will be taken to counteract any such schemes.

With that in mind, the GAAR that is set out in part 5 provides revenue Scotland with power to take robust counteraction against artificial tax avoidance schemes. The bill provides two separate definitions of artificiality—condition A and condition B—to make sure that our approach is as wide ranging and as comprehensive as it can be.

Patrick Harvie (Glasgow) (Green): In order that I can fully understand what is intended by the general anti-avoidance rule, will the cabinet secretary indicate whether a corporation that pretended not to be doing business in this country but simply to be providing services for its counterpart—one based in Luxembourg, for example—would fall foul of the general anti-avoidance rule?

John Swinney: Patrick Harvie will appreciate that it is impossible for me to give detailed tax advice in the chamber. However, I will set out for the Parliament's benefit the definitions of artificiality that will be applied. I think that that will give him significant comfort that the Government has gone into the legislation with the intention, objective and aspiration of ensuring that we set the highest possible standards. As I have said to the Parliament before, if, in the detailed scrutiny of the bill, the Parliament believes that the Government could take further action to establish a more robust position in tackling tax avoidance, I will consider any measures of that type, make the appropriate judgments and advise the Parliament accordingly of the terms of my responses.

Willie Rennie (Mid Scotland and Fife) (LD): I want to press the cabinet secretary a bit further on that. Closer to home, we have Amazon in Dunfermline. Does he think that Amazon would pay more tax under his regime?

John Swinney: As Mr Rennie will be aware, the taxes for which I will have responsibility will be the land and buildings transaction tax and the landfill tax. If Amazon were to be responsible for any transactions involving the land and buildings transaction tax or any activities relating to the landfill tax, I would expect it to fully and comprehensively meet its obligations under the legislation that the Parliament has already passed and under the Revenue Scotland and Tax Powers Bill, which I hope that the Parliament will pass.

In my response to Patrick Harvie, I said that I would address the contents of conditions A and B. Under condition A, revenue Scotland will be able

to take counteraction where a tax avoidance arrangement is not a reasonable course of action, having regard to the principles and policy objectives on which the relevant tax legislation is based, and having regard to whether the arrangement is intended to exploit any shortcomings in that legislation. That will allow revenue Scotland, the tax tribunals and the courts to look at the spirit and intention of tax legislation, not just the strict letter of the law, to defeat ingenious but artificial and contrived avoidance schemes. Those remarks are particularly relevant to the point that Patrick Harvie raised.

Condition B allows revenue Scotland to take counteraction where a tax avoidance arrangement lacks commercial substance. It also sets out a number of hallmarks of arrangements that lack commercial substance—for example, if they are carried out in a manner that would not normally be employed in reasonable business conduct or which consists of transactions that are circular in nature.

I have made it clear that I welcome any suggestions for toughening the GAAR still further. I am therefore happy to accept the Finance Committee's recommendation that the test of commercial substance should be extended to tax avoidance arrangements that lack either economic or commercial substance. We will also provide that a further hallmark of arrangements that lack economic or commercial substance is where the arrangements result in a tax advantage that is not reflected in the business risks undertaken by the taxpayer.

I believe that the approach that we have adopted to tackling tax avoidance is based on a straightforward commonsense test that ordinary taxpayers would understand and endorse. I note that when Michael Clancy gave evidence to the Economy, Energy and Tourism Committee on behalf of the Law Society of Scotland, he commented that the GAAR provisions in the Revenue Scotland and Tax Powers Bill were

“much better ... less complex and should prove to be more effective”—[*Official Report, Economy, Energy and Tourism Committee*, 19 March 2014; c 4205.]

than the corresponding general anti-abuse rule in the UK Finance Act 2013.

Throughout the bill, we have tried to strike a balance between the taxpayer and the tax authority. The investigation and enforcement powers that the bill provides for revenue Scotland are therefore fair and proportionate, and they are accompanied by careful safeguards.

A particular feature of the arrangements that we are putting in place is that taxpayers will have various opportunities to challenge decisions taken

by revenue Scotland without having to resort to expensive legal action.

First, taxpayers will be able to ask revenue Scotland to carry out an internal review that will be undertaken by a person not associated with the original decision. Secondly, if that does not resolve the dispute, revenue Scotland and the taxpayer will be able to enter independent, third-party mediation, if both parties agree to do so. Finally, there will be a right of access to the new, two-tier Scottish tax tribunals and ultimately, on a point of law, to the Court of Session. I believe that those arrangements are robust and credible and will provide taxpayers with confidence in the administration of devolved taxes.

Part 8 of the bill as introduced set out a penalties regime but left much of the detail to be put in place by secondary legislation. That approach was criticised by both the Finance Committee and the Delegated Powers and Law Reform Committee, as well as by a number of stakeholders. I will therefore bring forward amendments at stage 2 to set out on the face of the bill the detail of the penalties regime in full, including all penalty amounts. At the same time, I propose to provide flexibility to make by order subject to the affirmative procedure changes either to penalty amounts or to the detail of the penalties regime if that should prove necessary in the light of experience. I have already written to the Finance Committee to explain in detail what the purpose and effect of those amendments will be, and I have indicated that I aim to lodge them in good time before stage 2 gets under way.

The process of implementing the Revenue Scotland and Tax Powers Bill will involve putting in place a significant amount of subordinate legislation by 1 April 2015, when revenue Scotland comes into being. It is important that there should be ample opportunity for stakeholders, the Finance Committee and the Delegated Powers and Law Reform Committee to consider the proposed subordinate legislation. I therefore propose to publish a consultation paper later this year, accompanied by drafts of all the subordinate legislation that needs to be put in place by 1 April 2015, to provide that opportunity for consideration well before the relevant orders and regulations are laid before the Parliament in January 2015. We have already published consultation papers in which we set out the proposed subordinate legislation for the land and buildings transaction tax and the landfill tax.

The assumption of responsibility for the collection and management of devolved taxes is a significant opportunity for the Scottish Parliament. I believe that the approach that the Government and the Parliament alike have taken to developing the three tax bills demonstrates the seriousness

and maturity of the process. I would like to record my thanks to the various bodies that have contributed to our thinking in assembling the approach that we have taken to the legislation.

I know that members of all parties share the same objective in relation to the bill: to make sure that it provides the best possible framework for the collection and management of the first two devolved taxes when they come in on 1 April 2015 and a solid foundation that can be built on in the event of this Parliament becoming responsible for a wider range of taxes. I am confident that the bill as introduced has got the fundamentals right, but in such a complex area there will certainly be scope to make improvements at stage 2. The Finance Committee has made a number of recommendations that will help us do that, and I look forward to today's debate in that spirit. I invite the Parliament to approve the general principles of the Revenue Scotland and Tax Powers Bill.

I move,

That the Parliament agrees to the general principles of the Revenue Scotland and Tax Powers Bill.

The Deputy Presiding Officer (John Scott): I call Kenneth Gibson to speak on behalf of the Finance Committee. I inform members that we are tight for time today. You have up to 10 minutes, Mr Gibson.

14:35

Kenneth Gibson (Cunninghame North) (SNP): I am pleased to speak in this debate and highlight some key areas that the Finance Committee considered during its scrutiny of the evidence at stage 1. As the Cabinet Secretary for Finance, Employment and Sustainable Growth mentioned, the Revenue Scotland and Tax Powers Bill is the third of three bills arising from the financial provisions of the Scotland Act 2012. The Finance Committee was designated lead committee for all three bills. *[Interruption.]*

The Deputy Presiding Officer: Will you lift your microphone, please, Mr Gibson?

Kenneth Gibson: Both the Land and Buildings Transaction Tax (Scotland) Bill and the Landfill Tax (Scotland) Bill have now received royal assent and their provisions will come into force next April.

As its policy memorandum states, the purpose of the Revenue Scotland and Tax Powers Bill is to make provision for a tax system to enable the collection and management of devolved taxes. To that end, it establishes revenue Scotland on a statutory basis and puts in place a statutory framework for the devolved taxes, setting out the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.

The committee received a range of useful written and oral evidence from a variety of stakeholders and interested parties, and we received expert advice and analysis of the bill from our adviser, Professor Gavin McEwen. I put on the record the committee's gratitude to all those who helped us to focus on certain key aspects of the bill, particularly in light of its often complex and technical nature.

I will now address some of the key themes that we focused on in our consideration and highlight in our report. It seems that tax avoidance is never far from the headlines these days, and in an attempt to combat avoidance the bill introduces a general anti-avoidance rule, or GAAR, as we heard from the cabinet secretary. It is intended to grant revenue Scotland broader powers to combat artificial tax arrangements than those that are provided for in existing UK legislation. Given the continuing pressure on public finances, not to mention the notion of fairness to the majority who pay their taxes, the committee welcomes the bill's approach to tax avoidance.

We reject the position of those who wish to have artificial arrangements. However, as with all such matters, it soon became apparent that there was no straightforward consensus on how best to define artificial arrangements. Several professional bodies, including the Institute of Chartered Accountants of Scotland, suggested that a broadly drawn GAAR might result in uncertainty for businesses and other taxpayers, with the potential to deter investment in Scotland. Others, including the First-tier Tribunal (Tax) member and tax law lecturer Dr Heidi Poon, suggested that a more narrowly drawn, rules-based GAAR would encourage some people to search for loopholes, and they advocated instead a principles-based approach.

Having considered the evidence in detail, the committee was not persuaded that a narrowly drawn GAAR would result in more certainty for taxpayers, and as such we support the approach that is taken in the bill. Nevertheless, we remain mindful of the need for as much additional certainty as possible for taxpayers, and we considered a number of proposals that witnesses put forward to achieve that. ICAS, the Law Society of Scotland and the low incomes tax reform group all highlighted the need for detailed and extensive guidance that sets out the circumstances in which tax arrangements would be considered artificial.

The committee was persuaded of the benefits of that suggestion for taxpayer certainty, and we therefore recommended that revenue Scotland be required to consult widely on the draft guidance on the GAAR before it is published, and on substantive future revisions. The Government expressed sympathy with the thinking behind that

recommendation, but it has some practical concerns, such as the circumstance in which changes need to be made at short notice following a court judgment. The cabinet secretary has suggested a possible alternative, by way of including guidance to revenue Scotland in anticipation of such a consultation.

The committee also noted that the bill does not contain provisions that give the GAAR priority over other legislative measures. In order to reinforce the overriding importance of the GAAR, the committee recommended that the cabinet secretary consider introducing such a rule. In his response, he stated that he considered such a rule to be unnecessary in relation to LBTT and the Scottish landfill tax but that it could be considered in the event of the Parliament gaining further tax powers.

No legislation that is intended to deter those who might attempt to avoid paying their taxes in full would be complete without the imposition of a penalty regime for non-compliance. The bill is intended to provide a broad statutory framework to enable the imposition of different penalties depending on the seriousness of the non-compliance and the tax to which it may relate.

Several witnesses raised concerns about the appropriate balance between primary and secondary legislation in relation to the bill's penalty provisions. Although certain administrative arrangements can be adequately provided for in secondary legislation, we agreed with our witnesses that the primary legislation should contain more detail on penalties.

That view was reflected in the Delegated Powers and Law Reform Committee's consideration of the bill. The committee's report recommended that there should be greater clarity on the circumstances that could result in a penalty and the amounts that would apply, along with further detail on enforcement and the right to appeal.

We therefore welcome the cabinet secretary's commitment to lodge amendments at stage 2 to include

"more detail and greater consistency in relation to penalties on the face of the Bill."

I look forward to considering those amendments in the coming weeks.

On the subject of penalties, the Finance Committee was mindful that the bill's primary purpose should be to encourage timely payment of taxes rather than to implement inefficient, and at times costly, bureaucratic arrangements. We heard that, on occasion, penalties for minor or accidental transgressions can cost more to collect than they are worth. As such, we recommended

that penalties should be proportionate and should not create unnecessary administrative burdens for revenue Scotland. The cabinet secretary stated in his response that he believes that the amendments that he plans to lodge are consistent with that recommendation. No doubt, the committee will wish to discuss the amendments with him in due course.

The requirement for the tax authority to produce a charter that sets out the standards of behaviour and the values that are expected of revenue Scotland and the taxpayer was welcomed by our witnesses, although concerns were raised. It was pointed out that there was a lack of reciprocity in the bill as drafted, with taxpayers being "expected" to aspire to those standards and values whereas revenue Scotland would simply aspire to them. Some witnesses felt that that form of words implied that more was expected of the taxpayer than of revenue Scotland. We therefore welcome the cabinet secretary's commitment to amend the bill at stage 2 to ensure that there is "reciprocity of obligations" in the charter.

The issue of the discretion that is granted to revenue Scotland with regard to how and when the charter should be reviewed and republished was also raised, and the committee welcomes the Government's commitment to amend the bill to oblige revenue Scotland to consult when it updates and republishes the charter.

I turn to the committee's consideration of the bill's provisions in respect of establishing revenue Scotland as the tax authority responsible collecting devolved taxes. We heard no criticism of revenue Scotland's establishment as a non-ministerial department, and the fact that ministers would be prohibited from directing it was welcomed. However, some witnesses questioned whether it would be appropriate for ministerial guidance to remain unpublished in circumstances in which ministers decided that its publication might prejudice revenue Scotland in exercising its functions.

The cabinet secretary assured us that publication of ministerial guidance would be the default position but that he wants to retain the ability to provide confidential guidance in certain circumstances. In order to achieve an appropriate balance, we recommended that, where the Government does not consider publication of its guidance to be appropriate, ministers should be required to write to the committee explaining the reasons for that decision. I am pleased that the cabinet secretary has given an undertaking to that effect.

The rationale underpinning the delegation of powers from revenue Scotland to Registers of Scotland and the Scottish Environment Protection Agency for LBTT and the landfill tax respectively

was recognised by our witnesses, although some expressed the view that such delegation should not extend to all powers. The head of revenue Scotland's view was that a non-statutory formal scheme of delegation, to be laid before Parliament for consideration before the bill takes full effect, would address those concerns. We look forward to considering the scheme in due course.

The bill provides for two tribunals—a first-tier tribunal and an upper tribunal—to hear appeals against decisions that are made by revenue Scotland. The first-tier tribunal will consist of up to three members, and the upper tribunal would have only a single member. Several witnesses expressed doubts about the appropriateness of that arrangement, and the committee welcomes the cabinet secretary's undertaking to amend the bill to allow more than one member to sit on the upper tribunal when required.

The subject of legal restrictions on the right to appeal a decision of the upper-tier tax tribunal to the Court of Session was also raised. In evidence to the committee, the cabinet secretary stated that

"the appeal mechanism must be fair and must be seen to be fair".—[*Official Report, Finance Committee*, 2 April 2014; c 3948.]

We are therefore pleased that he has reconsidered eligibility to appeal to the Court of Session in light of the recently passed Tribunals (Scotland) Act 2014.

Before a dispute reaches the tribunal stage, it is important that attempts are first made to resolve it at a less formal level. The Government suggested informal mediation as a way of achieving that, and our witnesses broadly welcomed that suggestion. However, the independence of a revenue Scotland mediator is of paramount importance, and we have invited the Government to provide further details on how it intends to achieve that. We note that the Government is working with stakeholders to identify options to address the matter, and we await with interest the outcome of those discussions.

I am conscious of time and the need to let other members join the debate, so I will draw my remarks to a close. In summary, the committee has assessed and carefully reflected on the evidence, and—as we state in our report—we support the general principles of the bill. Work remains to be done at stage 2, when we will further consider issues around tribunals and penalties, among other matters.

Given the likelihood that many of the amendments will be of a complex and technical nature, we welcome the cabinet secretary's undertaking to furnish us with the complete set in good time before stage 2. We also appreciate the efforts of the bill team in that regard.

Looking further ahead, the committee looks forward to considering secondary legislation relating to devolved taxes in the coming months. As members would expect, the Finance Committee will continue to closely monitor implementation and delivery in relation to those taxes as they become embedded in the Parliament's annual budget scrutiny process.

I look forward to hearing from other members.

14:45

Iain Gray (East Lothian) (Lab): As far as legislation goes, this is more of a series than a one-off. It might not quite be a full box set, but today's bill is the third in the series, following on from the legislation that we have already passed to introduce the land and buildings transaction tax and the landfill tax. Those taxes were devolved to the Parliament by the Scotland Act 2012, following the recommendations of the Calman commission.

Recently we noted, if we did not quite celebrate, the 15 years since we met as a Parliament for the first time. Those of us who had the privilege of being there on that day know that it felt very much like being part of history, because it was. The fact is that the Parliament still sometimes gets the chance to make a little history, and today is one of those days. Making legislative history can sometimes feel a little duller than it sounds and a little more complicated than is comfortable. I will remember, back in the early days of the Parliament, when we abolished 1,000 years of feudalism. Whatever exciting images of swashbuckling land rebellions that might conjure, it was also a series of very complicated bills, which, by the time that we got to the Tenements (Scotland) Act 2004, had rather lost its revolutionary glamour.

Nonetheless, the bill that is before us today is genuinely historic, creating as it does revenue Scotland, which is to be charged with collecting the first national taxes to be set and collected by the Parliament and the Government that we scrutinise. Einstein once commented that the hardest thing in the world to understand is the income tax. Although we are not dealing with income tax today, but rather landfill tax and the land and buildings transaction tax, they have given the Government and the Finance Committee tricky enough issues to deal with, and they are to be congratulated on their sterling work in that regard.

The cabinet secretary has told us before that his approach to taxation is to return to the first principles, or Adam Smith's four maxims for a tax system, which are certainty, convenience, efficiency and proportionality to the ability to pay. That seems uncontroversial, but it is not always straightforward to apply those principles in reality.

Their application always requires subjective social and political judgments and the conclusion is always open to interpretation and dispute.

What is more, the purpose of taxation has rather widened since Smith was elaborating those maxims. I quote from a particularly fine document—Labour’s devolution commission report:

“The tax system is at the centre of the state and its relationship with citizens, households and commercial organisations. It has evolved over many centuries and is now used for purposes that extend beyond its traditional function of raising revenue.”

A perfect example of that is the landfill tax—one of the two taxes that revenue Scotland is being created to collect—which has been explicitly created to reduce landfill rather than to raise income. That raises some interesting issues around proportionality to the ability to pay, which we debated when legislating for the landfill tax.

The four maxims are certainly the right and principled starting point for the creation of revenue Scotland, but they do not get us out of some of the complexities, difficulties and complications. That was largely illustrated by the considerable debate in pre-legislative scrutiny around the general anti-avoidance rule. The first thing to say is that we agree with the cabinet secretary that the bill requires a general anti-avoidance rule, and we agree that it should be more widely drawn than the equivalent general anti-abuse rule in UK tax legislation. However, that gets us into some of those complexities around the interpretation of a word or phrase. As the cabinet secretary said, we are clearly talking here about avoidance, because tax evasion, which is illegal, will continue to be dealt with under the criminal law.

Having gone for the term “anti-avoidance” rather than “anti-abuse”, as used in the UK legislation, the cabinet secretary had to define what he meant and that took up much of the Finance Committee’s consideration of the bill. The definition given is

“tax avoidance arrangements that are artificial”

and in which

“it would be reasonable to conclude that obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement.”

That differs from existing definitions in three ways. It avoids the double reasonableness test—whether it is reasonable that something is reasonable—which seems pretty reasonable and much clearer to me; it uses artificiality rather than abusiveness; and it encompasses arrangements in which tax avoidance is one of the main reasons, not just the sole or main reason, for an arrangement. However, it is worth noting that the committee’s adviser did not think that the last of those was any different from the UK legislation.

In all this, the cabinet secretary has argued that he is trying to widen the net of the GAAR and that he is seeking greater clarity. Although we broadly support all that, we cannot simply ignore the many concerns that were raised in evidence to the committee that those definitions are not clear, and that the result is a lack of certainty for businesses, which is a breach of the first of the four maxims.

John Mason (Glasgow Shettleston) (SNP): I agree with a huge amount of what Iain Gray says. Does he agree that there is a basic tension here? In one sense, if we provide a lot of certainty, we give people the opportunity to find loopholes.

Iain Gray: I agree, but I would not want my remarks to imply that we accept that there is not certainty in the GAAR. Rather, as we take the bill through its stages, we are obliged to respond to those concerns as far as we can.

To be fair, the cabinet secretary has started to do that in his response to the committee. He has rejected some of the measures that were suggested to address those concerns, such as disclosure of tax avoidance schemes and pre-clearance of transactions. He quite rightly did that in the chamber today in his response to interventions from Willie Rennie and Patrick Harvie. That makes it all the more important that the amendments that the cabinet secretary intends to lodge at stage 2 are strong enough to provide some assurances on certainty. Those amendments will be welcome, especially those that put penalties on the face of the bill, and they will be subject to scrutiny at stage 2.

I note that the cabinet secretary has accepted the committee’s desire to see wide consultation on the draft guidance, to help with the concerns regarding certainty. I understand that he believes that revenue Scotland must keep the capacity to issue guidance urgently if required, which is reasonable on his part, but he must make clear that that should be the exception rather than the rule.

I return to the bill’s interaction with previous legislation on the landfill tax. In the debates on the Landfill Tax (Scotland) Bill, the Parliament welcomed the extension of SEPA’s powers to enforce tax liability on illegal dumping. That was seen as a major step forward, but concerns were expressed about SEPA’s capacity to enforce such collection. At the time, the cabinet secretary was perhaps a little dismissive of those concerns, but I am glad that he has had second thoughts and has provided for exactly that in the financial memorandum. That is welcome.

We look forward to continuing close examination of the bill as it evolves at stage 2, to see whether it can be made to reflect even more closely the four maxims of certainty, convenience, efficiency and

proportionality. We will be pleased to support the general principles of the bill at decision time.

14:54

Gavin Brown (Lothian) (Con): According to the policy memorandum, the bill

“puts in place a statutory framework which will apply to the devolved taxes and sets out the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.”

There is broad consensus on the bill, and it commanded support across the committee during the stage 1 process. In particular, the bill team ought to be given credit, as it was by witnesses, for the way in which it pulled together the bill and for its attitude since then. Obviously, we will support the bill at decision time.

I will focus most of my remarks on two areas that deserve a bit more scrutiny. The first is the issue of penalties, which many witnesses brought up in evidence. Broadly, their view was that the circumstances, the amounts, the mitigation and other factors to be taken into account should all be set out in the bill. The witnesses were more relaxed about procedure and administration issues, which they felt could be left to secondary legislation. I acknowledge that, in a letter to the Finance Committee, the cabinet secretary said that stage 2 amendments will be lodged and gave a pretty good indication of what those amendments would be.

It is critical that that happens, because the initial approach was not consistent or clear. For some penalties, exact amounts were set out in the bill. For example, section 167 contains the exact amount of £300 and section 169 contains the exact amount of £3,000. However, for many other penalties—at least four of them, including for a failure to make a return or to pay tax—no amount at all is stated in the bill and there is very little information on how those penalties will be dealt with, other than that they could and should be dealt with by secondary legislation.

It is right that the circumstances, amounts, mitigation and other factors should be set out in the bill. It is important that the amendments, when they are lodged, reflect that. It is also important that a consistent approach is taken across the bill. If it is correct to have some amounts in the bill, that ought to be the case for all the penalties. There should not be amounts for some penalties and not even an indication of the magnitude of other penalties. All that said, the cabinet secretary, when he gave evidence prior to writing his letter, suggested that amendments might be forthcoming. The Government and the bill team have listened to the committee and to experts on that issue. We look forward to seeing those

amendments when they are lodged in fairly short order.

The second area that I will focus on is one on which there has not yet been movement from the Government, and the cabinet secretary's letter suggested that the door might be closed on the issue. Nevertheless, the issue was raised by a number of witnesses, so I certainly want to put it on the record. It is the issue of the safeguards that might be brought in along with the general anti-avoidance rule. The convener was right that the committee in its entirety supported the broad approach to the GAAR. However, in my view, if we are to bring in a wider rule, there are strong arguments that safeguards need to be introduced at the same time. The door might be closed, but I hope that the cabinet secretary has an open mind and will not lock it completely.

Broadly, such safeguards could involve an advisory panel, revenue Scotland guidance, the disclosure of tax avoidance schemes or pre-clearance transactions. On revenue Scotland guidance, the Government has listened and I think that an amendment will be forthcoming on the level of consultation that ought to take place. It is important that that guidance is available to and useful for everybody, including those who do not have professional advisers. That point was made particularly strongly by the low incomes tax reform group, which pointed out that not everybody who goes through a transaction will have professional advisers, so the guidance has to be useful to all.

On the other three safeguards, I do not think that the Government is minded to make any changes, but there are good arguments for doing so. On the disclosure of tax avoidance schemes, the Government was at one stage at least considering that, but it is not going to do that because of the resource implications. The DOTA schemes achieved broad support from a number of organisations, including Unison and the Scottish Trades Union Congress. There was a particularly good comment on the disclosure of tax avoidance schemes from Dr Heidi Poon, who gave compelling evidence to the committee. She said:

“If they know that something is there, they can take a look at it. If they do that sooner, less time is spent on it, and it is better for the authority because, if the scheme is discovered years later, time bars may apply.

For multiple reasons, the GAAR and DOTA schemes should go hand-in-hand.”—[*Official Report, Finance Committee*, 26 March 2014; c 3881.]

I ask the cabinet secretary to reflect on that compelling quotation from that witness. I wonder whether, even at this late stage, the Scottish Government can do something to ensure that there are sufficient safeguards for taxpayers at the same time as it introduces the GAAR.

15:00

John Mason (Glasgow Shettleston) (SNP): I am pleased to be able to take part in the debate. I accept that taxation is not the most exciting topic for everyone, but I find it extremely interesting and the bill is particularly significant for a number of reasons, including the fact that, as some speakers have mentioned, it sets up our own revenue Scotland as an alternative to Her Majesty's Revenue and Customs. It also sets out the broad framework for future tax legislation and starts to deal with the highly topical issue of tax avoidance.

One of the problems of UK legislation in general and UK tax legislation in particular has been that it overemphasises the letter of the law while almost completely ignoring the spirit of the law. I argue that that is jointly the fault of Westminster legislators and the wider courts and legal system in the UK. As a result of that overemphasis, there have been situations in which the wider public were clear that tax should have been paid, but the taxpayers escaped by using so-called legal loopholes. That is particularly galling for ordinary members of the public, who are subject to the pay-as-you-earn system and have no room for manoeuvre but see the rich and famous paying proportionately much less tax than they do.

Therefore, the aim to have a more principles-based approach is welcome. I accept that we are dealing with a scale of approaches, ranging from more to less principles based. It is not entirely the one or the other, but I welcome the attempt to move in the principles-based direction and, to be fair, the UK is starting to do that as well.

That leads on to some of the evidence that the committee received from witnesses. We heard a lot of evidence from professionals, such as accountants—of which I am one—lawyers and tax advisers. I have to say that, in some cases, it sounded like they were arguing the case for richer taxpayers who were trying to avoid tax. Perhaps that is not surprising as they are the people who pay the bills. All the professions claim to have public interest at the heart of their thinking, but it seems that there is at the very least a tension for them when the clients want one thing and the public interest might be different.

We did not hear many witnesses representing the general public, who might want taxes to be paid properly so that public services are funded properly so, to some extent, it was left to committee members to give that particular angle on the bill. Some witnesses argued that most taxpayers want to pay the correct amount of tax. However, I am slightly more sceptical and would say that most taxpayers want to pay less tax if they possibly can.

Certainty has already been raised and was a major part of the committee's work. It came up a number of times and is one of Adam Smith's maxims, which I think that we all support. However, the demand for certainty can also be a smokescreen to tilt matters in favour of those who want to avoid paying tax. We had examples of that.

There was a general request for more certainty but it sometimes seemed that we were being asked to give taxpayers a totally fixed and rigid system so that, if they could find loopholes in it, they would know that those could not be challenged. I do not agree with that argument.

The desire for an advisory panel was similar. It seemed that the intention might be that some richer taxpayers could try pushing the boundaries of what they could get away with and get it approved beforehand so that they would not face any repercussions later. Similarly, the request for definite tax rates a long way ahead seems to me often to be a request to give people more time to juggle their tax affairs so that they can avoid paying the tax that they should pay.

Therefore, broadly speaking, the committee is supportive—I certainly am—of the cabinet secretary's insistence that we stick to the principles-based approach, including having a wider GAAR than the somewhat more timid one that the UK has.

Legal privilege was an issue that came up at committee, and I would like to touch on that. I am a member of ICAS, and it and the Chartered Institute of Taxation tended to argue for an extension of privilege to other professions, so that there would be more confidentiality for taxpayers, because those professions were, in effect, giving the same advice as people from the legal profession were. I think that there should be a level playing field for all the professions, while accepting that, on explicitly legal matters, there can continue to be professional confidentiality. My preference would be for legal privilege to be curtailed and for all tax advice that is given to be much more open.

Two relatively small taxes are currently being devolved. We have had the opportunity and time to start from scratch but, at the same time, we cannot stray too far away from what our friends and neighbours down south are doing. For example, with regard to landfill tax, we do not want to see waste travelling across the border to find cheaper tax rates.

When we take control of income tax and corporation tax, the challenges will inevitably be greater. We will be inheriting hugely complex rules-based systems that cost the UK more to administrate than is the case in many other

countries. Presumably, we will start off having to modify the UK system but will keep the basics in place. However, at some stage, we will have the challenge and the opportunity to write our own legislation for those major taxes from scratch. I look forward to that exercise.

However, the great thing about what we are doing today is that we are setting out a direction of travel. It is not completely different from that of the UK, but neither is it exactly like that of the UK. We want to do things our way and in a way that fits Scotland's needs. The bill is a good start, and I whole-heartedly support its approval.

15:06

Michael McMahon (Uddingston and Bellshill (Lab)): I begin by thanking all those who gave evidence to the Finance Committee on what was a complex issue and by thanking the clerks and the bill team for assisting us as we moved through the complexities of the bill.

Over the past year or so, the Finance Committee has grappled with the outcomes of the Scotland Act 2012 as they relate to new tax powers. The debate around which powers should be devolved can be interesting at times, but for now we must address the legislation that is before us, which is required to bring about the new land and buildings transaction tax and the Scottish landfill tax. The bill will create the framework for establishing the new taxes.

In the debates that we had on the two separate tax bills, I have to say that I was dreading the possibility of becoming bogged down in tedious technicality and prosaic legalistic verbiage. To be fair, there was plenty of both, but there was also the fun of watching lawyers and accountants arguing against one another to see who should have the greater right to make money out of advising people on how not to pay as much tax as they might otherwise. Had we taken evidence on the bill from a librarian and added it to what we heard from the lawyers and accountants, we would certainly have had all the information that we needed, but we would not have understood a word of it.

In truth, though, all the witnesses we heard from recognised that the bill is well drafted and in general delivers what is expected of it, so great credit is due to the team that prepared it. The fact that the lawyers as well as the accountants were left slightly disappointed is the best indicator that I could see that the right balance has been struck.

It was probably inevitable that in our evidence sessions most of the attention focused on the general anti-avoidance rule. It appears to be sufficiently robust for us to have confidence in it but, as is ever the case, much will depend on the

guidance and regulations that follow. Of course, there can be no guarantees that a good tax accountant could not still have a loophole named after them.

Mr Swinney has underlined again today the Scottish Government's intention to take a tough stance on tax avoidance and there is a widespread welcome for that, and an acceptance that the approach must be robust. However, I remain uncertain that the cabinet secretary has clarified entirely that principles-based drafting of any future Scottish taxes will alleviate the need for a targeted anti-avoidance rule in respect of the taxes. We took plenty of evidence on that.

I understand that it is desirable to keep complexity out of reliefs and exemptions, and there is a strong view that that will minimise the scope for avoidance activity, but I remain sceptical that parliamentary statements and guidance on the intention behind tax legislation are sufficient to ensure that tax tribunals and the courts can impose the spirit as well as the letter of the law. That will depend on how the board and related bodies work with one another. The committee asked whether it could get further clarification and we still require to explore that issue further.

That is not to say that I believe that the bill is flawed; it was merely a comment on a difference of opinion on the desirability of relying solely on the GAAR rather than having a plan B, and a targeted anti-avoidance rule. If we had a TAAR from the outset, we could look forward to the devolution of more tax powers over time and be confident that a principles-based rather than a rules-based approach could be developed as we move forward.

There has been much discussion this afternoon about Adam Smith's maxims and the principles-based approach. That leads me to a small point that I raise in order to bring something different to the debate. It is not a serious disagreement with the cabinet secretary, but he is aware that I think that he is wrong in his decision not to include the amount of tax that Scots will pay through the Scottish rate of income tax in their pay slips.

I appreciate that that information will be provided in someone's P60, but all tax paid can be found on that form. Scots should not have to wait until the end of the tax year to know in respect of the SRIT what they know from week to week or month to month in respect of their income tax. I have no evidence to back up what is nothing more than a gut feeling that there is something inherently wrong in people not being able to see in their pay slip what they are paying in tax. A lot of people have worked on that principle. We all receive our P60s but we also see our pay slips.

John Mason: Would the member agree that he is deviating somewhat from the subject? The SRIT could not be touched by the bill.

Michael McMahon: I did say that it was a small point, which was to emphasise the principles, which are accountability and how we know when and how much we are being taxed. I am trying to find something slightly different to say in the debate. I did make that clear.

If we had some consultation, those types of issues would come out. That is the point. We can hold Governments to account in many ways, one of which is by knowing how much we are being taxed. When we talk about a principles-based approach, it is only fair that we consider all of the principles, which includes knowing how much we are due to pay and what penalties we might face if we do not pay it. We have discussed that this afternoon. It is of little significance and it was probably not worth investing time and effort to consult on it, but it is a point of principle that we touched on in our discussions in the committee.

Overall, the bill is fine and will serve its purpose more than adequately. For that reason, we should have no hesitation in supporting its general principles this afternoon.

15:13

Willie Rennie (Mid Scotland and Fife) (LD): This is one of those debates that is, on occasion, rather technical in nature. However, we all know that it is about the precursor to what the Scottish National Party hopes will be an independent Scotland's revenue-raising tax body. I hope the opposite. However, I am glad that the finance secretary has been converted to the benefits of the Scotland Act 2012. In his press statement today, he emphasises the 300-year historic event of the creation of a new tax body. That is similar to the language that he and others scoffed at when the UK Government signalled the most significant transfer of financial power, from Westminster to Holyrood, in 300 years. I am glad that he is converted to the new language and optimism about the benefits of the act.

I welcome the bill and the creation of revenue Scotland. There is relative consensus across the piece about the benefits of having this new tax body. I note, however, that even before it has been created, it is much more successful than the United Kingdom body. Before any employees are in place or any actions have been conducted, it is much more effective than the UK body.

I was quite interested when John Mason said that what we are doing is not completely different from the UK but we want to do things our way. That contrasts quite starkly with the rhetoric that has been used about aggressive tax avoidance in

the UK, as if somehow HMRC is stuck in the past, unable to tackle aggressive tax avoidance by the likes of Amazon and Starbucks and many other companies that we have heard of. However, when John Mason gets down to the detail of exactly how we will implement this new tax body and the principles that will be established he says that it is not completely different, but our way.

In fact, he praised HMRC for making significant progress. He was right, because, with its general anti-abuse rule, the UK Government has managed to make significant progress. There have been 40 changes in tax law since 2010 and many loopholes have been closed. The general anti-abuse rule has meant significant progress and we have got in billions of pounds as a result of it. Often when we hear members in the chamber talk about HMRC, they talk as if it is some defunct body that is incapable of collecting tax. I like John Mason's phrase, not completely different, but our way.

Jean Urquhart (Highlands and Islands) (Ind): Will the member take an intervention?

John Mason: Will the member give way?

Willie Rennie: I will take an intervention from John Mason, given that I referred to him.

John Mason: I appreciate the member referring to me, but he slightly overstates my enthusiasm for HMRC. Does he accept that there is still a key difference between anti-abuse legislation at Westminster and our wider anti-avoidance legislation?

Willie Rennie: I accept that there is a difference and that our legislation goes further. The concerns of ICAS and the Law Society of Scotland need to be taken into account, because if we are to take a much more assertive approach to dealing with tax avoidance, we have to consider the potential consequences. There is no point going into this new measure blind, thinking that there will be no shift of investment from Scotland to elsewhere as a result of a less lucrative environment for some people who would like to invest. I would like the finance secretary to address that in his closing remarks. What does he think about the validity of the points that ICAS and others have made? I do not mean whether what they suggest will come to pass and whether they are right about uncertainty having an effect on investment but, rather, if they are right, what measures he has in place to deal with those consequences. There is a concern that if they are right in believing that the broader, inclusive approach to dealing with tax avoidance will create uncertainty, that will have an impact on the budget.

Again, this is about a precursor to the independent revenue body that the SNP is expecting to come about. A figure of £250 million

has been arrived at. I would like to know from the finance secretary exactly how that figure was calculated. Who are the people who are not paying tax currently but who will pay as a result of the measure? I like to deal in practicalities. I like to see the examples of who these new measures will catch.

The reality is that, as we have seen in New Zealand, creating a new tax body would be expensive. Sometimes making something simple is more costly and, therefore, it would have an impact on our budgets, too. That is why it is important that we deal not just with the upsides of creating a new tax body and a new tax system that is much more simple and less complex but with the consequences for investors and people who are trying to avoid tax. What would be the impact on our budgetary system and, therefore, on the budget for an independent Scotland?

Those are the questions to which I would like to hear answers from the First Minister—sorry, the finance secretary; he is not the First Minister yet. I would like to get some answers to the concerns that ICAS has drawn to the attention of the committee and the Parliament.

15:19

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I suppose that this bill is probably not viewed as the most exciting piece of legislation ever to come before the Parliament—certainly my mail bag has not been bursting at the seams with letters from constituents on the subject—but it is an important bill nonetheless, and I am very glad to have been part of the Finance Committee's scrutiny of it at stage 1.

This is the third bill that relates to taxes that have been devolved to the Parliament, as has been said, and it complements the two previous parliamentary acts and is necessary in establishing the structure for revenue Scotland, which will be responsible for the collection of those devolved taxes.

I turn to a few specific points in the bill. The general anti-avoidance rule has already been mentioned. I am very supportive of the Scottish Government's principles-based approach, which is the effective way forward. Although it probably cannot be said that most people relish paying their taxes, I think that most people accept and understand the need to do so, even more so when they feel that others are not avoiding paying their taxes. The approach is effective and the best way forward.

At stage 1, we received evidence that some perhaps did not agree with that. For example, ICAS argued that there is

“no certainty at the moment on the real impact of the GAAR”.

It felt that it failed Adam Smith's maxim about certainty. Surely if the expectation of the Scottish Government and its agency, revenue Scotland, is that no individual organisation should engage in avoidance, I cannot see what is uncertain. The convener of the Finance Committee referred to Heidi Poon's evidence to the committee, which was very illuminating. She suggested that

“A more principles-based approach would give more certainty”.—[*Official Report, Finance Committee*, 26 March 2014; c 3870.]

Therefore, I support the approach that is being taken.

I was quite relaxed about how many of the penalties were to be determined by secondary legislation. After all, such penalties would have the same effect in law and would be subject to parliamentary scrutiny in the same way as primary legislation is. However, I accept that many bodies that gave evidence to the committee felt that that was an issue. Again, they believed that it was an issue of certainty. I cannot see why, if penalties are in place in the tax system, their being in primary legislation, rather than secondary legislation, makes things more certain, but I recognise that organisations raised concerns. In that context, we should welcome the Scottish Government's lodging of amendments to put more detail in the bill, which can be amended in future by affirmative instrument. That is a sensible compromise, and I look forward to reviewing the amendments at stage 2.

The charter that revenue Scotland will prepare will, of course, set out the standards that it will operate to and the standards that will be expected of taxpayers. Two issues were identified early on with the bill as drafted. It said that the charter would set out what revenue Scotland would aim to do, but what was expected of the taxpayer. I think that the committee as a whole and certainly a number of witnesses felt that that did not seem equal or reciprocal. To be fair, I think that the bill team accepted that the wording could have been better. I was glad that the cabinet secretary confirmed that an amendment will be lodged to ensure that that is changed. Witnesses also had a strong desire for consultation on the charter. Again, it is welcome that the cabinet secretary has confirmed that an amendment will be lodged to that effect.

The issue of revenue Scotland's membership has been raised, particularly whether the chief executive should be on the board. The cabinet secretary mentioned that, and a few witnesses raised the issue during stage 1 scrutiny—I emphasise that a few witnesses raised it; most did not have anything to say about it. Those who

raised it seemed to view it as important that the chief executive should be on the board to maintain contact with board members. It is clear and self-evident that it would be important for the chief executive to do that.

The cabinet secretary asked for views on the matter. My view is that the issue is a little overblown. It is clear that, in any organisation, it would be perfectly acceptable for the chief executive to attend any board meeting without their being a member of it. There are circumstances in which that could be an advantage. If the board had to discuss the chief executive's position, that might be easier to do if they were not a member of the board. I think that the needs of those who said in evidence that the chief executive should be a member of the board can be achieved without the chief executive being a member of the board. Therefore, I support the bill's present approach.

The last issue that I will raise very briefly is a minor one: the names of the tribunals. The Faculty of Advocates is concerned that the tribunals' names are very similar to those of the UK tax tribunals and, understandably, it felt that that could cause some confusion. I hope that we can look at altering the names at stage 2.

Overall, I very much welcome the sensible approach taken in the bill. I look forward to further scrutinising the bill at stage 2 with Finance Committee colleagues.

15:25

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): As other members have reminded us, this is the third prong of a set of legislation that will see devolution of new revenue-raising powers to Scotland. The bill will give us our first body for management of taxation, and a statutory framework on which effective devolution of taxation will be based, whether or not that is under independence—as I know some members would want it to be. However, I note that ICAS has said today that an entirely independent taxation system would be a rather costly option.

The general anti-avoidance rule is at the heart of the bill and it should be informed by the principle of fairness. However, I want to make a few other points in relation to fairness before turning to the GAAR.

Section 10 of the bill requires revenue Scotland to prepare a charter that must include separate

“standards of behaviour and values”

for revenue Scotland and the same for taxpayers. It is not particularly fair that the bill includes separate obligations for revenue Scotland and for taxpayers, so I welcome the cabinet secretary's

announcement about reciprocal obligations, as well as his commitment to consult on the charter's terms.

The issue of penalties is also important in respect of fairness. The committee recommended

“more detail and greater consistency in relation to penalties on the face of the Bill”.

I welcome the cabinet secretary's announcement that he will set out the details of the penalties on the bill.

I will mention two other aspects that are related to fairness. First, a vigorous approach to tax avoidance must be balanced by a fair appeals system. I raised that issue with the cabinet secretary at committee; the committee recommended that he

“reconsider the restrictive rule governing appeals”

to the Court of Session, and the number of members of the upper tax tribunal for appeals. He has not mentioned those issues; perhaps he will do so when he winds up.

Finally, before I turn to the GAAR, I believe that if we are to found a taxation system on the principle of fairness—a lot of discussion took place on this, and I do not have a particular view about the extent to which advice should be privileged—the provision on what is and what is not privileged advice should apply equally to all advisers, whether or not they are lawyers.

The general anti-avoidance rule is widely accepted as being a more thorough approach to reducing the blight of tax avoidance than has been a feature of previous UK arrangements. The bill will allow revenue Scotland to counteract tax avoidance arrangements based on whether the arrangements pass a test of artificiality. The proposed Scottish GAAR will thus be wider than the UK general anti-abuse rule, which targets only abusive arrangements.

On the whole, the GAAR is a positive measure that the committee welcomed. However, its wide scope has also caused concerns for bodies including the Law Society of Scotland, which emphasised the need to protect taxpayers' rights. It is among a number of voices that are calling for an independent advisory panel to take an informed view of individual disputed cases. It is interesting that the Scottish Trades Union Congress did not object in principle to such a panel, but it made the point that were such a panel established, the personnel on it would have to be very widely representative—more widely representative than those on the equivalent UK panel. The committee did not support the introduction of an advisory panel; I was happy to go along with that recommendation. However, it recognises the need for additional protection for taxpayers.

A further issue on the general anti-avoidance rule concerns clarity on the definition of what is reasonable and the test that is applied to measure that. For purposes of certainty, which is a guiding principle of an effective taxation system, the widely drawn GAAR requires the definition of reasonableness to be as clear and unambiguous as possible. However, what is reasonable to one person may not be reasonable to another. That is why HMRC applies a double or second reasonableness test. I found myself in committee saying that—perhaps to my own surprise—the double reasonableness test is quite reasonable. However, the committee did not go along with the idea of a double reasonableness test.

One way to provide certainty in that regard is to enshrine in the bill clear principles on what is considered reasonable. As Dr Poon told the committee:

“certainty is not conferred by whether the GAAR is widely or narrowly drawn”—[*Official Report, Finance Committee*, 26 March 2014; c 3870.]

The cabinet secretary’s indication that the bill will enshrine clear principles of tax compliance was broadly welcomed by the committee.

The inclusion of more targeted measures would simply create a build-up of rules that would allow opportunities for loopholes to develop, as Justine Riccomini and Heidi Poon agreed. That has been the case with the current United Kingdom system.

The committee said that, in the interests of fairness, revenue Scotland should

“consult widely on a draft of its guidance on the application of the GAAR”.

I think that the cabinet secretary has indicated that he will go along with that recommendation. In general, we should appreciate that he has responded positively to several of the committee’s recommendations.

We want to preserve revenue Scotland’s independence. The committee recommended that guidance from the Government to revenue Scotland should be published. I think that the cabinet secretary has accepted that, with some qualification.

This is an opportunity to create a mechanism that functions effectively, in relation to the taxes that we will receive in this Parliament and changes that take place in the future. It is the start of a long-term project, which will require watertight legislation that is built on clear and unambiguous values and principles. The bill is a reasonable start.

15:31

Colin Beattie (Midlothian North and Musselburgh) (SNP): I welcome the opportunity to speak in this debate on the important—if slightly dull—subject of taxation.

The United Kingdom as a whole raises about 35 per cent of gross domestic product in taxation. In Scotland, council tax and non-domestic rates, which are the only fully devolved taxes, account for 6.9 per cent of tax revenues. Given the limited powers that we have, the Revenue Scotland and Tax Powers Bill represents an attempt to redress that state of affairs. The bill’s provisions on collection and management of the land and buildings transaction tax and the Scottish landfill tax will, I hope, raise the tax take to 7.5 per cent of revenues, which would be a small step in the right direction.

Taxation is fundamental to modern states and to provision of public goods and services. The Organisation for Economic Co-operation and Development average for tax revenues as a percentage of gross domestic product is about 34 per cent, which means that the UK’s 35 per cent is slightly above the average. We know that almost 70 per cent of Scotland’s revenue comes from income tax, VAT, national insurance contributions and North Sea revenue but, of course, that income is filtered through Westminster, and the Scottish Government has minimal flexibility in that regard. Only independence would enable us to take charge of our own tax affairs.

The land and buildings transaction tax is expected to improve significantly on the stamp duty system that it replaces. Each rate of LBTT will apply only to the part of the sale that is above the corresponding threshold. I hope that all members agree that that is much fairer than the stamp duty system, which applies to the entire sale price. The stamp duty system inevitably results in major discrepancies in relation to transactions on either side of the price threshold: an increase of just £1 on a house price can result in a tax bill that is thousands of pounds higher.

Furthermore, stamp duty has been criticised because it can lead to the bunching of house prices, given that buyers are understandably keen to avoid paying it. The end result is a skewed pricing structure. In 2007, more than 3,500 houses in the £125,000 band were sold, compared with just over 1,500 houses in the £135,000 band. It is clear that changes need to be made. I look forward to next year’s introduction of the land and buildings transaction tax, which is a progressive tax that will be fair for all.

The creation of a general anti-avoidance rule is an important step in our efforts to combat tax avoidance. Recent stories in the media

demonstrate that the issue is not going away. It is the Scottish Government's responsibility to ensure that all devolved tax is paid on time, fairly and in full, especially given that we cannot rely on the Westminster machinery to close loopholes on our behalf. The importance of tackling tax avoidance cannot be overstated. To put it simply, tax avoidance reduces our public revenues and can fundamentally undermine public confidence in our tax system.

The bill will see the introduction of a 10 percentage point Scottish rate of income tax, which will reduce the budget by 10 per cent, but will allow the Scottish Government to decide whether to replace the lost revenue via that income tax. Although that measure will allow some flexibility, it has been criticised by the Institute for Fiscal Studies, which said:

"while the Scottish parliament will be able to decide that income tax ought to be higher or lower overall, it will not be able to change the balance of liabilities between taxpayers at different income levels or with different types of income ... The SRIT will also prevent Scotland from reducing just the higher or additional rate of income tax as a form of tax competition to attract high-income people (and the revenue that accompanies them) from the rest of the UK. The SRIT is far from giving Scotland full autonomy over income tax policy."

That raises a critical issue with the bill, which is that the Scottish Government is working within the confines of the Scotland Act 2012.

Gavin Brown: Has income tax got anything to do with the bill?

Colin Beattie: As the bill is about devolution of tax powers, it is reasonable to make the point that I made.

I said that the amount of fully devolved tax that we can raise will increase by only 0.6 of a percentage point, which is a drop in the ocean in comparison with what we could do in an independent Scotland. As the Institute for Fiscal Studies notes, the bill is rigid and inflexible and will not allow the Scottish Government to create a balanced tax regime. We cannot fully benefit if we lack control over revenue and expenditure.

We can take positives from the bill. The land and buildings transaction tax will implement a much fairer system for home buyers. The establishment of revenue Scotland as its own department with legal status will provide the basis of a tax collection agency in an independent Scotland. We should therefore regard the bill as a beginning and we should look forward to what can be achieved under independence.

At the moment, we rely on the UK tax system, which features more than 10,000 pages of legislation. That makes it one of the world's longest tax codes. Numerous commentators have noted that an independent Scotland would have

the opportunity to create a simpler and more lucid tax system. Another benefit of such a system would be reduced administration costs, which would bring Scotland into line with comparable countries including Finland, Sweden and Denmark.

The Deputy Presiding Officer: You should draw to a close.

Colin Beattie: Alongside the introduction of the Scottish general anti-avoidance rule, a simplification of the tax system would—through streamlined reliefs and reduction of compliance costs—reduce the potential for avoidance. The Scottish Government aims to increase revenue by £250 million a year by the end of the first session in which it operates through simplifying and streamlining the tax process. That is a substantial sum of money that will add considerably to the Scottish Exchequer.

The Deputy Presiding Officer: You should close, please.

Colin Beattie: I broadly welcome the introduction of the bill, which has some measures that will be of undoubted benefit. However, the only way in which we can truly progress our tax system is under independence.

15:37

Ken Macintosh (Eastwood) (Lab): Like most members, I welcome the debate and will support the bill at stage 1. I am not sure that all my SNP colleagues will agree with me, but I believe that the bill is yet another example of devolution's success, both in principle and in practice.

I will make a couple of observations about the context in which the bill will operate and will ask questions about whether it fully fulfils our intentions or objectives. Several witnesses who gave evidence to the Finance Committee talked about the importance of getting our tax regime right. Any tax system has huge potential not just to reflect but to shape our economy, our Government and our country.

The SNP Administration often talks grandly about its radicalism and the transformational change that independence would supposedly bring, and ministers constantly hold up the examples of our Scandinavian cousins—Colin Beattie gave such an example a few minutes ago—and cite their approach to welfare reform. The picture is attractive to many of us, but as many of us know, it is based on an equally radical and different approach to taxation.

However, in practice, the SNP's approach has mostly been conservative with a small "c". Its guiding principle appears to be not so much to grasp the opportunity to make a difference as not

to rock the boat. I am not saying that it is wrong in taking that approach in this or the two preceding tax bills, but there is a stark contrast between ministers' words and their actions in the Government. Even with the Revenue Scotland and Tax Powers Bill, ministers' predominant concern seems to have been about how to devolve the taxes from the UK to Scotland without really changing anything.

John Mason: Does Ken Macintosh accept that we are considering two very small bills and that, especially with landfill tax, our scope for manoeuvre is quite limited?

Ken Macintosh: John Mason took the words right out of my mouth. I admit that revenue Scotland will be responsible only for the landfill tax and the land and buildings transaction tax, but what happened to the SNP's plans for a local income tax? That was an election promise, was it not? I would welcome clarification from the cabinet secretary on exactly where we are with the local income tax. Is it officially ditched, or is the SNP maintaining the pretence that it is official policy and will be introduced at some as yet undefined stage?

The cabinet secretary has made much of the Government's principles-based approach to the establishment of revenue Scotland. The legacy of Adam Smith has been invoked, as have his four maxims: certainty, convenience, efficiency and proportionality. However, as my colleague Iain Gray described in his opening speech—several other members also commented on this—there remain a number of questions about whether the bill could do more on the first of those principles. Certainty matters in taxation.

I will digress for a moment. In the 1960s, Zero Mostel starred in a funny film called "The Producers", which was remade in 2005. The plot centres on the premise that, with some dodgy accounting, more money can be made from producing a flop show on Broadway than can be made from producing a hit. The film is very funny.

However, as Gary Barlow and other members of Take That have discovered, in reality the public opprobrium that is attracted by taking a similar approach to taxation is not funny at all. The difficulty in such cases comes in distinguishing between tax evasion, tax avoidance and tax management. Just as it is the duty of individuals and companies to pay taxes, so it is the duty of Government to make it absolutely clear exactly how much tax is expected. I do not need to remind members of this, but most Scots were totally shocked when it was revealed last week that Amazon paid only £4.2 million in tax in the United Kingdom last year despite selling goods worth £4.3 billion. The company's defence—of course—is that that was entirely legal.

I do not want to be morally outraged by the behaviour of those who are not willing to pay their share for the provision of public services; I want to be legally certain of whether they are in the right or in the wrong. The danger with the bill is that it does not necessarily provide that certainty. The issue proved to be the focus of evidence to the committee and, like Iain Gray, Michael McMahon and Willie Rennie, I want to hear from the cabinet secretary how he can address the concerns that were raised by the Chartered Institute of Taxation, the Institute of Chartered Accountants in Scotland and others. It is worth emphasising that Labour members—in fact, the whole Parliament—entirely support the Scottish Government in taking a robust approach to tax avoidance.

To continue the theme of lack of certainty, I note that other aspects of the bill involve subsequent expected actions rather than detailed actions that are set out in the bill. In its submission at stage 1, Audit Scotland highlighted that there are no explicit provisions to cover auditing or accounting of revenue Scotland, although it is crucial that the work of revenue Scotland be open and transparent. I welcome the fact that it will be independent of ministers, but I would like to know what requirements ministers expect to place on revenue Scotland in terms of performance information and reporting arrangements, particularly regarding its record on collection and enforcement.

I support the bill.

15:43

Jim Eadie (Edinburgh Southern) (SNP): I am grateful for the opportunity to speak in the debate. The Revenue Scotland and Tax Powers Bill is an important bill. Its title may be dull—I do not think that anyone would deny that—but the bill serves a serious purpose, which is to fulfil the requirements of transferring the financial powers that are outlined in the Scotland Act 2012, to set out a positive framework that will allow the Scottish Parliament to assume responsibility for further tax powers in the future, and to address tax avoidance in the widest sense. We should all welcome those developments.

The cabinet secretary has made it clear this afternoon and in his evidence to the committee that the Government intends to take the toughest possible line on all tax avoidance—not on just the most extreme forms of abuse. That theme has been picked up by several members.

Iain Gray sought to explain the double reasonableness test. Until Malcolm Chisholm spoke, I thought that I understood it; I then realised that the issue is even more complex than I had thought. However, I think that in its general

anti-avoidance rule the bill provides power for revenue Scotland to take the robust action that is required against artificial tax avoidance schemes, and to provide the definitions of artificiality that will ensure that the approach that is adopted is as comprehensive as possible.

The general anti-avoidance rule is broader than the UK general abuse rule, as has been said this afternoon. The greater breadth of the bill's GAAR lies in the introduction of the test for artificiality, as opposed to the narrower UK test for abuse. The cabinet secretary quoted Mr Michael Clancy, who is the director of reform at the Law Society of Scotland, and who cannot be quoted enough in the chamber. I am therefore going to return to the wise words that he said in evidence to the Economy, Energy and Tourism Committee:

"We have compared those provisions with the current general anti-abuse provisions in the Finance Act 2013 and we think that the Scottish GAAR provisions are much better. They are less complex and should prove to be more effective."—[*Official Report, Economy, Energy and Tourism Committee*, 19 March 2014; c 4205.]

I was intrigued by Michael McMahon's account of the deliberations in the committee, with accountants and lawyers competing with each other. I therefore feel compelled to quote from the Law Society of Scotland, which stated that

"It would be misleading to suggest that most of the work of lawyers is involved in advising taxpayers on tax avoidance schemes"—[*Official Report, Finance Committee*, 12 March 2014; c 3810.]

rather than on helping clients to comply with their tax obligations. I think that all of us in the chamber will be grateful for that reassurance and clarification.

An important issue during committee consideration of the bill was professional privilege. Both the Faculty of Advocates and the Law Society of Scotland stated that they saw no reason to extend legal professional privilege beyond its current boundaries and took issue with the suggestion that the legal profession was benefiting from an unfair advantage. The Law Society stated in evidence to the committee:

"We are not aware of people flooding to lawyers' offices rather than accountants' offices to take tax advice because legal privilege exists. Accountants get more than their fair share of tax advisory work."—[*Official Report, Finance Committee*, 12 March 2014; c 3811.]

The legislation is, of course, a direct consequence of the fact that this Parliament and the UK Parliament passed the Scotland Act 2012. However, even after that act comes into force, the Scottish Parliament will be responsible for only 15 per cent of Scotland's tax revenues. That reminded me of the piece of work that was undertaken by Sir James Mirrlees, who has been mentioned already this afternoon, in his report on

the UK tax system entitled "Tax By Design; the Mirrlees Review", in which he stated:

"The UK system is ... unnecessarily complex and distorting. Tax policy has for a long time been driven more by short-term expedience than by any long-term strategy. Policymakers seem continually to underestimate the extent to which individuals and companies will respond to the financial opportunities presented to them by the tax system. They seem unable to comprehend the importance of dealing with the system as a whole."

Those wise words are reinforced by the work of the fiscal commission working group, which has looked at a number of the issues in the round and has concluded that, in relation to personal taxes, under the current system employed and self-employed individuals who undertake similar work are treated differently in terms of their national insurance contributions and that, more generally, income tax and national insurance contributions, which are effectively two separate taxes on the same income stream, are measured on different bases. The variations in rates, time periods, thresholds and applicability seem to underline the fact that the system is not fit for purpose.

The fiscal commission has stated:

"With regard to links to the wider welfare system, the current system comprises a range of tax credits and benefits, with a mixture of means tested and universal provision. All of these can impact on the effective rate of taxation, especially at the margin, leading to often conflicting incentives with regard to certain activities such as participation in the labour market."

In his book "Money for Everyone. Why We Need a Citizen's Income", Malcolm Torry has argued that the criteria for a benefits system should be coherence and administrative simplicity. It is clear to me—as, I am sure, it must be to many members—that neither the current UK tax system nor the UK benefits system meet the criteria of coherence and simplicity. I believe that we can do better with further powers of financial responsibility, which are coming to this Parliament, and with independence, which will surely follow a yes vote in the referendum.

17:49

Patrick Harvie (Glasgow) (Green): Like others, I welcome the Revenue Scotland and Tax Powers Bill and the approach that the Government is setting out in seeking to build in anti-avoidance as a principle from the word go.

Iain Gray described the bill as part of a series of pieces of legislation on tax, saying that we have a series but not the full box set. It may be that some of us on my side of the independence debate interpret that phrase a little differently. I would like Scotland to have the full box set of tax powers. However, even if others only see us getting one or perhaps two more series, the bill is clearly part of a transition towards Scotland needing an

organisation that exercises more than just the tax powers in the bill. It is therefore really important that we get that organisation and its culture right from the outset.

I argue that the bill is also part of a series of debates that we are having that relate to inequality. That is a far cry from the speech that Margaret Curran has given today suggesting that debate on inequality in Scotland has been shut down by the referendum. We are having a series of debates about the tax system, we will debate the welfare system when the Government's commission reports back on that, and we have been debating the structure of the economy as well. All those things are necessary if we are to address the inequality problem that our society suffers from.

It is crucial that we get the organisational culture right from the start. People have been talking about the long-standing principles of certainty, efficiency, convenience and proportionality, but I wonder whether there is one missing, because we do not really talk about the principle of progressive outcomes. Whether in relation to the initial, small tax powers or the wider tax powers that we may get, whether they are to raise all our own revenue or 40 or 50 per cent of it, we should be looking for a progressive outcome and ensuring that we close the gap between rich and poor.

There are also some assumptions that inform this debate, which are sometimes unspoken. For example, there are assumptions about greed. It may well be in some people's nature always to seek advantage and to seek to minimise what they pay and maximise what they can extract from any engagement with the economy or wider society, but I do not think that that is human nature. It is much more a cultural norm or a cultural expectation, and it can and should be challenged. When Governments and Parliaments pass legislation, they do not set cultural norms unilaterally. We do not establish them when we pass bills or establish new systems such as revenue Scotland. However, we contribute to them.

As Jim Eadie suggested in some of his comments, a comparison between our approach to taxation and our approach to welfare is instructive. It is almost as though, when we debate taxation, the expectation that wealthy people and businesses will always seek to minimise what they pay cannot even be challenged, but we would not accept the same principle in relation to the welfare state. We do not accept that people seeking to maximise false or unfair claims on the welfare system is just something that we have to expect and live with. In fact, the UK's welfare system is far harsher on people who misclaim benefits than our tax system is on those who underpay on their

taxation—those who seek to wriggle through every loophole, whether legally or by skirting around the edges of what is legal.

Given that both systems—taxation and welfare—are necessary if we are to achieve progress towards a more equal society, we should be looking to be as ruthless on cutting down on tax avoidance—or perhaps more so—as we are in relation to those who might seek to gain what is a much smaller advantage, in reality, from the welfare system. The penalties and sanctions that we have are quite disproportionate.

In debating the welfare system we also discuss a benefits cap, yet in debating the taxation system we do not discuss a principle that wealthy people must always pay a higher proportion of their income and wealth than poorer people. In fact, as I think we all know, our taxation system does not achieve that and has not for a long time. The expectation of pure self-interest in relation to tax systems and the way in which we operate them should be challenged.

I support the Government's suggested broad approach to the anti-avoidance rule. To those who are worried about the lack of clarity, I would just ask why. If someone's aim in constructing a tax arrangement is not to avoid tax or to seek a tax advantage, the worst that will happen, from my reading of the bill, is that the tax advantage that they have accidentally achieved will be corrected. If their aim is not to achieve tax avoidance, why should they worry? It is no big deal for them to lose a tax advantage that they had not intended to achieve.

The Deputy Presiding Officer: I ask the member to draw to a close, please.

Patrick Harvie: In conclusion, legal tax avoidance is not the only driver of inequality in our system. We also need a fair welfare system that does not bully people into low-paid work, and we need to address the structure of our economy. However, tax avoidance has been one of the drivers of inequality in our society for decades, and it must be tackled.

15:56

Gavin Brown: The debate has been pretty good, following a pretty interesting committee report and investigation. I will pick up on a couple of points from the debate before coming to a couple of themes that I want to cover.

The cabinet secretary said in his opening speech that he was interested in Parliament's view on whether or not the chief executive of revenue Scotland should sit on the board. The committee considered that issue in detail, and many witnesses were asked the question. I am afraid

that the result of our consideration on that point is not terribly helpful to the cabinet secretary in enabling him to reach a decision.

There were good arguments put forward for why the chief executive should be on the board of revenue Scotland, and good arguments for why he should not. I, and the rest of the committee, found it difficult to decide which argument was more powerful and, as a consequence, we felt that leaving the provision in the bill as it was drafted was fair enough. It was difficult to say that one argument was better than the other.

Jamie Hepburn spoke about penalties and suggested that he was a bit more relaxed about whether penalties should be in secondary or primary legislation. He is correct to say that, whichever it is, they would still have the force of law and would still have to be applied. Ultimately, the taxpayer may not be bothered about whether penalties are in primary or secondary legislation, but I believe that the Government's change of approach to include penalties in primary legislation is right. Primary legislation, by its very nature, receives considerably more scrutiny than secondary legislation. The committee can look at the amendments carefully at stage 2 and, if we have not got it right by stage 2, there are still opportunities to amend the provisions formally at stage 3. That is why it is important in getting the regime right that we deal with penalties through primary legislation.

In my earlier speech I touched on the safeguards that I thought ought to be considered in relation to the general anti-avoidance rule. I accept the thrust of what the Government is doing, but it needs to introduce greater safeguards. I talked about the guidance that it is giving to a degree, and I touched on the disclosure of tax avoidance schemes. I repeat that the Government's reason for not progressing such a scheme at present—at least as it appears from the cabinet secretary's letter to the committee—is down to the revenue Scotland resource implications. I ask the cabinet secretary to confirm whether that is the case. If Dr Heidi Poon's reading is correct, which is a matter of interpretation, the longer-term resource implications would be greater in the absence of a DOTAS mechanism. Perhaps the Government can reflect on that.

One other concern in relation to safeguards for the GAAR concerns pre-clearance transactions. Those happen elsewhere, in certain instances, and again the Government may want to give some thought to that approach, particularly with regard to LBTT, for which it is probably more of an issue than it is for the landfill tax.

Three obvious approaches can be taken by any Government. There could be no system

whatsoever, which is the current case; there could be an informal system in which there are discussions with the tax authority and a steer is given, but that steer is ultimately not binding; and the third option is to take a formal approach in which pre-clearance is signed off by the tax authority, which means that no challenge can be made later.

I put that specific question to Sir James Mirrlees, who is highly regarded by the Government and who has been quoted by a number of members for his expertise and by the cabinet secretary in his opening remarks. When I put those three approaches to Sir James Mirrlees, his response was:

"The second of your three approaches makes sense to me. It violates certainty a bit, so I can see why there is a case for the third approach but, on balance, that is what I would call for."—[*Official Report, Finance Committee*, 5 February 2014; c 3626.]

I therefore suggest that a number of organisations argued for a pre-clearance scheme, and I think that there is some merit in it. I quoted Sir James Mirrlees because some experts out there can see the merit in having pre-clearance. It gives a degree of certainty, and it ought to be considered.

The other area I wanted to discuss was some form of advisory panel. The idea here is ensuring that the GAAR is applied with a degree of commercial experience, particularly given condition B in the legislation. The idea got support from a number of organisations that we might have expected to support it, but it also had support from Unison and the STUC, although that support would depend on who the members of the advisory panel are to be.

That is a point worth making in response to John Mason, who was pretty strongly against the advisory panel. However, the strength of such a panel would be that it would give independent expert advice; it would not just be revenue Scotland giving its take on things. One could argue about who ought to be on such an advisory panel—and different groups had different views—but its strength would be in its independence.

There ought to be some more safeguards in the bill but, as I said at the start, we agree with the Government's approach and will support the bill come decision time.

16:02

Iain Gray: This has been a debate of broad agreement. It started off after the cabinet secretary with what was a very convenery contribution from Kenneth Gibson, who summarised the committee's deliberations very effectively. He said that he was looking forward to stage 2 and further

scrutiny. Gavin Brown rather jumped ahead to stage 2 by scrutinising the proposals on penalties, for example, that the cabinet secretary suggested he would make. That is good; it shows that there is an appetite for developing the legislation.

Interestingly, Mr Mason brought his inside knowledge of the accountancy profession to bear in the form of scepticism about his former colleagues' motives in seeking certainty. He spoke up very effectively for the honest tax-paying citizen. Michael McMahon picked up that baton when he made the point that, if we are leaving lawyers and accountants disappointed, we are probably doing the right thing.

We were some way into the debate before somebody spoke up for the lawyers. Mr Eadie quoted them by pointing out that some of their representatives—Mr Clancy, for example—had strongly supported the GAAR and the Scottish Government's approach as being better than that of the UK. There was, however, overall general agreement that tax avoidance is a bad thing, and it is a good starting point to ensure that we minimise it.

We should remind ourselves that tax avoidance is not new. I have a quote here from John Maynard Keynes, an economist who Mr Swinney often follows when it comes to capital investment. Many years ago, Keynes said:

"The avoidance of taxes is the only intellectual pursuit that carries any reward."

I presume that he was still thinking of those lawyers and accountants. We should not therefore be naive about our capacity to end tax avoidance, but it is good to start from the right principles.

This has been a debate of widespread agreement. However, before we get too misty eyed about that and join hands across the chamber, I will make some remarks about two dogs in the debate that by and large did not bark, although there was some reference to them from Willie Rennie and Malcolm Chisholm, for example. One of them is looking back at where revenue Scotland has come from and the other is looking at where the cabinet secretary perhaps fondly imagines that revenue Scotland is going.

One or two members have made the point that revenue Scotland is a manifestation—an outcome—of the process of the Calman commission and the Scotland Act 2012: the latest enhancement of the devolution settlement. It is worth saying that, although it is the latest and perhaps one of the biggest enhancements of the devolution settlement, it is far from being the only one. It rather gives the lie to the idea that devolution is somehow fixed and unchangeable and cannot match itself to new and developing circumstances.

Indeed, since the very beginning of devolution we have seen changes in the powers and responsibilities of this Parliament, such as responsibilities for new technologies and renewable energies—things that were not really known or understood at the time that the Parliament was set up. For example, some of the responsibilities around consenting to offshore developments have passed to this Parliament.

Some of the changes have been driven by the logic of responsibilities that we already have. During the three years that I spent as an adviser in the Scotland Office, one of the biggest things that we did was devolve responsibility for rail infrastructure to this Parliament, which was a logical development of the fact that we had responsibility for rail services and the franchise. That was a significant piece of devolution, because it brought with it investment of around £300 million every year. Of course, the amount each year has become rather more than that as time has gone on.

The changes have encompassed all Administrations. The current UK Government—not that I am in any way an apologist for it—has enhanced the devolution settlement when it felt it appropriate. For example, it has devolved some parts of the welfare system to the Parliament. The responsibility for community care grants and crisis loans is one example, and the most recent example is the agreement that control over discretionary housing payment caps will be devolved to the Parliament.

Devolution has changed over time, but there is no doubt that the Scotland Act 2012 and the Calman process that preceded it have provided one of the biggest enhancements. The driver for that was to rebalance the Parliament and give it more fiscal powers to match its very high level of legislative responsibility. All that demonstrates that devolution is dynamic and flexible: a powerful democratic system that we can use to our best advantage. It will continue to be so.

It is no secret that I and my party want more devolution of welfare—such as housing benefit—and taxation. That is the actual meaning of the old phrase,

"devolution is a process, not an event,"

which was said not by Donald Dewar but by Rhodri Morgan.

Independence, of course, would be an event, and it would not enhance but destroy devolution, because we would give up the powerful combination of the ability to pool risk, reward, resources and opportunities with the ability to make strong democratic choices over a wide range of sectors in public and private life.

Nonetheless, that is where the cabinet secretary wants to take us. I think that he has said in the past—and certainly Colin Beattie said today—that revenue Scotland would become our equivalent of HMRC were Scotland to become independent. I am a little puzzled by that because, when I was in a debate last week, one of Mr Beattie's colleagues thought that we would contract out responsibility to, for example, HMRC—although that option was not favoured in the relatively small case of the two taxes that we are discussing today.

ICAS is puzzled as well. The paper that it produced today demonstrates that the cost of independence on taxation is not clear but could be anything up to £3.25 billion. There would be a staffing cost as well: 2,500 HMRC staff in Scotland would not be required. There would be problems of a lack of specialist staff. For example, staff who deal with oil and gas are based not here in Scotland but in London, and those who deal with national insurance are based in Newcastle.

There are therefore still big questions about revenue Scotland and its future but, with regard to the bill, there is a widespread welcome for the body and general support for the cabinet secretary's approach. The bill will go on to stage 2 with a fair wind from those of us in the Labour Party and, I rather suspect, members from right across the chamber.

16:10

John Swinney: I thank members of the Finance Committee and other members of the Parliament for the way in which they have engaged with the bill, which sets foundations in which all of us must have confidence. My guiding principle in working through the bill process is to give clear leadership but to ensure that the bill commands wide political agreement, because there has to be contentment across the political spectrum with the approach that we take.

It was particularly kind of members to record their thanks to my bill team. That is important, because the individuals who work in that team have to convey to the Parliament in their evidence and in the steps that they take the clear guidance that I give on the formulation of the bill, and they have to deal with the fact that the bill has to meet that high test of being able to command broad parliamentary agreement. It is in that spirit that I respond to the debate.

I will deal with a couple of issues before I come to the heart of the debate, which has been on issues to do with the GAAR and issues of certainty. Ken Macintosh talked about issues that Audit Scotland raised. As an office-holder in the Scottish Administration, revenue Scotland will automatically be subject to audit by Audit

Scotland. Under sections 11 and 12, revenue Scotland will be required to prepare and publish a corporate plan and an annual report, both of which will be laid before the Parliament. Thereafter, it will be up to the Parliament to exercise the scrutiny that it determines to be appropriate for those issues.

Ken Macintosh: Audit Scotland is of the view that the Government will have to introduce an order, possibly to coincide with the day of implementation of the bill. Is that correct?

John Swinney: I cannot confirm that that is the precise approach, although I suspect that it will be. We are working on the assumption that, as an office-holder in the Scottish Administration, those arrangements will apply to revenue Scotland.

Malcolm Chisholm asked about the number of members of the upper tax tribunal. I will lodge an amendment at stage 2 to allow the president of the tax tribunals to appoint additional members of the upper tribunal in cases that are particularly important or complex and to provide the flexibility to apply that.

John Mason raised the issue of professional privilege, as he did in the committee, if I recall correctly. There is a difference in treatment between the accountancy profession and the legal profession. The arrangements that we have in place are part of long-standing legislative arrangements on legal privilege and I do not propose to revisit them as part of the bill. However, I will say that it is important that the standards and methods of operation in handling all business in relation to privilege must be within the spirit of the legislation. We expect that of the legal profession and the accountancy profession.

I turn to the issues that have been raised about the general anti-avoidance rule. I am happy to give Mr Gibson, the convener of the Finance Committee, an undertaking that I will exercise my power to issue guidance to revenue Scotland to make it clear that I expect it to consult in advance on all guidance that it proposes to publish, and not merely the GAAR guidance, except where there are good operational reasons for not doing so.

I will try to tackle some of the issues that Mr Brown and others raised about the alternatives to a GAAR that we could put in place—I suppose that I should say the complements of additional tests that could be applied. I am generally pretty unsympathetic to those alternatives for a number of reasons.

Mr Brown suggested a DOTAS approach. In my formal response to the committee, I said that I gave careful consideration to that but, on balance, decided that the disadvantages—particularly the potential resource implications for revenue Scotland—outweigh the arguments for putting in

place such arrangements, at least for the present. It is not only about resources; it is about the fact that, with the bill, I am trying to create the clearest possible culture of responsible tax paying, in which the burden of tax is shared fairly by individuals and companies paying their taxes in full as the Parliament intended.

I think that that is the spirit in which Patrick Harvie makes his contribution to the debate. It is also the tone set by John Mason in his speech, in which he made the point that not only the letter but the spirit of the law is important in paying taxes. That is the tone that I tried to set in the bill's design and, if we apply the bill with that approach, we will minimise the need to have a DOTAS approach, some further review mechanisms or other provisions because the general anti-avoidance rule will signify that we expect individuals to comply with the legislation in full.

That is the heart of my response to Mr Gray's and Mr Rennie's points on certainty. If individuals or businesses are prepared to pay taxes within a culture of responsible tax paying as we expect, I do not see what need there is to put in place any mechanisms other than the general anti-avoidance rule, because it signals to people the standards by which we intend to operate.

Mr McMahon also explored some of that territory in his speech, in which he suggested that there can be a place for targeted anti-avoidance rules. Of course there can be a place for such rules if they are required, but the style that I am trying to bring to the bill is to establish all our direction based on the creation of a clear and simple set of arrangements for paying tax. Those arrangements are designed to work within the spirit of the general anti-avoidance rule and to give us the robust framework within which individuals and organisations should operate to comply with the legislation. That has been done because we have tried to translate into legislation Adam Smith's four principles on certainty, proportionality to the ability to pay, convenience for the taxpayer and efficiency. I will continue to apply those tests as we continue to scrutinise the bill as it passes through the Parliament.

In the last part of his speech, Mr Gray talked about where revenue Scotland had come from and where it was going. Yes, revenue Scotland has emerged out of the Scotland Act 2012. I do not think that I could ever be identified as someone who signs up to what Mr Rennie described as the new optimism of the Scotland Act 2012. If that act is all that captures our country's new optimism, heaven help us. I am determined to be infinitely more optimistic and ambitious than anything that it could produce for us. I simply and gently point out that the Scotland Act 2012 did not even give us all the powers that the Calman commission

envisaged coming to the Scottish Parliament, so for it to be used as an example of the unionist parties' pioneering, ambitious approach to devolving further powers to the Parliament is well misplaced.

My final point concerns the comments that were made today about the ICAS paper. I simply point out that Scotland participates in an existing tax system. I want that system to be a great deal simpler and more efficient. I have demonstrated how that can be undertaken by the approach that we have adopted to this legislation as we take it through the Parliament. That will be the approach that we continue to take as the Parliament acquires more responsibilities. This legislation demonstrates that it is perfectly possible for us to undertake effective and strong tax legislation in the Scottish Parliament, and the independence referendum in September gives us the opportunity to do a great deal more of that, in the interests of the people of our country.

Revenue Scotland and Tax Powers Bill: Financial Resolution

16:20

The Deputy Presiding Officer (Elaine Smith):

The next item of business is consideration of motion S4M-09142, in the name of John Swinney, on the Revenue Scotland and Tax Powers Bill financial resolution.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Revenue Scotland and Tax Powers Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.—[*John Swinney.*]

The Deputy Presiding Officer: The question on the motion will be put at decision time.

Disabled Persons' Parking Badges (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Elaine Smith):

The next item of business is a debate in the name of Dennis Robertson, on the Disabled Persons' Parking Badges (Scotland) Bill.

16:21

Dennis Robertson (Aberdeenshire West)

(SNP): It gives me great pleasure this afternoon to come to the chamber to introduce the Disabled Persons' Parking Badges (Scotland) Bill, which is more commonly known as the blue badges bill.

The bill is designed to strengthen some of the enforcement aspects of the current legislation and to ensure that there is a statutory review in order to ensure that people who are entitled to a blue badge receive one and that people who are using one are legitimately entitled to it.

The badge provides on-street concessions within local authority parking zones and there is sometimes a degree of contention about blue badge spaces. The bill is not concerned with the spaces, however; it deals with how the badge is used and how to tackle its misuse.

I thank the Local Government and Regeneration Committee, which is the lead committee for the bill. I also thank the Delegated Powers and Law Reform Committee and the Finance Committee for their submissions to the Local Government and Regeneration Committee. My thanks also go to the Minister for Transport and Veterans for the support that he gave me in the early stages and to the Government for being supportive of the bill. However, I certainly would not have been able to make progress with the bill without the support of the team from Transport Scotland, which has been excellent in taking me through the process of the bill and providing me with the appropriate guidance.

The Transport Scotland team was also responsible, along with myself, for setting up two review groups. It is important to emphasise that those groups have been influential in shaping the bill. They continue to be involved in the process, and I thank their members for the degree of commitment that they bring to their work, the time that they spend on it and their consideration of the guidance that will underpin the bill.

The bill has six sections. Section 1 concerns the design of the badge. Since it was first introduced, the badge has undergone many changes. To begin with, it was an orange badge, and I remember when that scheme was brought in under section 21 of the Chronically Sick and Disabled Persons Act 1970. Section 1 of the bill

sets out how the badge will be improved so that it cannot be copied. The current badge can be and is tampered with to alter the expiry date and so on or to remove photographs. People can take a legitimate badge from someone and use it for their own purposes. I will return to that later.

Section 2 will give a local authority the power to cancel a badge that has been reported as lost or stolen. At the moment, that is seldom centrally registered. The blue badge is issued by a central authority in England, the blue badge improvement service, which holds a record of every blue badge issued in Scotland, England and Wales. With each badge comes a unique number for the badge holder so that when a badge is lost or stolen it can be reported and a new badge issued, with a new identification number. That ensures that any badge issued by the BBIS is legitimate and fit for purpose.

The issue of confiscation has caused a little debate among some organisations and members have been approached by Inclusion Scotland and the Law Society of Scotland. I want to reassure members that a badge would be confiscated only if it was felt that there was justification to do so. In most cases, an examination of the badge by an enforcement officer would probably determine whether that badge had been tampered with, was legitimate or was the badge of the person in the vehicle at the time. If the badge did not belong to the person in the vehicle, the enforcement officer would want to know where the badge holder was. We hear many stories: the person whose badge it is has just nipped into a shop and will be back in five minutes; or there has been a mistake and the badge should have been removed, because the driver was just nipping to the shops on an errand for a person with a disability and forgot that the badge was there. We hear many, many excuses.

Confiscation will be carried out sensitively. There is no point in confiscating a badge from a person who has a legitimate right to it. The badge is not just about on-street parking; it is about empowering people to get out and about. It enables people to get out of their homes and pursue leisure or employment, go shopping or visit family. It has an enabling function. At the moment, though, we are aware that it is being misused and abused.

There are some questions around the evidence from Glasgow City Council and the City of Edinburgh Council. The Law Society and Inclusion Scotland have asked for that evidence to be substantiated. I say to both groups that if a blue badge is being used by someone other than the badge holder, that person is denying someone else that disabled parking space. On-street parking can be difficult, especially in town centres.

The measures in the bill are appropriate and proportionate. I am grateful to the Local Government and Regeneration Committee for taking evidence and explaining to the Law Society of Scotland and Inclusion Scotland what it felt were the appropriate measures.

When we gave evidence to the committee at stage 1, the minister and I were questioned on those aspects and I think that we gave the appropriate answers to provide some degree of reassurance—if not total reassurance—to the Law Society of Scotland and Inclusion Scotland.

The other element of the bill that we are looking at is about non-uniformed officers. Again, that relates to the enforcement aspect of the blue badge scheme. Sometimes, what we need is the evidence, as has been called for. We need to ensure that badges are not being misused. At the moment, the intelligence from Glasgow and Edinburgh is that enforcement officers can go out, investigate, take evidence and then maybe make the appropriate approach—again, they could advise the police.

The final aspect of the bill is the review process, which is extremely important. In 2012, we introduced the independent mobility assessment, which lays down the criteria for a person to be given a badge. The measures are there. At the moment, there is no review process in some local authorities, but I am delighted to say that since we started moving forward with the bill, the majority of local authorities have put a review process in place.

I look forward to the debate and I hope that, at the end of it, the bill will be able to move on to the next stage.

I move,

That the Parliament agrees to the general principles of the Disabled Persons' Parking Badges (Scotland) Bill.

The Deputy Presiding Officer: I call Kevin Stewart to speak on behalf of the Local Government and Regeneration Committee. You have a maximum of seven minutes, Mr Stewart.

16:31

Kevin Stewart (Aberdeen Central) (SNP): Thank you, Presiding Officer. I am delighted to be speaking in this debate on behalf of the Local Government and Regeneration Committee, which scrutinised the bill at stage 1.

Dennis Robertson is to be commended for all his hard work and diligence in producing the bill. He has introduced it and piloted it to this stage. He has a personal interest as a blue badge holder, which I am sure has probably added to the work required of him. In his opening speech, he helpfully set out in general terms what the bill

seeks to achieve.

This member's bill is small in size, but do not let that fool anybody; it addresses a serious matter and the committee heard some illuminating evidence about the scale of the problems that exist. As with all bills that come before the committee, we initially sought views on its content. We received 27 responses, many of which mirrored comments that Dennis Robertson received in his earlier consultation.

The committee also heard evidence from three panels of witnesses, representing local authorities, third sector bodies including disability organisations, and the police and the Law Society of Scotland. In a departure from our normal approach, we heard evidence from the member in charge, Dennis Robertson, in a panel alongside the minister. That worked extremely well, with the evidence from the member and from the minister dovetailing and complementing one another. It avoided duplication and, of course, reduced the time involved, for which my very busy committee was extremely grateful. I would recommend that other committees consider that approach for bills where the underlying policy is not contentious.

There were some limited disagreements between witnesses, which is to be expected and, of course, is welcome, as it allows the committee to test the policy fully. We are extremely grateful to all those who gave us evidence, be it in written or oral form. Without input from such people, committees and, indeed, the Parliament could not properly and effectively scrutinise legislation.

We heard that some 260,000 individuals in Scotland hold a blue badge, for many of whom the badge provides a lifeline, allowing them to park without charge or time limit in otherwise restricted on-street places. It also allows them to park on single and double yellow lines, with certain restrictions relating to the safety of other road users, and where there are no other restrictions in place. That can allow badge holders to access jobs, shops and other services.

We also heard that people misuse badges for financial gain, either by using fraudulent badges or by using badges when the badge holder is not present. Given that in Glasgow city centre, for example, parking costs £3 an hour, we can see the temptation to abuse badges in that way. The temptation is probably increased because the existing law is weak. The bill will provide additional enforcement powers to local authority officials and police officers; allow badges to be cancelled and confiscated in certain circumstances; and provide increased security features, which should reduce forgeries and other forms of abuse.

The bill will make it a criminal offence to display a badge that is not valid—it might have expired, or

it might not be being used properly. As Dennis Robertson mentioned, a person's nipping out to the shops on behalf of a badge holder, for example, does not entitle them to use the badge and nor does a person's nipping into the shops when the badge holder is in the car. The purpose is to provide the badge holder, and no one else, with access.

The bill will allow the confiscation of badges that are being improperly used. That provoked a little bit of controversy in the evidence, as the badge holder could be inconvenienced as a result of somebody else's actions. However, we were reassured that, if the badge was confiscated, it would be returned to the badge holder promptly, thus minimising their time without it. I could go on further about that, but Dennis Robertson gave the Parliament a fair show on it.

We heard interesting evidence from civilian enforcement officers about the problems that they face and how they undertake their jobs. Indeed, I understand that, as a result of that evidence, discussions are now taking place to allow the police access to the existing national database of blue badges. That alone could make a significant difference in tackling abuse and could make the task of detecting abusers more efficient.

The bill will also put in place a requirement for all local authorities to have a review system in place to consider appeals from persons who apply for and are refused a blue badge. That provoked the suggestion from the Law Society of Scotland in its written evidence that the provision is not compliant with human rights legislation. It wants the appeal to be to a sheriff, as an independent tribunal.

The committee discussed the issue in oral evidence and the Law Society conceded that its main concern was about the cost of judicially reviewing a local authority's decision. It accepted that the existence of judicial review makes the provision compliant with human rights. Curiously perhaps, the Law Society was more concerned with legalistic propositions than with convenience and speed for the individual. The committee was content that the proposals in the bill provide for an independent review, minimise costs all round and satisfy the requirements of the European convention on human rights.

It was clear to the committee that at least some misuse of blue badges was inadvertent. I have given a couple of examples that could fall into that category. We asked witnesses how that misuse could be reduced and how badge holders could be better informed of the dos and don'ts of using their badges. All blue badge holders receive a booklet, but many perhaps either do not read it or do not understand it, or it might not be in the best format for them. A multi-agency working group is looking

at that. We consider that much could be done to make it easier for badge holders to comply with the law.

The committee unanimously backed the bill. We commend the general principles to the Parliament and look forward to future consideration of a measure that is small but eminently worthy.

16:38

The Minister for Transport and Veterans (Keith Brown): I am pleased to contribute to the debate and, as Kevin Stewart did, commend Dennis Robertson for the work that he has done so far. I reiterate that the Government supports Dennis Robertson and the bill.

The bill follows a period of earlier reform and modernisation of the blue badge scheme, which, among other changes, saw the introduction of the blue badge database, which Dennis Robertson mentioned. That database holds information on blue badge holders in Scotland, England and Wales. In addition, a new badge design makes the forgery and replication of badges much more difficult.

To add to that, Dennis Robertson's bill will provide more powers for the detection of forged or fraudulently used badges. That can only be a good thing for badge holders, who often have their days ruined when they cannot go about their business due to disabled parking spaces being used by those who misuse badges.

As Kevin Stewart said, during the bill process we must bear in mind the interests of those who are most important—the blue badge users.

Liam McArthur (Orkney Islands) (LD): Blue badge holders in my constituency have raised concerns about the rather onerous hoops that they need to go through to apply for the blue badge when it is evident that their eligibility is not in question. Does the database allow the process to be streamlined for those whose eligibility is not in question?

Keith Brown: I have heard other individuals express that concern, which is often the result of welfare reform changes that require people, as Liam McArthur put it, to go through hoops. That is why the form can be somewhat complex.

From time to time, we have looked at whether the form could be made more straightforward. In particular, we have tried to maximise the number of people with a blue badge who will be passported straight through to entitlement in the future. However, it is important to have the form because that helps to drive out misuse of badges and forged badges. We will keep the matter under review, as we have done up until now.

I, too, thank the Local Government and Regeneration Committee. I endorse Kevin Stewart's point about the effectiveness of witnesses giving evidence to the committee at the same time as Dennis Robertson, the bill's proposer. I also thank the Finance Committee and the Delegated Powers and Law Reform Committee for their consideration of the bill.

We have heard much of the bill's detail from Dennis Robertson, so I will draw on some of the conclusions of the Local Government and Regeneration Committee's report. An issue was the difficulty in identifying the level of misuse. It has not been easy for Dennis Robertson in developing the proposals to establish a baseline of evidence for the scale of blue badge scheme misuse. In that context, our thanks must go to the Glasgow City Council and the City of Edinburgh Council, which provided information based on snapshots of blue badge use and misuse in their areas.

I underline Kevin Stewart's point that a very determined person can save themselves upwards of £6,000 by misusing a blue badge. I also reiterate the point that blue badge misuse is not a victimless crime—or will not be when it becomes a criminal offence. As has been said, a misused badge deprives people of the disabled parking spaces to which they are entitled.

Research findings from Scotland on the use and value of the blue badge and the extrapolation of data from England also contributed to defining as closely as possible the scale of misuse. Paragraph 22 of the Local Government and Regeneration Committee's stage 1 report gets to the crux of the matter and states:

"While it is unclear how accurate these figures are or indeed whether they refer to overall abuse rates, it is clear from the evidence we received there is a substantial problem which impacts adversely on people's lives. The Bill aims to address by improving the ability of the enforcement authorities to take action in a number of ways."

I agree whole-heartedly. That is why it is important that local authorities have powers to act in cases in which it is apparent that a blue badge is not being used in the way that it should be used or by the person whom it is intended to assist.

I also acknowledge Police Scotland's commitment to enforce the blue badge scheme. As mentioned in the stage 1 report, I confirm that Transport Scotland officials are consulting the blue badge improvement service to facilitate direct access by Police Scotland to the blue badge database. That will give Police Scotland immediate and accurate information on badges issued by local authorities.

While the bill is an improvement on what went before and on the further improvements that we

have made over the past two years following a review of the scheme, it will not provide a quick fix to the misuse of badges. Research on the use and value of the blue badge scheme highlighted gaps in people's understanding of the scheme; that was echoed in responses to Dennis Robertson's consultation on the bill and in the evidence to the Local Government and Regeneration Committee.

As was mentioned, Transport Scotland is working with Dennis Robertson, and a multi-agency working group has been set up to help to inform the policy behind the legislation and to consider wider issues: for example, how better to highlight the role and purpose of the blue badge scheme to badge holders, enforcement officers and the wider public.

The old cliché is not true; one size will not fit all. We need to get the relevant information to the right people. In order to do that, guidance will first be disseminated to all local authorities and to Police Scotland on the changes that the bill will introduce. Local authorities will be able to include that guidance in their existing training arrangements for enforcement officers and appropriate guidance will also be arranged for use by Police Scotland.

Secondly, we will review the current information for badge holders, with the aim of providing more concise messages on the use and care of the blue badge. As Kevin Stewart said, some of the current guidance is perhaps a bit unwieldy. As I said to the committee, work is under way in the multi-agency working group to develop the top 10 tips for use of the blue badge. The aim is to produce something that is easy to read and durable and that can be kept with the blue badge, as a constant reminder of the correct way to use it.

Thirdly, publicity will be developed to deter abuse and to make people aware of the devastating impact of the scheme's abuse on blue badge holders.

The bill is the culmination of a range of measures that have been put in place over the past few years to ensure that people who hold blue badges can benefit from the on-street parking concession that the scheme provides.

I again thank the Local Government and Regeneration Committee for its work, and in particular for considering the range of written and oral evidence that it received and exploring the issues that were raised. The Government will continue to support Dennis Robertson as the bill progresses.

16:45

Mark Griffin (Central Scotland) (Lab): I welcome the opportunity to speak on the Disabled

Persons' Parking Badges (Scotland) Bill and I congratulate Dennis Robertson on the progress that he has made.

Labour members support the general principles of the bill and will vote yes at decision time tonight. We welcome the bill's main objective, which is to protect the rights of blue badge holders. We recognise that misuse of blue badges must be tackled, because it can lead to blue badge holders not being able to access a parking space when they need one.

However, we seek reassurance from the Scottish Government that it will work with its multi-agency working group to ensure that blue badge holders are properly educated about how to use their badge, so that disabled people who inadvertently misuse their badge are not penalised under the proposed new approach. I welcome what the minister said about providing more concise information to users.

We also seek reassurance that local government in Scotland will be properly supported and financially resourced to implement the bill's provisions, in particular those on enforcement and review.

This bill follows Jackie Baillie's Disabled Persons' Parking Places (Scotland) Bill, the intention of which was to prevent disabled persons' parking places from being occupied by people who are not entitled to use them, by making disabled parking bays enforceable and ensuring that enforcement action could be taken.

Sandra White quickly followed with a proposal for a responsible parking bill, which would allow freedom of movement for all pedestrians, by restricting parking at dropped kerbs and on pavements and double parking. The issue affects disabled people, who can find it difficult to negotiate their way across pavements and roads if their route is blocked by a parked car.

Sandra White's proposal complements the approach in the Disabled Persons' Parking Places (Scotland) Act 2009. Together, the measures will go a long way towards making our towns and cities more accessible to people who have a disability.

The proposed powers in the bill will be a welcome addition for local authorities as they seek to tackle blue badge misuse and its impact on genuine users, as long as authorities are financially supported to enforce those powers, in particular the power to cancel a badge that is no longer held by the person to whom it was issued.

Constables and enforcement officers will be given the power to confiscate a badge that appears not to have been issued under the Chronically Sick and Disabled Persons Act 1970,

that has been cancelled, that should have been returned to the local authority or that is being misused. It will be an offence to use a cancelled badge and to drive a vehicle while displaying a badge that has been cancelled or should have been returned to the local authority. The proposed powers will be most effective in curbing misuse of the scheme.

Although we support the bill at this stage, we seek assurances that there will be an education campaign to inform genuine blue badge users of exactly what they can and cannot do when they use their badge.

Other issues, which are not covered in the bill, might be worth thinking about in future. Blue badge holders can sometimes park on single or double yellow lines, but they are not allowed to do so if there are additional markings on the kerb. Sometimes it is possible to park, but people cannot find the road sign that lists the prohibited times without walking a long distance and standing in the street to check the restrictions. There appear to be more and more restricted areas and it would be worth while if the minister looked into the upsurge in restrictions.

I will close as I began, by saying that we support the bill's general principles and that we will support them at decision time, with the caveats that I gave on assurances about resourcing and education. I look forward to the bill progressing.

16:50

Cameron Buchanan (Lothian) (Con): I start by declaring an interest as a blue badge holder, as members will know I am from seeing me stagger into the chamber with my two sticks. I have a great interest in the subject.

As a blue badge holder and a fellow MSP, I add my congratulations to Dennis Robertson on introducing the bill. I, too, have suffered from some of the problems that have been described.

From the contributions that have been made and from the evidence, we know that the blue badge scheme needs to be reformed. That reform is definitely overdue. The evidence that was presented to the Local Government and Regeneration Committee showed an overwhelming sense of resentment among blue badge users about the lack of respect that the scheme is shown and the subsequent wide-scale abuse that goes on. Calls were made for greater awareness and investment in education, given the number of blue badges that are being misused unintentionally by family members, for example, as we have heard.

In his evidence, Grahame Lawson of the Mobility and Access Committee for Scotland said

that the number of people who take the time to read the booklet on their rights and responsibilities under the scheme is very small. We have touched on that. The booklet is a little complicated. It needs to be simplified and cut down, because people do not read such things.

The staggering scale of intentional and calculated fraud that goes on under the scheme points to a far greater problem, which the bill cannot fully address. The fundamental problem is that too many people do not understand—as I did not—how valuable the scheme is to those who have mobility problems and how much those with a disability are restricted and prevented from going about everyday tasks when they do not have access to designated disabled parking bays. If people understood what a lifeline those bays are, their attitude to the abuse that goes on would be very different. That is why I would welcome a bit more education, which is key.

The fact is that people know that using a disabled parking bay is wrong, but they also tend to think that it is okay to use one if they are running late for an appointment, as we heard from Dennis Robertson, or nipping into the supermarket for something. That is not okay, and we must make it clear to people why it is not okay. We must challenge the notion that it is somehow acceptable to abuse such schemes in the right circumstances.

We blue badge holders have a critical role in the drive for greater awareness. We should be aware of our rights and responsibilities, as the likes of Helen Dolphin from Disabled Motoring UK argued in her evidence. One of the biggest misunderstandings is about a friend or relative borrowing our blue badge to run an errand on our behalf. That is a definite misuse, although many people do not regard it as such. In theory, the badge is valid only when the badge holder is in the vehicle concerned. I am not sure whether the badge holder must be getting out of the vehicle; sometimes, I have been caught in that way.

Raising awareness and challenging false perceptions are an important part of tackling the problem. Improving enforcement is also a critical element, which has long been missing. That is the strength in Dennis Robertson's bill. New laws are often passed when better enforcement of existing legislation would be just as—if not more—effective. The bill focuses on how we improve the workings of the blue badge scheme, and central to that is enforcement.

Most telling is the fact that many witnesses told the committee time and again that misuse rates are high—they are estimated to be between 52 and 70 per cent in Edinburgh—because those who commit the offence are confident that they will not be caught. Local authority officers' contributions were interesting. There was broad agreement that

blue badge fraud is in many cases viewed as a cheap alternative to car parking charges, although we heard that only 30 cases of common-law fraud were recorded in relation to blue badges. We must more readily prosecute those who abuse the system routinely and deter people who see abusing the scheme as an easy option.

I am a bit worried about the confiscation of badges. I make a particular point about that because confiscating a badge deprives somebody of it. It is crucial that confiscated badges are returned quickly to holders who are not guilty.

The new criminal offence that the bill proposes and the powers of confiscation are welcome, but that is not really an end to the process. It is obvious from our evidence gathering that there is work to be done on data sharing and the design of the badge.

I, too, support the bill.

The Deputy Presiding Officer: We move to the open debate. If members keep their speeches to a maximum of four minutes, I should be able to call everyone who wants to speak.

16:55

Sandra White (Glasgow Kelvin) (SNP): I congratulate my colleague Dennis Robertson on introducing the bill. I fully agree with the bill's policy objectives of protecting the rights of badge holders and strengthening the existing framework of the scheme. I also agree that, without the blue badge, many disabled people would be confined to their homes, as members have mentioned.

For me, that is central to the bill's objectives and resonates well with my proposed responsible parking bill, whose policy objectives are to allow freedom of movement for all pedestrians by restricting parking at dropped kerbs, parking on pavements and double parking. It seems to me that those two bills and the act that Jackie Baillie introduced, which Mark Griffin mentioned, complement one another. Irresponsible parking affects the ability of people—especially the disabled, the elderly and those with visual impairments—to get around, to access local services and to otherwise enjoy the freedom of movement that many of us take for granted.

Unfortunately, unlike the bill that we are debating, my proposed bill appears to have fallen foul of parliamentary process and has not moved forward at the same speed, even though it was lodged some months earlier. I am obviously frustrated by that, as are many members of the public across the country, judging by the correspondence that I have received regarding my bill. Perhaps Dennis Robertson could give me some sage advice on the best way to move

forward my proposed responsible parking bill. I will have a chat with him after the debate.

The committee's report states:

"On-street parking enforcement is the responsibility of the police and local authorities. The police are responsible where parking remains criminalised ... and Police Scotland use police officers or police traffic wardens to enforce parking restrictions. Local authorities are responsible in areas where parking has been decriminalised".

In giving evidence to the committee on behalf of Police Scotland, Assistant Chief Constable Wayne Mawson stated:

"We are changing the way in which we conduct parking enforcement by removing the traffic warden role. However, we are committed to tackling dangerous or obstructive parking and the misuse of blue badges, including parking in disabled bays. That commitment will remain after the traffic warden service ceases."

I welcome that. However, his colleague Superintendent Craig Naylor went on to say:

"Some of the paperwork that"

has been

"pulled together mentions that people say that it is hard to get in touch with a police officer to deal with abuses".— [Official Report, Local Government and Regeneration Committee, 26 March 2014; c 3308, 3316.]

People can dial 101 to contact the police, which Police Scotland says is a good way to go about reporting abuses, but many of my constituents tell me—I presume that other members hear the same from their constituents—that that is not the case in dealing with parking offences. They are informed that many parking offences are under the control of local authorities, although that is clearly not the case. We need some information and clarity on the issue. As others have stated, the police have responsibility for such issues. I would like some clarity on the matter—perhaps I should write to Police Scotland myself. The Convention of Scottish Local Authorities also highlighted its concerns about enforcement in its submission to the committee.

I agree with Kevin Stewart, the minister and Mark Griffin that we need multi-agency working, more information and more education to ensure that people know exactly who is responsible. There is much confusion over who is responsible for what and over where people can and cannot park—for example, there is confusion about parking on yellow lines, as Mark Griffin mentioned. I would welcome the opportunity to look at the issues and concerns around parking and enforcement with a view to adopting a consistent approach to achieving the bill's aims.

In conclusion, I echo Dennis Robertson: the bill is about not just parking, but enabling people to have a life. I fully support the bill.

16:59

Liam McArthur (Orkney Islands) (LD): I join others in warmly congratulating Dennis Robertson on the progress that he has made with the bill so far. All the speakers have rightly pointed out that although it is a small bill, its significance should not be underestimated. I thank the Local Government and Regeneration Committee for its work to date on the bill.

Mark Griffin was right to set the bill in a wider context. I certainly understand Sandra White's frustrations over her bill. I know that a precursor to her bill was brought forward by my colleague Ross Finnie, so the issue has been in the pipeline for some time. Jackie Baillie's efforts in relation to the misuse of disabled parking bays are also worth noting in the context of this debate.

I was not involved in the committee's deliberations on the bill, but I welcome, from two perspectives, the chance to participate in this debate. The first perspective is that of personal interest, as I am the brother of a wheelchair user who is a blue badge holder. I recognise very much the frustrations that Cameron Buchanan, Dennis Robertson and others have outlined about the abuse of blue badges and the impact that that has on the individual blue badge holder.

The second perspective is that of my constituency casework, from which I know about the issues that can arise with the malfunctioning of the current system and the need for improvements of the sort that Dennis Robertson is bringing forward in his bill and the proposals that Sandra White has under review.

I was very grateful to the minister for his response when I raised the issue of the administration of the current scheme. I know that a number of constituents are concerned about the 20-page form and the possible half-hour assessment that are involved in securing a blue badge. One constituent approached me on behalf of her parents, who are over 80. She made it clear that

"it is hugely stressful to get through all these procedures, so much so that they would rather forfeit their badge than go through all of this."

She went on to ask whether a more streamlined process might be possible when eligibility is obviously not in question and is supported—as happens in some cases—by evidence from general practitioners and nurses. I put on record my gratitude to Orkney Islands Council for the way in which it has responded to the concerns that I have raised, but there seems to be a case for more discretion or a fast-track process in some instances.

On the enforcement provisions to which other members have referred, I am aware of COSLA's

evidence. Like others, I have concerns about the withdrawal of traffic wardens in my area, and about the possible implications for already stretched police resources. I think that the issue will have to be looked at in more detail at stage 2. Likewise, in relation to the confiscation of badges, I recognise that there is a balance to be struck when we try to bear down on fraud, but if we are at risk of creating additional problems for those who rely heavily on their blue badge, we might need to look again at confiscation. I note the comments that have been made about the speed of redress when mistakes have been made but, in light of Inclusion Scotland's evidence, I think that more work needs to be done in that area.

As I said, this is a small bill but it is hugely significant for those who rely on blue badges, which enable people to lead more independent lives. I welcome the progress that has been made on the bill and I wish Dennis Robertson all the luck in the world as the bill proceeds through stages 2 and 3.

I confirm that the Liberal Democrats will support the bill at decision time.

17:03

John Wilson (Central Scotland) (SNP): I come to the debate as a member of the Local Government and Regeneration Committee and as a member, in the previous parliamentary session, of the Local Government and Communities Committee, which examined Jackie Baillie's Disabled Persons' Parking Places (Scotland) Bill. I therefore have some knowledge of the issues that are presented in Dennis Robertson's bill.

Although legislation already exists for many parts of the blue badge scheme, anyone with even basic knowledge of the subject knows that there are on-going problems with the scheme, particularly in relation to its abuse. Dennis Robertson's bill seeks to enhance the rights of blue badge holders. We must recognise that that is what it is about.

The Local Government and Regeneration Committee's stage 1 report, which was published this month, is supportive in principle of the bill and its general intentions. That is not to say that the evidence presented to the committee showed that organisations did not have some concerns about the bill. For example, we heard concerns from the Law Society of Scotland and Inclusion Scotland about its implementation.

The blue badge scheme is, in essence, about assisting disabled people to live independent lives. During the committee's evidence-taking sessions, it was suggested that blue badge abuse tends to occur most frequently in supermarket car parks. We have no legislation on such areas, and people

must be aware that private car parks such as supermarket car parks are not covered by the bill. We need to examine that area further.

The committee also heard evidence about the levels of abuse of blue badges. Gordon Catchlove of the City of Edinburgh Council gave detailed figures, and said that 52 to 70 per cent of the blue badges that are on display in Edinburgh at any one time are being misused. However, we must recognise that even disabled people can hold down jobs and that they depend on the blue badge scheme to get to and from work, so some of the badges that are on display may belong to genuine blue badge holders who are carrying out full-time employment to their benefit.

That leads me to the area of enforcement. On-street parking is the responsibility of the police or local authorities, as other members have said. I hope that we have resolved that issue, given the evidence that we received at committee. There is clear guidance on who is responsible for enforcement in relation to the misuse or abuse of blue badges.

The Deputy Presiding Officer: You are in your final minute.

John Wilson: Both the member in charge of the bill, Dennis Robertson MSP, and the minister said that many disability organisations do not share the concerns that have been expressed by Inclusion Scotland. The debate that is taking place within the disability movement is to be welcomed by everyone as it will enable us to be clear about how we move forward.

I thank Dennis Robertson for bringing his bill to the Parliament, and I thank everyone who has given evidence to the committee. I hope that we as a Parliament will achieve legislation that helps disabled people to fulfil their lives and participate as fully as possible in the activities that they want to engage in. We have to ensure that action will be taken, and to get a clear message to those people who misuse or abuse the blue badge scheme.

I congratulate Dennis Robertson on getting to this stage and look forward to the bill becoming an act at a later date.

The Deputy Presiding Officer: We now turn to the closing speeches. I remind members who have participated in the debate that they should be in the chamber for the closing speeches.

17:07

Cameron Buchanan: It seems only a minute—or maybe it was four—since I gave my opening speech. Still, what the debate lacked in longevity, it more than made up in its succinct, constructive and supportive tone in favour of Dennis Robertson's bill.

In my opening remarks, I outlined why I support the bill, which will bring much-needed improvement to the administration of the blue badge scheme. However, I am aware that there are still some concerns over some of the finer details. For instance, there are a range of views on non-uniformed enforcement officers. I am a bit wary of that issue, the crux of which is the striking of a balance between the most effective way of enforcing the legislation and showing an appropriate level of sensitivity to blue badge users and their personal circumstances. Very quickly, we centred on how officers will be identified and whether that will give assurances to the likes of Inclusion Scotland. There is clearly a need for some further discussion on the point, probably at stage 2.

Liam McArthur mentioned the hoops that people need to go through to get a blue badge. That is not covered in the bill, but it is a difficult, complicated process. I know that, as I have gone through it. I sent in a picture of me limping along a pavement because I could not show them that I am disabled.

The Law Society of Scotland highlighted its concerns about the inclusion in the bill of strict criminal liability relating to the use of a badge once it has been cancelled, and other evidence was given to the committee about the potential for people to commit offences inadvertently. We heard concerns about what would happen where vulnerable badge holders were aware of abuse but had limited options due to their reliance on others around them. Along with the enforcement issue that I mentioned earlier, that highlights an important aspect of the enforcement of the legislation, namely that it will require local authority officers and the police, where appropriate, to exercise their duties with a good deal of care and sensitivity.

Although we agree that, in clear-cut cases of fraud, we expect the perpetrator to be prosecuted, we would all expect a certain flexibility and discretion to be shown in the more complex areas that there will undoubtedly be. We do not want genuine mistakes to be met with punitive fines.

If we are to have well-trained enforcement officers on the ground, we will need the money to fund them, which brings me to the vexed issue of funding and resources. Happily, a number of local authorities have officers in place who are able to tackle the matter at present, but they would have to monitor the working of the bill in practice. Perhaps that is something that we can deal with at stage 2. We also heard that there was anecdotal evidence of unofficial amnesties on expired blue badges where councils had a backlog in the administrative processing of appeals. The system must be properly funded if it is to work, and

greater funding will be required for the process of reviewing decisions.

In areas where the police are responsible for enforcement, resources will have to be put in place. I was pleased to hear the assurances that were given at the committee, but we must monitor the situation in that regard.

I am sure that all the issues that I have mentioned can be highlighted at stage 2, but we must not lose sight of the fact that, at its core, the bill gives local authorities and police sensible powers—powers that they have long sought—to challenge the widespread abuse of the blue badge scheme. Therefore, I support the bill.

17:11

Anne McTaggart (Glasgow) (Lab): As a member of the Local Government and Regeneration Committee, I have had the opportunity to consider in some detail the proposal contained in the bill and its likely effects. I thank Dennis Robertson MSP for bringing an important issue to the attention of the Scottish Parliament, and I commend his efforts in raising awareness of the very real consequences of blue badge misuse in towns and cities across Scotland.

I fully support the bill's broad aims. I acknowledge that it can often be challenging for disabled people to find accessible parking spaces and that blue badges go some way towards addressing the difficulties that badge holders experience in reaching their destination safely. I was initially surprised to learn that more than half of all blue badge holders believe that misuse of badges is a major problem. Despite realising that disabled parking badges were too often open to misuse, I had not appreciated the scale of the problem that local authorities face in distinguishing between genuine and fraudulent badge holders.

I feel strongly that the Scottish Government should seek to work with key stakeholders to ensure that all blue badge holders are properly educated on the use of the badge. I appreciate the minister's comments about the top 10 tips that people will easily understand, which sounds like an excellent idea. That would provide reassurance that disabled people who inadvertently misuse their badge will not be penalised under the bill's provisions.

I recognise concerns raised by the Law Society of Scotland that the introduction of new criminal offences—of driving a motor vehicle while displaying a cancelled badge and of wrongful use of a blue badge—are simply duplications of the existing common-law offence of fraud. However, I believe that the incorporation of those offences in statutory form will raise awareness of the seriousness of blue badge misuse and will send a

clear message that those who deprive genuinely disabled people of accessible parking spaces will be punished.

However, I share the concern that the bill does not contain a right of appeal to an impartial body after a blue badge application has been reviewed and rejected by a local authority. I believe that there should be an external appeals process—one that is resourced—that reviews the rejection of applications by local authorities, and that that external process should have the power to overturn the original decision if there is evidence to justify an appeal. I also believe that, as Cameron Buchanan said in his closing speech, local authorities should be fully resourced to implement the provisions of the bill, including in relation to enforcement and the review elements of the of the blue badge application process.

Notwithstanding those observations, I am delighted to confirm my support for the aims of the proposed legislation. and I look forward to considering the issues in greater detail with my constituents as the bill progresses.

17:15

Keith Brown: I will try to cover and respond to some of the points that have been raised in the debate.

John Wilson talked about enforcement in private car parks, and he was quite right to say that that does not fall within our jurisdiction. I have written to the Scottish Retail Consortium to highlight the importance of the issue and the need for disabled people to have close access to shops. I hope that the passing of the bill will raise retailers' awareness of the importance of managing disabled bays in shopping centres. If necessary, I will be more than happy to write to the SRC again once the legislation has commenced.

Anne McTaggart raised the issue brought up by the Law Society of Scotland about the offence of duplication of a blue badge. It is already an offence to misuse a blue badge. By introducing an offence of using a cancelled badge, section 4 of the bill is amending the existing law to include provision that it is also an offence to drive or to park a vehicle that is displaying a badge that has been cancelled or that should have been returned to the issuing authority. I am no lawyer, but I think that it is true that we have a general presumption in law against theft, but there are many aspects of theft that we describe as an offence in law, and this is, to my mind, similar.

To return to the point that Cameron Buchanan made about being sensitive about these things, we would not expect action to be taken if a person who had previously reported their badge as having been lost then found it again and inadvertently

used it instead of the replacement. The same situation would have to apply to a carer who transports a badge holder and is unlikely to be unaware that the badge holder is using a cancelled badge. It is quite right to say that we should be sensitive about such things. Every case should be treated on its own merits, which is why we are working with the agencies that are involved, including the Crown Office and Procurator Fiscal Service and the police, to ensure that guidance to local authorities is in place to allow agencies to take a pragmatic approach to enforcement.

It is not really part of this bill, but mention was made of the application for blue badges. Local authorities should and do provide assistance to those who are going through that process. It is also true to say that the code of practice gives guidance to local authorities on the application process, and it recommends that, if a person is clearly eligible and their condition is unlikely to change, the blue badge improvement service can be notified so that no independent mobility assessment will be required in the future when a person is reapplying for a badge. That is helpful to people in those circumstances. Many local authorities operate in that way.

To go back to the point about being sensitive in these cases, I note that, even if a case is referred to the procurator fiscal, it is its role, on receipt of reports about crimes from the police and other reporting agencies, to decide what action to take, including whether to prosecute someone. That step provides a further check.

Kevin Stewart: I thank the minister for giving way, and I note that he and I are wearing twin ties for Enable Scotland.

The minister mentioned changes to welfare in his response to Liam McArthur earlier, and the move from disability living allowance to personal independence payments might cause some difficulties. Can the minister ensure that the expert groups that he has set up will do everything that they can to iron out those difficulties to make sure that folks who need blue badges will get them?

Keith Brown: It is a very good point. I noticed that Kenneth Gibson was also wearing the same tie for Enable Scotland. This is an enabling bill for those who have disabilities, so it is quite appropriate.

On welfare reform, our guiding approach so far has been to maximise the number of people who will passport automatically because they were previously eligible. We have tried to minimise the changes that will take effect in Scotland by keeping an eye on those who have blue badges and making it as straightforward as possible for them to continue to use them when they are

eligible. That will be the approach that we will continue to take in future.

Enforcement officers and the question of legal recompense to local authorities were mentioned. The bill confers powers, not duties, so it is up to local authorities to decide how to use the powers. They can help to fund additional officers—if that is what they choose to do—by using the money that they can take under the bill. As I said earlier, someone in Glasgow or Edinburgh who misuses a badge can gain up to £6,000 a year. That money is lost to the local authorities. If they can get that money back in, it can help them to pay for their enforcement services, but that would be the choice of the local authorities.

The one place where there will be an additional cost is the review process. I note the point that Anne McTaggart raised about an independent and perhaps external review process. We looked at such a process and, although I am not afraid to look at it again, we have taken local authorities at their word that they can manage—as they do in many other respects—an internal review process. Of course, outwith that, people have recourse to the ombudsman and, as I said earlier, to the legal process, so there are adequate means of redress.

On a related point, there is a good reason why the process to get a blue badge can be quite complex: to protect the interests of blue badge holders. The process is complex right across the UK—the Scottish Government has not done this alone—whether regarding the database or the new process. The reason is to minimise the number of people who should not have a badge who do. The number of spaces is limited, so it is very important that we protect the interests of those who need them most. That is one reason why the form, as Cameron Buchanan mentioned, is quite complex.

I mentioned that we will put in place the review process, which builds on the introduction of independent mobility assessments, carried out by occupational therapists. It will no longer be for personal GPs or nurses to make assessments; rather, there will be independent mobility assessments. That was what the UK-wide review came back with.

The existing legislation is clear that the assessment will be carried out by an independent health professional with the correct skills and experience to determine a person's functional mobility, which is the crucial criterion for the awarding of a blue badge. The implementation of IMAs is being closely monitored, particularly in light of the recent welfare changes.

The Scottish Government is pleased with the Local Government and Regeneration Committee's report. The provisions will provide local authorities

with powers that they can use as part of their existing arrangements for parking enforcement and apply as they consider necessary. Importantly, the bill responds to the views of badge holders. Once again, I congratulate Dennis Robertson on the work that he has done so far.

17:21

Dennis Robertson: I thank members for taking part in the debate, and I thank the minister for responding to some of the issues that members raised.

I can offer some degree of reassurance on the sensitivity of confiscations, which we discussed quite a lot with the review group. I have been reassured that training already exists in local authorities, such as disability awareness training and training on engaging with the public in areas of conflict. I am quite content with the training that is in place.

Confiscation of any blue badge will be done only as a last resort. Whether a badge is confiscated by the police or an enforcement officer, that will happen only if the confiscator is absolutely sure that the badge has been tampered with, has been used fraudulently, or is in the possession of someone who should not have it.

Training and information for blue badge holders was also raised by members. Cameron Buchanan is absolutely right about the booklet that goes with the blue badge. I think that, when the majority of people get a blue badge, they look at the blue badge and put the information booklet in the drawer. They are not really aware of all the responsibilities that they have as a blue badge holder, and we need to ensure that they are aware of those responsibilities. The top 10 tips, which we are looking to produce, will be produced with the enforcement and review group that we are working with.

Kevin Stewart: It was suggested during evidence taking that it may be an idea to get folk to sign and say that they have understood the guidance. Will the review group look to see whether that is possible and whether it would work?

Dennis Robertson: Mr Stewart makes a valid point, and it is certainly something that the review group will consider. That is perhaps one aspect of trying to ensure that badge holders are aware of their responsibilities.

I started on this journey about 18 months ago and in the time since then I have travelled across the country to engage with various groups, people with disabilities and COSLA representatives. People with disabilities who are badge holders are saying that they require a change in the current

legislation. I believe that, to an extent, they are content with the proposals, because the current enforcement powers are not sufficient. At the moment, a traffic warden or enforcement officer can approach someone and ask to see their badge, but if that warden or officer believes that the badge is being used fraudulently, they cannot confiscate it. Instead, they actually have to wait for a police officer to arrive, by which time the driver might have driven off. Surely that is wrong. We need the new powers in the bill to ensure that, when we are absolutely convinced that badges are being misused, they can be withdrawn.

Cameron Buchanan said that he is slightly concerned about aspects of identification with regard to non-uniformed officers, but I do not believe that that presents a problem. I sometimes think that being approached by someone in uniform can raise greater anxiety among some members of the public. In any event, someone who is not in uniform can provide the appropriate identification. If a person is concerned, they can ask for further identification. As far as I am aware, most enforcement officers have a radio with them and can probably call a central office to provide confirmation of identification.

I believe that the steps in the bill are proportionate and appropriate. I believe that the review process, which has been mentioned, is the right thing to do. At present, there is no statutory provision for a review although, since we started on this journey, the majority of local authorities have introduced a review process. If a person has been denied a badge, they will be able to appeal. I am not concerned that the appeal will be to the same local authority, because it will go to a different person in the authority—perhaps the line manager of the person who made the original decision or someone else. The decision will be based on criteria and guidance and, if a person does not meet the criteria for having a blue badge, their application will be denied. We also need to ensure that those who can be passported into the blue badge system know about that.

There are many stories of misuse, but the one that probably angers me more than any other is about a person who had a blue badge and who was housebound but whose family members used the badge without ever taking the badge holder out. That might be an extreme case, but we need to ensure that badges are used appropriately. Third-party misuse is not acceptable. We should say that it is not acceptable to misuse a blue badge.

Cameron Buchanan mentioned people just nipping out to the shop and inadvertently leaving a blue badge on the dashboard. That is fine but, with the central database system, we have a method of recording the incidents that take place so, if there

is persistent misuse, the enforcement officer or police officer will have that information to hand.

I believe that the Parliament wants the bill to progress. It has been my absolute pleasure to bring this debate to the chamber. I thank the team from Transport Scotland, the Local Government and Regeneration Committee and the minister, and I ask members to support the motion in my name.

Decision Time

17:30

The Presiding Officer (Tricia Marwick): There are three questions to be put. The first question is, that motion S4M-10079, in the name of John Swinney, on the Revenue Scotland and Tax Powers Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Revenue Scotland and Tax Powers Bill.

The Presiding Officer: The next question is, that motion S4M-09142, in the name of John Swinney, on the financial resolution for the Revenue Scotland and Tax Powers Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Revenue Scotland and Tax Powers Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

The Presiding Officer: The next question is, that motion S4M-10076, in the name of Dennis Robertson, on the Disabled Persons' (Parking Badges) (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Disabled Persons' Parking Badges (Scotland) Bill.

The Presiding Officer: That concludes decision time.

Epilepsy (Tackling Stigma)

The Deputy Presiding Officer (John Scott):

The final item of business is a members' business debate on motion S4M-09792, in the name of Kenneth Gibson, on tackling the stigma of epilepsy through education. The debate will be concluded without any questions being put.

Motion debated,

That the Parliament is saddened by what it understands is the persistent social stigma associated with epilepsy, which variously affects the lives of 54,000 people with this condition in Scotland; recognises research by Quarriers in 2012 that found that one in two people with epilepsy still encounters prejudice from the public and understands that nearly everyone with epilepsy polled said that most people know little about it; considers that informing attitudes through public education based on the See Me campaign model helps to tackle longstanding stigma and discrimination toward epilepsy; notes calls for all school pupils to learn about the effects of epilepsy and other long-term conditions and potentially life-saving techniques; acknowledges the forthcoming Stamp Out Stigma awareness-raising campaign for secondary pupils developed by Members of the Scottish Youth Parliament in conjunction with Epilepsy Connections, Education Scotland, Scottish Epilepsy Initiative and Young Epilepsy; understands that, by making epilepsy awareness a compulsory element of all first aid training, school staff in North Ayrshire and elsewhere can better assist over 800 children who are newly diagnosed each year, and up to 7,000 children and young people with active epilepsy, and believes that National Epilepsy Week, from 18 to 24 May 2014, offers an ideal opportunity to transform public perceptions.

17:31

Kenneth Gibson (Cunninghame North) (SNP): I thank the many members who signed the motion to make the debate possible, and I thank Allana Parker of epilepsy consortium Scotland and Alice Drife of Quarriers for their briefings.

As convener of the cross-party group on epilepsy, I have learned a great deal about the condition over the years, and much of it has been surprising. As treatments and medications have changed and improved, understanding among the general population has remained steadfastly low, and with that lack of understanding has come stigmatisation from some quarters and a feeling of exclusion for the people who live with epilepsy.

On attitudes to epilepsy, a 2012 research report by Quarriers entitled "We need to talk about epilepsy" found that one in two respondents felt that others treated them differently after they revealed that they had the condition. Many people may not consider being thought of as different as a huge issue, but half of children aged eight to 15 years with epilepsy stated that it was the worst part of having epilepsy; only 38 per cent said that the physical seizures were the worst part.

Epilepsy is the most common serious neurological disorder on the planet. In the United Kingdom, 600,000 people live with it and 54,000 of them are in Scotland. It is best defined as repeated seizures—not just one—that start in the brain. Epilepsy Scotland explains:

"A brief disturbance in the brain's normal electrical activity causes the nerve cells to fire off random signals. The result is like an electrical storm that causes a temporary overload in the brain.

There are many different kinds of seizure. Some end in seconds while others may last several minutes. People might lose their awareness of what is happening or where they are during a seizure. They may lose consciousness altogether."

Epilepsy can be caused if brain tissue is not properly formed or has been damaged by an infection or head injury. However, in about seven out of 10 cases, it has no identifiable cause, although it is thought that there may be a genetic link. We debated that link the year before last and Scotland leads the world in research on it.

Although a number of third sector organisations, such as Quarriers and Epilepsy Scotland, offer incredible support to people who live with epilepsy, the lack of understanding of and the stigmatisation surrounding the condition can make life extremely difficult for those with it. People often choose to hide the fact that they have the condition for fear of being misunderstood or of being thought of, and treated as, somewhat different from the rest of society. Hiding a part of themselves and having their real needs neglected is one reason why people who live with epilepsy are more likely to develop a mental health problem. Tragically, people with epilepsy are five times more likely to commit suicide than the general population.

The "We need to talk about epilepsy" report to which I referred provided other interesting and shocking figures on the experiences of people who live with epilepsy and on how they feel they are treated and viewed. More than two thirds of those who were interviewed for the poll admitted that they worried about what a member of the public would say or do if they had a seizure. A third admitted that concern over a seizure in public may lead to anxiety about whether to leave the house. Two fifths avoided telling people that they had epilepsy, while 60 per cent said that epilepsy had an impact on relationships with friends and family and more than half said that it had affected intimate or sexual relationships.

Nearly all of those who were polled—94 per cent—feel that most people do not know a lot about epilepsy. More than three quarters—77 per cent—claim that the general public make incorrect assumptions about how epilepsy affects sufferers. A quarter revealed that they had been accused of faking or exaggerating a seizure and, sickeningly,

7 per cent have even been filmed or photographed while having a seizure, when they are at their most vulnerable.

That lack of awareness is not only upsetting for the people who have epilepsy, but can have serious medical consequences. Sara Brannan—one of the people who told her story as part of the study—explained that many people would simply ignore her, or even step over her, when she was having a seizure, assuming that she was drunk or on drugs. On another occasion, Sara was kicked out of a shop after asking for a glass of water to take her seizure-preventing medication, because the shopkeeper assumed that she was a drug addict.

In my role as convener of the cross-party group on epilepsy, I wrote to the education departments of all 32 local authorities to ask what first aid and epilepsy awareness training was being given to pupils and staff in their areas to ensure that people with epilepsy would be in good hands should they require the assistance of their classmates or colleagues. Although health and wellbeing is covered as part of curriculum for excellence, epilepsy awareness is not compulsory, nor is it a compulsory element in the teacher-training programme; indeed, it is at the discretion of headteachers to decide which health topics will be explored. As a result, the responses from local authorities were something of a mixed bag, with many simply offering general first aid training and only providing specific epilepsy training where it was deemed to be necessary.

However, some local authorities, such as East Lothian Council, advised that all staff could access epilepsy awareness courses and, at least once a month, and twice on in-service days, the City of Edinburgh Council runs a course entitled “Severe Allergies, Asthma and Epilepsy Awareness—management in educational establishments”.

Although it is clear that councils must work within time and budget constraints, it is important that much more emphasis be placed on epilepsy awareness and training, especially when seizures can develop at any age and occur at any time of the day or night. As the City of Edinburgh Council and East Lothian Council have shown, that can be done. I therefore welcome epilepsy consortium Scotland’s call for local authorities to consider making epilepsy awareness a compulsory element of all first aid training so that school staff are better equipped to assist children who are newly diagnosed or are yet to be diagnosed. As I said, 54,000 people in Scotland have the condition, so it is not rare; I imagine that most teachers will see it during their career. When I was at school, a boy in my class had a seizure. No one had known that he suffered from epilepsy, and it was quite shocking for us.

In terms of pupil engagement, I am pleased to note that progress continues to be made towards the launch of the stamp out stigma campaign that has been developed in line with the curriculum for excellence by members of the Scottish Youth Parliament in conjunction with Epilepsy Connections, Education Scotland, Scottish Epilepsy Initiative and Young Epilepsy. The campaign will provide materials for staff and pupils who are seeking to find out more about epilepsy—the condition and the effects—and will enable people to hear first-hand evidence from people who are living with epilepsy. The materials will be made available on the glow website for staff and pupils to access. I am aware that classrooms will soon be able to sign up for epilepsy discussion sessions. Those discussions will undoubtedly help to normalise public attitudes to epilepsy and reduce the social stigma of the condition.

I would like again to thank members who signed my motion and those who will participate in this evening’s debate, and I also thank the minister for speaking on behalf of the Government. I hope that the debate will be informative to members and that they will encourage their local authorities and schools to get involved in the stamp out stigma campaign, so that we can gradually change social attitudes towards epilepsy into the 21st century.

17:38

George Adam (Paisley) (SNP): I thank Kenneth Gibson for bringing the debate to the chamber. I know, from his work on the cross-party group on epilepsy, how involved he is in working to help people with the condition.

It is interesting to hear that 54,000 people in Scotland have epilepsy. We recently had a members’ business debate about multiple sclerosis, and there are 100,000 people in Scotland with that condition. Those are two neurological conditions that affect people in Scotland.

Mr Gibson mentioned the stigma that is attached to epilepsy and that affects many young people. My niece has epilepsy and she never used to talk about it, because she did not want anyone to know that she had it. The Quarriers research found something similar. Young people felt as though they were treated differently in education and elsewhere if they mentioned that they had epilepsy.

Mr Gibson talked about first aid training for teachers. Perhaps the 32 local authorities should consider that. Mr Gibson mentioned that only one authority offers such training. We can imagine the panic in a classroom if someone has a seizure and the teacher is unable to do anything about it. It is probably down to local authorities to ensure that

their staff are able to help a young person in that situation.

Quarriers is based in Bridge of Weir, which, Presiding Officer, is not in my constituency but in the one next door, which is the constituency of my colleague Derek Mackay. Its £6.4 million Scottish epilepsy centre in Glasgow is there to help families that are dealing with the condition in the long term. As I have said previously, it is not just about support and so on; it is about ensuring that sufferers feel better about their condition. A lot of the time, just being able to talk to someone can make quite a big difference.

My niece is now in her 20s. At one point, she was going to lie to the Driver and Vehicle Licensing Agency so that she could get a driving licence. She had been informed in no uncertain terms that she could not get a licence because of her epilepsy. That shows the lengths that young people with epilepsy will go to to hide their condition.

The curriculum for excellence offers an opportunity to overcome that stigma. The whole point is to enable young people to explore different parts of the curriculum and come to their own conclusions. The stamp out stigma campaign and the glow network give teachers access to information about epilepsy and help them to teach young people about the condition and move them away from ignorance—from not knowing what they are dealing with. In dealing with just about anything, we need to ensure that young people are fully informed. The young people who we interact with are probably a lot better informed on a lot of issues than many of us are. It is important that education about epilepsy is available in the curriculum for excellence.

I thank Kenneth Gibson—I cannot get used to using his Sunday name—for bringing the debate to the chamber. I support him in his campaign to stamp out stigma about epilepsy in Scotland, and will continue to support him.

17:43

Cara Hilton (Dunfermline) (Lab): I thank Kenneth Gibson for securing the debate on tackling the stigma of epilepsy through education. As we have heard, epilepsy has a huge impact on people's lives. It affects 1 per cent of the population and many of us will have a friend or a family member who is affected. For me, it is my mum, who was diagnosed with epilepsy six years ago but had been suffering from what she calls "funny feelings" for a couple of years before that. She was stunned to be told that she had epilepsy, but she is now on medication, is seizure free and, most important for her, she is back at the steering wheel and can get herself out and about.

Epilepsy is a condition that varies considerably. There are at least 40 different types of seizures. While people's experience of the condition varies, those affected have got one thing in common: every day, people with epilepsy experience stigma, prejudice and discrimination. Having epilepsy can be a lonely and isolating experience that destroys confidence and self-esteem.

Colleagues have highlighted the Quarriers research, which found that 55 per cent of sufferers said that they were treated differently when people found out about their epilepsy. Many keep quiet, not just because of the prejudice that they face but because of general public ignorance about epilepsy. When my mum first found out that she had epilepsy, in common with 43 per cent of sufferers she tried to keep quiet about her condition. When she felt brave enough to speak out, she found that many people simply changed the subject and moved on to talk about the weather instead. Others would panic, worried that she would have a seizure at any minute and wondering whether they would cope if she did.

Is it any wonder that so many people with epilepsy suffer in silence when a shocking 28 per cent of epilepsy sufferers have been laughed at as a result of having a seizure? A third of epilepsy sufferers worry about leaving the house in case they have a seizure in public, 72 per cent say that their condition has affected their career prospects and 7 per cent say that they have been photographed or filmed when having a seizure. A former chief executive of Quarriers said:

"It appears we are stuck in the dark ages over how to treat people living with epilepsy".

We have huge challenges ahead. It is unacceptable that in 21st century Scotland people living with epilepsy are living in fear of ridicule and discrimination.

Things are not much better for between 5,000 and 7,000 children and young people who have active epilepsy. A survey of school children found that, for over half of them, being thought of as different or being teased by others—not the seizures themselves—was the worst part of epilepsy. I was quite shocked to read in the excellent briefing provided by Allana Parker that 31 per cent of young adults were concerned that epilepsy might be contagious. That really highlights how much more needs to be done to raise awareness of epilepsy in our schools, workplaces and communities.

I commend the stamp out stigma awareness-raising campaign, which will provide study materials on glow for class teachers and secondary school pupils. The campaign has been developed in line with the curriculum for excellence by members of the Scottish Youth

Parliament. I hope that when it rolls out in the autumn it will go a long way towards raising awareness in our schools, improving support for children and young adults with epilepsy and, perhaps most important, changing people's attitudes and perceptions. I hope that classes in my constituency and across Scotland will sign up for it.

A big concern for me, which Kenneth Gibson has highlighted, is the lack of adequate first aid training for pupils and staff in our schools, with many schools waiting until a child is diagnosed before putting training measures in place. Given that seizures can develop at any age and at any time, surely it would be better to ensure that every single school has a first aider who is trained to deal with epilepsy. I would therefore welcome the minister's comments on what action the Scottish Government can take to move this forward so that staff in all our local authorities and all our schools are better able to assist children with epilepsy.

I would also welcome the minister's comments on what measures the Scottish Government plans to take to raise public awareness and address the stigma that continues to undermine everyone of every age who is affected by epilepsy. The see me campaign has been really effective in tackling mental health stigma. Would the minister consider supporting a similar campaign to address the stigma of epilepsy?

I hope that during national epilepsy week we can together go some way towards reversing the negative perceptions that surround epilepsy. It is time to stamp out the stigma. I thank Kenneth Gibson again for securing the debate.

17:47

Liz Smith (Mid Scotland and Fife) (Con): I thank Kenny Gibson for securing the debate and I congratulate him on all the work that he has done on the topic in Parliament over a long period. Before I go any further, I apologise to Mr Gibson as I must depart early for constituency reasons and so cannot stay until the end of the debate.

The three previous speakers described eloquently just how much epilepsy affects the lives of so many people. It is something when one in 97 people ends up having epileptic fits. For the majority of those people, managing their condition can be extremely difficult. It has been highlighted that it can be particularly difficult for younger people—not just because of the medical challenges that they face, but because of the stigma and discrimination that they experience from some people.

On a personal note, I was lucky enough to teach in a school where epilepsy was well recognised and where teachers had a good understanding of

what it might involve. However, the call from Mr Gibson about what the General Teaching Council for Scotland and teacher training can do is important. There is no question in my mind but that it is essential that there is much better understanding—not just among staff, but among pupils.

In preparing for this evening's debate, I looked over the debate that Kenny Gibson secured two years ago on this very subject. I was struck by comments that were quoted from David Ford, Young Epilepsy's chief executive, who said:

"A major shift in awareness and understanding is the only thing that is going to improve this situation. We know that young people with epilepsy are getting a raw deal when it comes to education, employment and social interaction".

It is therefore very clear that a great deal of work still needs to be done to change public attitudes and to raise awareness of epilepsy. I congratulate epilepsy consortium Scotland on an excellent briefing.

I was very concerned to see in a report from a survey of more than 19,000 adolescents in the general population the perceptions and lack of real understanding of what epilepsy involves. Some are very far from appreciating exactly what it is, which shows us the scale of what we have to do.

It is very hard for teachers to control the initial reaction of young people in a classroom if a fellow pupil has a seizure. Obviously, what they do is out of concern for the pupil, but many of them do not understand what they have to do. I welcome the positive steps that have been taken in places including North Ayrshire and hope that the minister can take up the point that Cara Hilton made on what the Government can do to help with guidance and training. My understanding is that there is currently a very mixed picture across the local authorities on formal training and raising awareness. Kenny Gibson made a very good point. We have to look at that, because that seems to be a little difficult in some areas.

It is very worrying that the evidence points towards epilepsy being perceived in a very negative framework; I think that George Adam made a point about other diseases having received better recognition. That is a very important point that we, as parliamentarians, need to take on board, especially in debates such as this one, but also through listening to what the very successful lobby groups tell us.

I say again that it is important that we all have a much better understanding of the difficulties that people with epilepsy and their families and teachers face, and I thank Kenny Gibson for bringing this debate to the Parliament.

17:52

Alison McInnes (North East Scotland) (LD): I, too, congratulate Kenneth Gibson on securing this important debate in epilepsy awareness week.

As other members have mentioned, Quarriers conducted research in 2012 and published its findings in a report called "We need to talk about epilepsy". In introducing its findings, it explained:

"Epilepsy is one of the most serious neurological conditions and it has a huge impact on people's lives.

There is still a stigma around epilepsy that we have to remove.

Many people don't understand epilepsy or know that with the right treatment, those with the condition can lead completely normal lives."

The research reveals how the negative attitudes towards epilepsy that are still mired in myth and founded on fear or ignorance can impact heavily on those with it. Nearly all those who were surveyed felt that most people do not know a lot about epilepsy. More than three quarters claimed that the general public make incorrect assumptions about how epilepsy affects them. As we have already heard, more than two thirds of those who were interviewed admitted that they worried about what a member of the public would say or do if they had a seizure. Therefore, although it is sad, it is no surprise that a third of those who were surveyed admitted concern about a seizure in public leading to anxiety about whether to leave the house. That is dreadful.

Just over half of the respondents believed that they had been discriminated against and that discrimination towards people with epilepsy is widespread. More than one in four people said that they had been ignored or laughed at during or as a result of having a seizure, and people with epilepsy have said that they feel that they are treated differently. That, of course, leads to a great many people avoiding telling others that they have epilepsy.

We know that around one in 100 people in the UK has epilepsy. That is a lot of people struggling to cope on their own. Many of them are teenagers. There is evidence that epilepsy is perceived more negatively by teenagers who do not have epilepsy than other chronic illnesses are. An assessment of adolescent perceptions of chronic conditions found that epilepsy was also perceived to have a more negative social impact, particularly on behaviour, honesty, popularity, adeptness at sports and fun. It is disheartening that significantly more adolescents expressed reluctance to befriend peers with epilepsy. The most common reason that was given for that was fear of what to do if a seizure occurred.

I cannot think of any other long-term illness that leaves people feeling so isolated. People should

not feel that they need to hide the condition. That is why the forthcoming stamp out stigma campaign, which has been developed by members of the Scottish Youth Parliament in conjunction with partners such as Epilepsy Scotland, Epilepsy Connections, the Scottish Epilepsy Initiative and Young Epilepsy, has such potential to make a significant difference to the lives of children and young people who have epilepsy. Those of us on the cross-party working group on epilepsy have heard the MSYPs speak on the need for awareness raising, and I congratulate them on their determination to develop the campaign.

Scotland has 54,000 people with epilepsy. Recent research has shown that 95 per cent of children with epilepsy struggle at school. Their difficulties are often ignored or misunderstood. I want to see that change; proper support should be available to everyone and teacher training should include epilepsy awareness.

Epilepsy is a condition that manifests itself in many different ways, so teachers and school staff need to understand better how seizures impact on learning. Epilepsy awareness training gives people confidence in dealing with seizures, and information about first aid for epilepsy may even save lives.

Given that seizures can develop at any age and occur at any time of the day or night, it is sensible for school first-aiders to know about epilepsy and to share that information with colleagues. Therefore, I support the call from epilepsy consortium Scotland for local authorities to consider making epilepsy awareness a compulsory element of all first aid training, so that school staff are better equipped to assist children who are newly diagnosed.

I pay tribute to the many organisations that support people with epilepsy. I particularly highlight the work of the Muir Maxwell Trust in trying to combat the stigma of epilepsy. Its mum on the run for epilepsy campaign has been very well received—in fact, so much so that what was to be a temporary programme will continue indefinitely. The overarching purpose of those talks is to inspire, motivate and encourage young people to overcome challenges, as well as to provide a greater understanding and awareness of the issues surrounding epilepsy. It is doing a good job; I want us all to play our part in doing what we can to build a future free of stigma.

17:57

The Minister for Public Health (Michael Matheson): Like others, I offer my congratulations to Kenneth Gibson on securing the debate. I also recognise his particular interest in this area and

the work that he undertakes through his good convenership of the cross-party group on epilepsy.

The debate provides an opportunity to consider a number of issues around how epilepsy is addressed in our society. Like all members in the chamber, I am saddened when I hear of the discrimination and stigmatisation of anyone who lives with an illness or disability. We have learned from the debate how stigma impacts unacceptably on people with epilepsy.

Several members have mentioned the research that was carried out on behalf of Quarriers. That brings home in quite a sobering way just how peoples' lives can be affected by epilepsy. I recognise that all members in the chamber have a strong commitment to making Scotland a country where everyone is treated fairly and has the chance to achieve their full potential in all aspects of their lives without being held back by discrimination or stigma because of their personal health circumstances. Members of the Scottish Youth Parliament are taking forward its stamp out stigma campaign, which is a very welcome addition to the overall campaign in tackling all forms of stigma in our society.

As is the case with all neurological conditions, it is vital to have good information. As members recognise, epilepsy is a complex condition, not least because of the misconceptions to which it gives rise. As I am sure all members recognise, those misconceptions need to be challenged very strongly. Key to breaking the misconceptions is to ensure that people get the opportunity to talk about issues such as epilepsy. It is only through encouraging openness and discussion that we can get to the point at which progress can be made.

I am aware that stakeholders have done a lot of valuable work in providing support and information, as well as raising awareness about epilepsy. For example, a principal objective of Epilepsy Connections, a Scottish charity, is to raise awareness of the diversity and complexity of epilepsy needs. Fundamental to the charity's approach is the involvement of epilepsy service users in the planning and delivery of services. It also runs an ethnic minorities project, which supports people from black and minority ethnic communities and their families, friends and carers. The charity aims to raise awareness of epilepsy and to reduce the stigma around the condition in ethnic communities. That is important.

Other charities have led the way for many years in combating the prejudice that individuals with epilepsy can experience, not least in the workplace. For example, Epilepsy Scotland's guide for employers, "Epilepsy and Occupational Health", which was launched in 2011, acknowledges the importance of employers having readily accessible and up-to-date information

about epilepsy, including information about first aid, which is extremely important.

A few weeks ago I had the opportunity to speak at the national neurological advisory group's learning and sharing event. It was clear to me that there is tremendous commitment from everyone in the neurological community in Scotland to building on the good progress that has been made towards improving services for people who have neurological conditions, including epilepsy. The national neurological advisory group was formed to take forward work to improve neurological care in Scotland. Epilepsy is well represented on the group.

Several members referred to training for teachers. I am sure that members recognise that local authorities have an important role to play in ensuring that individuals who have epilepsy receive the right support and assistance. We want all children and young people to get the support that they need to reach their full learning potential.

The additional support for learning legislation was put in place to ensure that education authorities have a clear duty to identify, provide for and review the additional support needs of their pupils, including pupils with a condition such as epilepsy. Children and young people with disabilities should receive the support that they need to overcome barriers to learning. Such support might include the provision of additional equipment and services. Where necessary, schools should make reasonable adjustments to facilitate pupils' attendance.

George Adam mentioned the benefits of curriculum for excellence. We do not prescribe what should be taught to pupils, but the curriculum for excellence provides teachers with a unique opportunity to cover neurological conditions such as epilepsy.

Two bodies have a statutory responsibility to ensure that children with epilepsy get the support that they require: the local authority and the health board.

Local authorities have a responsibility to ensure that every child reaches his or her full potential, as well as a duty to make reasonable adjustments to ensure that a pupil suffers no disadvantage as a result of their condition. An important element of that is local authorities' responsibility to ensure that their teachers and support staff have the right training, so that they can support their pupils. Cara Hilton asked me to consider action to ensure that local authorities have properly trained first-aiders in schools. She is a council member, so I am sure that she is aware that that is the responsibility of the local authority. I encourage her to contact her local authority to ensure that it has put in place

adequate training for teachers and support staff, so that they can meet pupils' needs.

Meeting closed at 18:04.

Health boards have a responsibility to ensure that patients with epilepsy receive the right support.

National epilepsy week presents a good example of epilepsy charities working collectively to raise awareness of the condition. I congratulate the charities on their work over the week. I hope that I have been able to reassure members that we are working in partnership with a variety of stakeholders to ensure that people in Scottish society who live with a neurological condition such as epilepsy receive the highest quality care and support.

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