



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DEVOLUTION (FURTHER POWERS) COMMITTEE

Thursday 15 January 2015

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DEVOLUTION (FURTHER POWERS) COMMITTEE
2nd Meeting 2015, Session 4

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

COMMITTEE MEMBERS

*Linda Fabiani (East Kilbride) (SNP)
*Rob Gibson (Caithness, Sutherland and Ross) (SNP)
*Alex Johnstone (North East Scotland) (Con)
*Alison Johnstone (Lothian) (Green)
*Lewis Macdonald (North East Scotland) (Lab)
*Stewart Maxwell (West Scotland) (SNP)
*Mark McDonald (Aberdeen Donside) (SNP)
*Stuart McMillan (West Scotland) (SNP)
*Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Peter Kelly (Poverty Alliance)
Lucy McTernan (Scottish Council for Voluntary Organisations)
Dave Moxham (Scottish Trades Union Congress)
Satwat Rehman (One Parent Families Scotland)
Bill Scott (Inclusion Scotland)
Mary Taylor (Scottish Federation of Housing Associations)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Devolution (Further Powers) Committee

Thursday 15 January 2015

[The Convener opened the meeting at 09:31]

Interests

The Convener (Bruce Crawford): Welcome to colleagues and visitors who are here to witness what we do. No apologies have been received.

Agenda item 1 is a declaration of interests. I welcome to the committee Duncan McNeil and invite him to declare any relevant interests.

Duncan McNeil (Greenock and Inverclyde) (Lab): I have no relevant interests other than those in my entry in the register of interests.

The Convener: I am grateful to you. With Duncan McNeil arriving, Drew Smith is no longer a member of the committee. I thank Drew for his thoughtful and considered contributions when he was a committee member.

Deputy Convener

09:31

The Convener: We move to item 2. The clerks have indicated to me that the Labour Party has decided to change its nominee for deputy convener of the committee. Lewis Macdonald is to be replaced by Duncan McNeil.

I invite the committee to agree that Duncan McNeil be appointed as deputy convener.

Duncan McNeil was chosen as deputy convener.

The Convener: I welcome Duncan McNeil to the role and I thank Lewis Macdonald, who was very good at prodding me when I was going in the wrong direction—I hope that Duncan can do the same. I thank Lewis very much for the time he spent in that capacity.

I suspend the meeting until the witnesses for the next item are able to join us.

09:32

Meeting suspended.

09:34

On resuming—

Smith Commission for Further Devolution of Powers to the Scottish Parliament

The Convener: I ask everyone to ensure that their telephones are switched off. *[Interruption.]* I heard one going off as I said that, so I am glad that I gave that reminder.

Linda Fabiani (East Kilbride) (SNP): Sorry.

The Convener: I give a very warm welcome to our witnesses. I will go through who you are; I do not have a list of you in the order that you are sitting in, so forgive me—it would be too complicated for me to try to work it out in any other way than the one that I have here.

The witnesses are Peter Kelly, director, Poverty Alliance; Dave Moxham, deputy general secretary, Scottish Trades Union Congress; Lucy McTernan, deputy chief executive, Scottish Council for Voluntary Organisations; Satwat Rehman, director, One Parent Families Scotland; Bill Scott, director of policy, Inclusion Scotland; and Mary Taylor, chief executive, Scottish Federation of Housing Associations. *[Interruption.]* Phones are going off somewhere—I hope that that has now stopped.

Good morning, everybody. We have quite a big panel, so I ask my MSP colleagues to be as succinct as they can with their questions. It would be helpful if witnesses could do the same with their answers. We will ask general questions of the panel, although some questions might be directed at particular panel members. If a witness wants to answer a general question, please do, and if you want to contribute, just catch my eye. As we have a big panel, we need to go about things a bit less formally than we would at a normal committee meeting, or we will not get through everything that we want to get through.

I will break the session down into three chunks. I will deal with welfare powers, then tax powers, and I will try to pull together a package of all the other issues towards the end of the discussion. Having said that, I will open with a general question to you all, in order to get a reaction. My question is on the content and cohesion of the Smith commission's proposals and the extent to which they will address the interests of the groups that you represent. That will allow you to deal with the opening in the way that you wish.

Would anybody like to kick off? Lucy McTernan looks like she is ready to go.

Lucy McTernan (Scottish Council for Voluntary Organisations): Good morning,

everyone, and thanks very much for having us all along to have this discussion. The voluntary sector engaged with the Smith commission with great enthusiasm. It was a very intense period of work and the voluntary sector had a lot to say on all the subjects that eventually emerged in the commission's report. For the record—we have been open about it in the public press and elsewhere—we found doing this kind of work in that very intense and quick way quite frustrating. It did not allow us to engage with the people whom we represent and involve them in the thorough way that we would have liked.

Everybody who engaged did so thoroughly and with a lot of enthusiasm, because this is such an important set of issues, but we need to create the space for discussion about what is appropriate governance for Scotland and for Scottish society and people, wherever they are, in whichever communities. We are seeking a new type of politics and, if the general question is about content, it is important that we make that point.

On the conclusions that the commission arrived at and the content of the report, the summary is that we are happy with some elements and not happy with others, where things that the voluntary sector called for have not been addressed or even mentioned in some instances. I am sure that colleagues here will talk more about this as the meeting progresses, but the key thing about welfare is coherence and whether the things that are detailed in the report have the correct dividing line and whether, given the interconnectedness of the range of benefits that people can access, they can be supported and delivered in practice.

There is work yet to be done, which we in the third sector would very much like to be involved in. We do not think that it should be a politician-to-politician or official-to-official type of engagement. We have expertise on how these kinds of issues will affect people in practice, and we would like to be involved in it.

A third bundle of issues is those things on which the Smith commission has suggested that further powers should be devolved. We have a key interest in ensuring that that is expedited, where appropriate. A key example is employability, as part of the package of welfare services. We know that the work programme is not delivering for people in Scotland—nor, in our opinion, is it delivering for people in the rest of the UK. However, we know that the programmes, projects and activities that the third sector delivers and supports in Scotland do work and do help people. The statistics prove it. That is particularly the case for people who might be considered as being the furthest away from the labour market—those who have been called the hardest to help. We do help, and we do get people into productive employment.

We would like work to be done as soon as possible to ensure that resources can be transferred to the kinds of activities that we undertake so as to make that sort of work happen as quickly as possible.

Those are the three main areas that I wished to highlight.

The Convener: Thank you for that broad opening. Do any other witnesses wish to add anything new to that?

Dave Moxham (Scottish Trades Union Congress): I apologise for starting with something negative, but the biggest concern for the STUC was that the range of powers that could impact on the labour market, the quality of work, employment law and other areas were not included in the proposals for devolution. I will not talk about that for too long because that ship seems to have sailed, but that was one of our major concerns.

We welcomed the increase in tax powers, although we would have gone further. The big question now for what happens next is how the financial framework is written up so that the new tax and spending powers can be exercised in a way that properly incentivises Government action in Scotland and does not rob Peter to pay Paul. I will be happy to go into that in more detail when we discuss the fiscal issues more specifically.

Mary Taylor (Scottish Federation of Housing Associations): I echo much of what Lucy McTernan said. There are two key areas of concern to us. The first area of interest is housing benefit, or what has become the housing costs element of universal credit. At the time of the Smith commission, we acknowledged that the measures were a step in the right direction, although they fell short of what we had asked for on the ground of coherence across the welfare system. There are lots of boundaries that will need to be managed.

The second area of interest is fuel poverty. There have been moves that I think will be helpful in the long term, although they rely on the effective use of the powers by this Parliament once they are transferred.

Given the terrain that we are in, the Smith commission was helpful in shining a light on the whole area of intergovernmental working. When there is a mixture of devolved and reserved powers, whatever they are, we need to have effective mechanisms for managing them at both political and official levels. Smith rightly identified those as issues—they are coming to light as issues through the stakeholder group. It is a matter of trying to manage the follow-on from Smith.

The Convener: Thank you, Mary. We will get into some of those issues in more detail later in the discussion.

Bill Scott (Inclusion Scotland): One of our greatest disappointments was to do with the timescale involved. We found an enormous enthusiasm among disabled people about being involved in the process, as a spillover from the referendum campaign. A lot of disabled people had been energised by that campaign, and they wanted to take part in determining their country's future. I refer to people from both the yes and no camps, including activists from both camps.

When we organised consultation events on the Smith commission, we had to turn people away. The timescale meant that we could not organise too many events, and the ones that we did organise were massively oversubscribed.

It was a very complex area. Which powers should come? We managed to devise a meaningful way of doing things, so that people could understand what the movement of powers between one Parliament and the other might mean. One of the key things that were said by a disabled person to us was that the powers that the Scottish Parliament should get should be looked at through a human rights lens. Will they enable the Scottish Parliament to enhance the human rights of disabled people in Scotland?

Unfortunately, all that work took place after we had submitted our written evidence to the Smith commission rather than before, so there is a disconnect between, on the one hand, people's energy, enthusiasm and feeling that they were taking part and, on the other, how much they could influence the Smith commission's deliberations. It is something to bear in mind in future that, if we want local democratic participation, we must allow the space for it to take place. That is one of the key issues for us.

09:45

The other key issue for us concerns the welfare powers and their interaction with employability. Yes, the work programme will be devolved, but the sanctions regime, which impacts badly on disabled people and discourages them from seeking employment and the support that they need to get into work, will remain in place and not be influenced by that devolution. Therefore, the background against which the Scottish Parliament gains those employability powers will be affected by certain welfare powers—the work capability assessment and benefit sanctions, for instance—remaining at Westminster.

The Convener: We will get into the details of that shortly.

Peter Kelly (Poverty Alliance): What I say will echo some of the points that have been made already, so I will be brief.

We have struggled to see the coherence in the proposals in the Smith commission report. As we have stated several times, we share the concerns about the difficulty of the process. Like Bill Scott, we had a huge response from our membership and beyond to engage in some of the work that we did in the run-up to responding to the Smith commission. We need to think seriously about how we maintain that momentum and engage with people as we go forward into the next stages. That will be difficult, but we need to turn our minds to it.

We have been a bit more positive about, for example, the proposal to provide the power to create new benefits. That is interesting, is useful and should allow the Scottish Parliament and Scottish Government some scope to take new actions to address problems that are specific to Scotland. In our evidence to the Smith commission, we said that we were keen for that power to be given but, as Dave Moxham said, the question is whether we have the fiscal responsibility to enable us to use it. That is a key issue for us that is hanging in the air.

The Convener: Thank you, Peter.

Satwat Rehman (One Parent Families Scotland): I, too, will echo much of what my colleagues have said.

We, too, engaged effectively and widely with single parents in the lead-up to and during the referendum. They have shown energy for continuing to be involved, particularly on the issues that affect them. Welfare benefits, the work programme and Jobcentre Plus are the areas that they expressed the most disappointment about when we went back to them with what came out of the Smith commission. Although the work programme will be devolved, the policy framework will remain reserved and the regime of conditionality and sanctions, which is having such a negative impact on the families with whom we work, will remain in place.

On whether we are content with what came out of the commission, when we look back at the tests that we were going to apply to it—would what was proposed alleviate or reduce poverty and support children and families, particularly single-parent families; would it avoid or address the cliff edges that exist currently between the two regimes; and would it address inconsistencies in the system?—it is clear that the proposals fall short in a number of areas that colleagues have spoken about.

One area in particular that is not mentioned in the Smith report even though we had a specific session on it with Lord Smith is childcare. For us, that is one of the starkest examples of what

happens when supply and demand—funding, in a way—is split across two Parliaments. We are disappointed that there is no mention of childcare and nothing to consider how it could be addressed through the greater powers that will be given to Scotland.

The Convener: Thank you, Satwat. I thank all the witnesses. We will now get into much more of an exchange.

Duncan McNeil: I hope that I can meet that challenge.

I say good morning to the witnesses. It was interesting to read the written submissions, because there was a balance between comments about what was missing and a determination and willingness to participate to make the proposals better. Indeed, some of the submissions spoke about significant progress from the Smith commission. There was a lot of positivity in them. Will the witnesses focus on what the progress has been and reflect on the submissions and where the opportunities are to make progress? I think that Peter Kelly mentioned some of those. There is the right to make new benefits.

Dave Moxham mentioned the fiscal issue, on which there is not agreement. Some people are for full fiscal autonomy and some are not, and some are for the devolution of some taxes and some are not. It might be helpful if we can speak about the positions on that for balance.

The Convener: Does Dave Moxham want to kick off?

Dave Moxham: Yes. On that financial issue, when we did our submission, we reflected a little bit on the situation in Northern Ireland. As members know, there is quite significant devolution there of a range of policy powers, such as welfare powers, but, as we see from the discussions there, there is clearly a problem with the funding of that.

There has to be a coherence between the amount of money that the Scottish Government spends and how that is reflected in both the number of taxes that it can levy and how the block grant is calculated, because there can be a number of negative incentives in a system in which there is simply a static block grant.

I will give one quick example. The future jobs fund, which Alistair Darling introduced four or five years ago, was essentially half-funded by fiscal stimulus and half-funded by savings that the Department for Work and Pensions managed to make, because obviously people were not being paid housing benefit, jobseekers allowance and other things. In the current circumstances, were John Swinney to do the same thing, he would not

derive any of those benefits, which would essentially be recaptured by the DWP.

It is therefore useful to have the additional devolution of powers only if there is a suitably flexible and negotiated fiscal framework that allows some of the spending decisions in Scotland to derive benefit in Scotland. Therefore, we are looking very closely at how the financial memorandum and fiscal arrangement will be negotiated in the next three or four months.

The Convener: That is quite a helpful example. Does Peter Kelly want to build on what he said about benefits?

Peter Kelly: On the positives from the Smith commission, I have already mentioned the powers to create new benefits. Dave Moxham succinctly made a point about how that is paid for and how it can be incentivised.

We were also happy about the devolution of cold weather payments, funeral payments and sure start maternity grants, for example. They can make a real difference if we use them creatively.

At some point, all of this comes down to political will to use the new powers in ways that reflect the concerns that the whole panel probably shares, so I do not want to go into some of the negatives.

On things that we were happy were not devolved, we have mentioned corporation tax. We were happy about not having new powers in that area. There needs to be an appropriate division of responsibilities between the UK and Scotland.

Those are some key points.

Lucy McTernan: To pick up on what was welcome in the report, the voluntary sector raised a very wide range of issues, as members would expect from such a diverse sector and a sector with such a wide range of key interests. For example, the proposed devolution of the Crown Estate was exceptionally welcome to many rural community organisations and to environmental organisations. The proposed devolution of some aspects of energy policy and of consumer protections in the interests of citizens' rights was very much welcomed, too.

I have already said that the proposed devolution of aspects of employability was also very welcome, given the complications that we have just discussed. We believe that a system that supports unemployed people and which is much more tailored to their personal circumstances can be designed far better for a population of 5 million than for a population of 50 million.

Equality was a big area of concern for many in the voluntary sector, and a wide range of calls were made for the Parliament to have more control over equality law. Although Smith

concluded that equality law should not be devolved, the slightly enigmatic sentence

"The Scottish Parliament can legislate in relation to socio-economic rights in devolved areas"

has left us all intrigued about what might be possible. After all, we want the powers only to promote the interests of the communities and individuals whom we serve and to pursue the human rights agenda to which Bill Scott has already referred. There might be more scope to that sentence than at first meets the eye.

The Convener: Duncan McNeil mentioned the word "progress". As Mary Taylor is on the implementation group—I think that I have got that right—it would be helpful if she could give us a flavour of the progress that is being made on the nuts and bolts of all this. After all, I think that that is one of the aspects of Mr McNeil's question.

Mary Taylor: I am happy to do so, convener, subject to my clarification that what you have just called the implementation group is actually called the Scotland Office stakeholder group.

The Convener: I am sorry about that.

Mary Taylor: That is fine. I just want to ensure that we are talking about the same thing.

The Convener: I am probably giving it too much importance.

Mary Taylor: We are not quite at the implementation stage, convener. I wish that we were.

At the risk of being an anorak, I want to refer members to paragraphs 44 and 45 of the Smith agreement. Paragraph 44 specifically refers to "administrative power", and paragraph 19 makes a very clear—and, we think, quite helpful—distinction at the start between administrative power and legislative power. The administrative powers identified in paragraph 45 potentially give the Scottish Government a lot of flexibility in the short term to introduce changes to the administration of the housing costs element of universal credit. I say "potentially", because we are still trying to clarify, not least through the stakeholder group and various back channels, exactly what the transfer of powers in that area needs to look like. That position is not at all clear; I think that our submission says that we were still trying to clarify the matter, and that remains the case today.

The other issue relates to paragraph 45. At the most recent stakeholder group meeting, we were told quite clearly that moving forward with the power to vary, for example, the underoccupancy charge—or what is probably more commonly known in these circles as the bedroom tax—would

require legislative power, and no one is banking on any legislation coming forward before autumn.

Bill Scott: I just want to make a very brief point. Obviously, we welcome the transfer of disability benefits to the Scottish Parliament—after all, that was one of the key things that disabled people called for—but the problem on the fiscal side is that the Scottish Parliament needs sufficient scope to be able to raise funds to make a more supportive system work. Otherwise, the Parliament will have powers to bring in benefits, but it will not be able to do very much with them.

The Convener: I believe that Stewart Maxwell is interested in the area of balance and some of the stuff that Mary Taylor began to touch on. Do you want to ask your questions, Stewart?

Stewart Maxwell (West Scotland) (SNP): Thank you, convener.

I think that an underlying thread that runs through all the written evidence that I have read relates to the interesting issue that Mary Taylor touched on of administrative powers and what I might call real powers. Of course, that is not what I really mean, but I think that you will know what I mean by that phrase—I am talking about legislative powers.

I thought that the conclusion of the SCVO submission summed the matter up very well. It says:

“These powers cannot merely be administrative. To create solutions that work for Scotland we must be able to design not just deliver ... This has to be a genuine transfer of responsibility”.

I wonder whether we can tease out your feelings about the Smith package in relation to legislative powers, with which we can change things, and administrative powers, which might allow us to change things at the margin but which mean, in effect, that we are administering a system while the policy and legislative decisions lie at Westminster. I feel that that issue underlies many of the submissions.

Mary, do you want to start off?

10:00

Mary Taylor: I am happy to kick off. The Scottish Federation of Housing Associations has consistently thought that the powers to support tenants to live in any kind of housing, in the form of housing benefit, should have been devolved at the time that the Parliament was set up. More recently, on taking advice about the way that social security was going and the formation of universal credit, we arrived at the position that the whole of social security needed to be devolved in its entirety, and I have had conversations with some of the people around this table about the

details behind that, because some parties were calling for elements, including housing benefit, to be devolved on their own.

Inclusion Scotland has a clear understanding of the problem from a specific, grass-roots perspective, particularly in relation to disabled people. Some of the trickiest issues arise in areas where, if any part of the benefits system is devolved, it is still necessary to manage the boundary, whether inside universal credit or outside it.

The SFHA takes the view that the Smith commission has given us a certain array of powers and we will work with whatever those powers are. The administrative ones are actually quite helpful in the short term, as long as they do not land us in the position that Northern Ireland is in—I am sorry to mention Northern Ireland again—whereby it has nominally devolved powers but cannot do anything with them, as Dave Moxham has said, because of the fiscal consequences.

I have been assured verbally that that is not what we are looking at. I specifically asked that question at the stakeholder group the other day and was assured that it was not the case, but I have seen nothing in writing, and until I have seen something in writing I remain to be convinced.

The Convener: I think that the quote that Stewart Maxwell read out came from the SCVO paper.

Stewart Maxwell: It did.

Lucy McTernan: Yes, it did, and thank you for remarking on it. If you peel that right back, you will find that what is behind it is something that takes me back to my initial point about how we do governance and how we involve people. We at the SCVO and other colleagues in the sector are intrigued by the growing emphasis on co-production—involving people in the design of policies that affect them rather than just at the sharp end of implementation.

We now hear ministers, academics and others talking about the Scottish model, which stems from the Christie commission and is about prevention—enabling people to stay well, out of harm's way and in work, rather than dealing with them once they have got to the acute part of the cycle. We were particularly interested in having powers over the design of a welfare system that supported people in that preventative, upstream way, and we have a lot of experience across the third sector of doing things with people and for people differently from the way in which the current top-down benefits system operates.

We have quite an ambitious vision for a kind of system that supports people, communities and families differently from the way in which that has

conventionally been done in the UK. That obviously requires the Scottish Parliament to have the powers to create an enabling environment for the kind of discussion that involves people such as the witnesses who are here today right through to communities and individuals themselves on a routine basis.

That is why design is important. I agree with Mary Taylor that there is a lot in what Smith proposes, even for the administrative aspects of the system, that we can do better, but if we want to get fundamental, we need to have the design powers as well.

Stewart Maxwell: I have a short supplementary that is about a different area but which, in effect, is on the same point. Do the panellists have any comments on the issue of assigned revenues, such as the example of 10 per cent of VAT being assigned? If something is taken off the block grant and replaced with assigned revenues from VAT, it looks as if a power is being transferred, but does that mean that we are just administering a different bit of the system and that we do not actually have the power to change anything?

Dave Moxham: I am not sure how many people agree with me, but I am quite a fan of assigned revenue. I fully take your point that it is not a power in the sense of being usable to promote particular behaviours, but I return to my point about how good Scottish policy is reflected in the block grant. A degree of assigned revenue clearly rewards the Scottish Government for economic growth and, in our view, the closer we get to an amount of revenue that is derived from positive actions undertaken by the Scottish Government, the better. I take your point about it not being a lever, but I still think that it is useful that we move towards a situation in which a larger proportion of Scottish revenue is derived from positive Scottish Government economic activity.

Stewart Maxwell: But you accept the point that we cannot make any changes whatever to VAT, so we are, in effect, stuck with the system.

Dave Moxham: Indeed.

Stewart Maxwell: For example, for many years the building trade has campaigned for reduced VAT on repairs, but we cannot do anything about that.

Dave Moxham: No. The matter was discussed at our stakeholder group. Through grant mechanisms, ways can be found of providing VAT advantages for particular activities, but—I take your point—it is not a lever and you would not allow it to be a lever anyway. Nevertheless, I return to my point that it is useful as a reflection of overall Scottish Government activity to have a degree of assigned taxation.

The Convener: Lewis Macdonald wants to ask a supplementary question about housing, and Alison Johnstone will ask the last question in the general area. We will then move into the welfare arena.

Lewis Macdonald (North East Scotland) (Lab): My question is on points that are made in Mary Taylor's submission regarding implementation. We have touched on some of that already, but I wonder whether more can be said about how we can implement the elements of the Smith agreement that relate to housing. On the link with fuel poverty, your submission makes the point that, for those people who are dealing closely with the housing sector, there is an obvious read-across from one area of policy or implementation to another that needs to be articulated in the document. You are giving advice to the Government on that, and it would be very interesting for the committee to hear your view on the practicalities of it.

Mary Taylor: We need to be mindful of the distinction between housing benefit as it is at the moment and the housing costs element of universal credit. You will be aware that we—along with others, some of whom are on this side of the table—have called for the suspension of the roll-out of universal credit in the short term pending clarity around what the additional powers will look like, what form they will come in and when it will be possible to introduce them. This week, we have had a reasonably constructive dialogue with the DWP that has not yet come to an end.

None of what Smith talks about actually relates to housing benefit as it is at the moment, yet for everybody who is on housing benefit, be they of working age or of pensionable age, the existing housing benefit system will continue to exist until they have been subjected to the roll-out of universal credit. The niceties around administration are therefore about making sure that we have a safe transition of powers for the housing costs element of universal credit. In the meantime, the housing benefit side of things is working okay—the bedroom tax aside.

On fuel poverty, in our response to Smith we said that the transfer of powers over the warm home discount and the energy company obligation is welcome. In recent years, we have been bedevilled by constant changes in the arrangements for those schemes, which have taken very little account of the Scottish climate or Scottish market conditions. That transfer is very welcome.

Going back to the earlier point about cohesion, the fuel poverty stuff is scattered in different places in the document. It is incumbent on a committee such as this one to ensure that it keeps an eye on some of the themes, and I invite you to

make fuel poverty one of the themes that you keep an eye on, for all the reasons that Lucy McTernan has referred to. It could easily get lost in the welter of bigger discussions about fiscal arrangements and so on.

Lewis Macdonald: That is partly what I was after. When a bill is produced to implement the proposals, the committee will need to be well advised to recognise those connections.

The Convener: Alison Johnstone wants to ask a question about fuel poverty. Mary Taylor has just introduced the issue and we are now moving into the area of welfare. Do you want to ask that question now? We can come back to your more general question later, after which Mark McDonald can ask his questions.

Alison Johnstone (Lothian) (Green): Sure.

In its submission, the SFHA says that we need

“Effective powers in order to ensure the equitable pricing of energy supply across Scotland, wherever the customer lives.”

That recommendation is not explicitly in the Smith report. Do you feel that it should have been? What might we do to progress that discussion? There are aspects of ECO that I very much welcome, and it is great that we will have an opportunity to tailor measures to address fuel poverty that better suit the conditions that we face in Scotland, but what would you like to see happen with regard to the equity of energy pricing across the country?

Mary Taylor: I am struggling to find it at the moment, but I might come back to you on the detail of the paragraph in which that is dealt with. Indeed, it brings me back to my point about the dispersed nature of references to fuel poverty.

It is quite clear that the Scottish Parliament will have powers that I would put under the banner of intergovernmental working to hold the Office of Gas and Electricity Markets to account in relation to its powers on pricing, and I encourage the Parliament to ensure that those powers are framed in such a way as to allow it to exercise them effectively.

Alison Johnstone: Thank you.

Mark McDonald (Aberdeen Donside) (SNP): Convener, my question straddles the line between general questions and questions about welfare.

The Convener: In that case, I will come to Rob Gibson after you, because he has a general question about welfare.

Mark McDonald: There is a lot of talk in all the submissions about in-work poverty and incomes. One means of boosting incomes is to pay people more, and the submissions express a desire for a

living wage to be introduced or for control over the minimum wage to be devolved. What are the panellists' views on the absence of those powers from the Smith recommendations? After all, one way of reducing welfare spend is to reduce reliance on in-work benefit, and paying people a better wage is a perfect method of doing that.

The Convener: Dave, do you want to kick off on that? I will come to Peter Kelly next.

Dave Moxham: As I have already made reference to that issue, you will probably not be surprised to hear what I have to say. First of all, the trade union movement in Scotland is looking extremely closely and with a not uncritical eye at the potential to devolve a range of powers relating to what we categorise as workplace protections, including employment law, the minimum wage and health and safety, that in our view fit the committee's prescription for improving the quality of work and wages and reducing the benefits bill.

Although we were aware of many of the historical arguments about the clear advantages of maintaining a single market across the UK, in the end we looked at the fact that the Scottish Government already exercises a large number of economic and economic development powers. In addition, it has the justice system, which clearly interacts with the workplace. When we looked at the issue in the round, we came to the clear view that control over such workplace protections, including the minimum wage, fitted better with devolution. Therefore, we feel that that is a clear omission from the Smith proposals.

Migrating on to the issue of a living wage, which is slightly different—it is not mandatory; a partly voluntary approach is being taken to it—I think that members will know that the Scottish Government and most local authorities are now living wage employers. When the Scottish Government analysed the impact of paying the living wage to all its employees, it found that—and this goes back to my previous point—around 50 per cent of the benefit of doing that was derived by the DWP. In other words, the people who were affected were on some form of means-tested support, the money for which came back to the DWP.

That brings me back to my idea of flexible financial arrangements. Is it really right for the Scottish Government, which has taken a conscious decision to pay the living wage to its employees, not to derive the full benefit of that budgetary decision? Even though we are disappointed that the Smith recommendations are lacking when it comes to the devolution of core employment powers, we still think that there are imaginative ways of incentivising what we would consider to be good behaviours in pay and quality of work.

Peter Kelly: We, too, called for control of the national minimum wage to be devolved. That brings me back to the point that I made at the start about coherence, which we mentioned in our submission to Smith. Given the range of employability and social security powers that we had hoped would come, it would have been natural to have included the national minimum wage in that overall package to support people in making the transition from being out of work to being in work.

10:15

We are disappointed that the national minimum wage has not been devolved. Although there is still much that we can do—and much that the Scottish Government and a range of organisations around the table and outside Parliament are doing—to promote a living wage, the fundamental point is that having the legal mechanism to set a floor for wages would have been very helpful in linking the economic development ambitions of the Scottish Government and the Scottish Parliament.

Mark McDonald: Dave Moxham has made an interesting point about coherence and who derives the financial benefit. Obviously, the individual derives benefit, because they are moving into a situation where they are relying on secure pay instead of top-up benefits.

In its submission, One Parent Families Scotland talks about

“Key Policy Issues affecting Single Parents in Scotland”,

two of which, I noticed, are

“Financial insecurity in and out of employment”

and

“In work Poverty & Low pay-high turnover economy”.

It strikes me that the asks that Dave Moxham has been making run very much in tandem with what your organisation is calling for.

Satwat Rehman: Very much so. As we have said in our submission, we are disappointed that powers over employment, particularly the national minimum wage, remained reserved. In our submission to the Smith commission, we called for those powers to be devolved and for the minimum wage to be set in line with the living wage.

A big issue for the families with whom we work is that despite the welfare and benefits system's work first agenda, work does not actually pay for many of them. We find that, relatively speaking, single parents enter work at the same rate as the rest of the population, but they tend to leave work much more quickly because of the additional costs and stresses of working and because they find themselves in quite severe in-work poverty.

Like Peter Kelly, we feel that, if there is to be a model of progression from being out of work to being in work, a key cornerstone of it should be a wage that provides a decent standard of living. Such a wage would be part of a coherent package of support that would take people through employability into work and then to retaining and progressing further into work. Indeed, that is why we called for it.

The Convener: I will let Duncan McNeil ask a quick supplementary and then come to Rob Gibson.

Duncan McNeil: I noted Dave Moxham's comments. I understand why for the trade unions there would have been a tension about the decision that they reached, given that we—and I mean we—have opposed regional minimum wage levels in the past. A more interesting point is that it would take a wee bit of a leap of faith to expect those minimum wages to go up.

I want to contrast that with the position of the Poverty Alliance and the STUC on corporation tax. Both have said that they are against the devolution of corporation tax because it could mean a race to the bottom. Why are we confident that setting a minimum wage here in Scotland would not mean a race to the bottom, too?

Dave Moxham: The evidence is slightly clearer with regard to corporation tax, because the Scottish Government said that it wanted to reduce it. As a result, that was a fairly easy judgment to make.

Our main view is that Scotland as a functioning economy compared with the rest of the UK is about average in its levels of employment, output and productivity. Therefore, the idea that Scotland would attempt to seek inward investment through a trickle-down mechanism of lowering wages seemed to us economically unlikely. Compared with the views of the majority parties across the UK, the whole flavour of the referendum campaign and the nature of the two biggest political parties in Scotland did not lend themselves to the view that Scotland would be likely to wish to reduce its minimum wage.

For a range of reasons, we did not think that such a reduction was likely in the short to medium term. We also reflected on the fact that Northern Ireland currently has the same power and there has been no race to the bottom, even though Northern Irish productivity and economic output would from one economic standpoint—not mine, I should add—make it a possible candidate for that kind of competitive activity.

As I have said, it was a judgment that we made very carefully. We did not see the prospect in the short to medium term of a race to the bottom; in fact, we saw some prospect of a race to the top.

The Convener: I will ask Peter Kelly and then Bill Scott to respond, after which we will come back to more general welfare issues.

Peter Kelly: This is an inherent danger with any of the new powers that could have come or are coming to Scotland. Indeed, the same argument could be made about welfare benefits; they, too, could be levelled down. As Dave Moxham has said, we have made the judgment that that is less likely to happen with some of these things, and we want to see those things increase.

Interestingly, on the minimum wage, it was important that the trade unions took the position that they did. It all goes back to policy coherence. When the minimum wage was introduced in 1999, there was a strong case for doing so. We had had nothing pre-1999, although up until 1993 we had the wages council system, which was a patchwork. As campaigners who had campaigned for the minimum wage, we wanted a unified system throughout the UK.

I think that we have moved on from that point. With regard to the Scottish Parliament's powers and the opportunities that they presented, we wanted coherence in how the conditions were set to ensure that poverty was addressed social justice promoted in Scotland. The minimum wage would have been one way of doing that. After all, the key issue is not just the level of the minimum wage but its enforcement. Although we would like a progressive increase in the minimum wage, we need to do more about enforcement, which is an issue that has withered on the vine for many years. It is all about political will, and we must assume that there is political will to enact and use those powers in the way that many of us around this table would want.

Bill Scott: We were very careful to warn all the disabled people who came to our engagement events that the simple transfer of powers would not change anything for the better or for the worse, because those powers would then have to be used one way or another, and they could well be used to affect our lives negatively rather than for the better. Nevertheless, the overwhelming message that we got back from 80 or 90 per cent of people was that they wanted equalities law and employment law to be devolved.

If employability is going to be addressed, we have to bear in mind the key policy areas that affect the employability of disabled people. Less than half of disabled people are in work. Of those who are in work, the majority are in entry-level jobs and depend on the minimum wage being set at a level that removes them from poverty; otherwise, they would just be exchanging out-of-work poverty for in-work poverty. They got the point. They saw that bringing everything up here would provide a coherent approach that would

allow us to affect employability over the longer term and to address the particular issues that single parents, disabled people and so on face in the current market.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): I want to turn to universal credit—the practice, not the principle. The Scottish Parliament information centre has provided the committee with the following note:

“If a UC claimant is receiving any of the reserved benefits below, and they have been increased by the Scottish Parliament, then they will get a reduction in their UC award, pound for pound. This could mean a UC recipient is worse off. However, this eventuality could be offset if the Scottish Parliament decided to increase the UC award as well. A similar situation might arise if the Scottish Parliament introduced a new benefit, and in this case there would need to be a discussion between the two governments about how the new benefit would interact with UC.”

Do panel members agree that that would undermine the Scottish Parliament's ability to improve outcomes for individuals by topping up reserved benefits?

Mary Taylor: I am happy to kick off on that.

I have to say that I have not seen any such note, but I am not entirely surprised that it exists. I would be very happy to have a look at it if you are able to share it with us. On the basis of what you have read out, I think that your conclusion a fair one. It goes back to what I was saying about Northern Ireland.

The Convener: I should point out to the panellists that that piece of evidence is on our website.

Mary Taylor: I am sorry, convener—I have not seen it.

The Convener: I was not suggesting that you should have seen it. The issue was raised as a result of our first discussion with Alistair Carmichael, and we wrote to him to confirm whether the position set out in the SPICe note was accurate. Unfortunately, we have not yet had a response to allow us to see whether the position was agreed to by either the Scottish Government or the UK Government. All of you might be a wee bit in the dark here, but anyone who wants to deal with the question should feel free to do so.

Dave Moxham: I apologise if I have misunderstood, in which case please stop me quickly. Paragraph 55 in the Smith commission report says:

“Any new benefits or discretionary payments introduced by the Scottish Parliament must provide additional income for a recipient and not result in an automatic offsetting reduction”.

As I pointed out at the stakeholder group meeting that Mary Taylor and I attended, that can be

interpreted in two ways. The first is that nothing can be introduced that might result in that particular situation, and the second is that anything that is introduced must not have that effect. My impression from the meeting on Monday—perhaps you can tell us whether it is right or wrong—is that it is the latter rather than the former interpretation that is meant. In other words, top-up benefits can be introduced and, as a rule, they should not affect a person's universal credit.

Whether that is written into the draft clauses or in financial memoranda that would involve both Governments, including the DWP, has still to be investigated. I very much hope that it is the latter interpretation and not the former, because otherwise we will move no further forward at all.

Rob Gibson: Does anyone else wish to comment on that point?

Bill Scott: Very much so. Carers allowance is an example of a benefit that, if increased, results in a pound-for-pound reduction in income support, and the same would happen under universal credit. As it stands now, if the Scottish Parliament decided to increase carers allowance by £10, it would mean £10 less being paid in universal credit. We need an arrangement in which any increase by the Scottish Parliament is matched by a disregard by the UK Parliament. Although the Smith commission report says that that is what must be achieved, it does not say how that is to be achieved. As far as other benefits are concerned, I note that disability living allowance is not taken into account with regard to reductions in universal credit; instead, it results in disregards and premiums in universal credit and income support.

If the UK Government has a benefits ceiling—by which I mean an overall ceiling on the amount that it spends on benefits as well as an individual benefits ceiling—and the Scottish Parliament acts to increase those benefits or the number of people who receive them, that will have an effect on the UK Exchequer in terms of the amount of income support that it has to pay out. If you are more generous and award personal independence payments to people in Scotland than is generally the case in England, that will result in a higher universal credit bill for the UK Exchequer, because it will have to pay premiums and disregard that money. If the Scottish Parliament acts differently, the Exchequer is not going to achieve the savings that it thinks it is going to achieve in certain areas of welfare reform.

I do not think that the Smith report goes into the interaction of benefits at all. That interaction between non-means-tested and means-tested benefits, which is much more complex than Smith envisages, is the reason why it was so important

to bring social security to Scotland as a block rather than in piecemeal fashion.

The Convener: You have opened up a fascinating area. Indeed, last week, the committee agreed that we needed to bring in benefits experts to help us with the draft clauses. It would be useful if you could explain more of the detail in writing to give us time to absorb and understand the issue.

10:30

Rob Gibson: I echo what the convener has said. Alistair Carmichael was unclear and unable to articulate the point. You would, of course, agree that we need to deal with any other complications that could be envisioned, and that we need clarity on this matter at an early stage.

Mary Taylor: I would add only that this was a live topic at the stakeholder group earlier this week, in the sense of the issues being aired. I do not think that any solutions were proposed or clarified, but it is a live topic for discussion.

It might be of interest to know that we were assured that, where the Scottish Government—or the Parliament; I cannot remember—took decisions that created savings for the UK Government, which is the opposite of the situation that Bill Scott identified, those savings would accrue to the Scottish Government. Just to test whether that would work, I specified housing as an example, using a situation in which the Scottish Parliament agreed a greater budget for housing investment, particularly in social housing, by housing associations, at an enhanced rate of subsidy. That would produce more houses at lower rates than would otherwise be the case, and those tenants who were living in expensive private rented accommodation on expensive local housing allowances would move to cheaper housing cost elements of universal credit or housing benefit, which would create a saving for the UK Exchequer. I was assured by the Treasury that, in that case, the saving would accrue to the Scottish Government. Therefore, I commend to you enhanced investment in housing.

The Convener: The matter is complex. The situation is concerning, because we are only a week away from seeing the actual clauses, yet we have not bottomed out some of the final positioning. I hope that, by next Thursday, when the clauses are published, a lot of this can be bottomed out. Any written evidence that anyone might want to give us in that area would be helpful.

Rob Gibson: We are talking about housing, and the questions about sanctions and so on have a particular bearing in that regard. Last year, the SFHA published a report that set out how benefits sanctions are compounding the impact of welfare reform in two important areas: directly, where

sanctioned tenants are falling into arrears as a result of their housing benefit claims being suspended; and indirectly, where sanctions are leaving tenants destitute, with no money for rent, fuel or food.

What is your view on the impact that the UK-wide sanctions system is having on the ability of your members' tenants to pay their rent?

Mary Taylor: The situation is as we reported last year. My guess is that, if we were to update the figures, we would find that more tenants have been sanctioned since then, with all the consequences that we identified in the report. That underpins some of our concerns around universal credit and the way in which that is being rolled out, which is why that is the subject of active dialogue with the DWP.

Rob Gibson: I take it, therefore, that you would say that the control of the sanctions system should be devolved to the Scottish Parliament.

Mary Taylor: Our original position, which we submitted to the Smith commission, was that the whole of social security should be devolved. We said that the housing element was a step in the right direction, but the sanctions element is clearly not a step in the right direction. I am sure that Bill Scott has more to say on that.

The Convener: I think that Satwat Rehman wants to speak.

Satwat Rehman: We have found that, increasingly, the single parent families with whom we are working are being subjected to sanctions. We have found that there tend to be two trends with the sanctions. First, they are being misapplied because the advisers in the job centres are not aware of the flexibilities that they can apply to single parents around childcare, the hours in which they should be looking for work and so on.

Secondly, even where the advisers are aware of the flexibilities, they are still applying the sanctions. They are finding that increasing numbers of cases that were taken to appeal are being overturned. However, there are still situations in which families have to live with little or no income for the sanction period and have to rely on food banks and other charitable sources to be able to survive. We called for social security to be devolved alongside the work programme and Jobcentre Plus so that we could create a system that was not reliant on such draconian conditionality and sanctions.

The Convener: I think that Stuart McMillan has one other welfare issue to deal with, then Alex Johnstone will ask about taxation.

Stuart McMillan (West Scotland) (SNP): My question is more about poverty than welfare as a whole. Is that okay, convener?

The Convener: Yes, it is still in the welfare arena.

Stuart McMillan: Paragraphs 73 and 74 of the Smith report refer to the proliferation of payday loan shops and fixed-odds betting terminals. I have campaigned for some time on those two issues.

The Smith report recommends that powers over those two policy areas should come to the Scottish Parliament. I am not aware that any of the witnesses mentioned those areas in their submissions and I accept that they might be considered to be on the margins of the bigger issues that we have discussed. Nonetheless, they impact on the people and the organisations that you deal with. Do you welcome the powers coming to the Scottish Parliament? Will the Parliament be able to deal with them effectively? Will there be a better outcome for the people whom you work with and represent?

Peter Kelly: We would welcome those powers. Over many years, we have done a lot of the work with community representatives. A consistent theme that people talk about is that the only occupied premises in some communities are pubs, chip shops and bookies.

Powers to regulate in those areas, particularly on fixed-odds betting terminals, would be useful, although again the issue is how we use the powers. Local authorities have licensing powers with regard to betting shops. Therefore, although the power would be useful, we would need to look seriously at its wider implications and how it is used, particularly at the local level.

Bill Scott: A disabled person is three times as likely to have a payday loan—even though they might not be in employment—as a non-disabled person, so the proliferation of payday loan shops needs to be addressed. However, that proliferation is because of the grinding poverty that many of our citizens experience. That must be addressed as well.

For people in the employment and support allowance work-related activity group, a disabled person is four times as likely to be sanctioned as to be found a job. That suggests that the programme is not about work at all; rather, it is about punishing people for not being in work.

Satwat Rehman: I echo what colleagues have said. People have expressed concern to us about payday loans and very high-interest loan companies. More and more families that we work with are in higher levels of spiralling debt as a result of being in poverty. On top of that, if they are sanctioned, they have to find a way to get money and must resort to high-interest loans. I would welcome anything that we could do to regulate that lending. We also need to look at the

alternatives and to support families to find other sources of income when they need them.

Alex Johnstone (North East Scotland) (Con):

On looking through the papers, I see that there are a number of proposals on the devolution of tax powers. We will be honest with each other. I presume that you do not want the taxes devolved so that we can cut them. We have also talked about what we could spend the money on.

In recent years, the trend has been for the proportion of gross domestic product taken in tax in the UK to reduce. I presume that you would wish to reverse that trend in Scotland, using the powers. What do you see as the limit to the expansion of the Government take in terms of the proportion of GDP in Scotland? What do you need?

Dave Moxham: You are looking at me as the person most likely to advocate higher taxes.

Alex Johnstone: You just happen to be there.

Dave Moxham: You are spot on.

There are fairly specific and clear limits to how the amount of tax levied in one part of a highly integrated economy will be different from the amount in another. Putting an exact figure on that is a different matter but, if you are saying that overall UK tax take is 38 or 39 per cent—I do not know the current figure—and you are asking whether Scotland would be likely to jump to 47 or 48 per cent, the answer is clearly not. That would not happen.

I slightly disagree with you about tax rises and falls. One of the points about devolving enough of a basket of taxes is that it potentially empowers the Scottish Government to vary the taxes within that basket. For example—I am not necessarily advocating this—you could make adjustments to income tax if you were seeking to introduce a land value tax.

The issue is potentially one of adjusting taxes up and down if you have a sufficient basket and enough taxes in order to operate an effective system. However, beyond certain things that we have heard about, such as the possibility of retaining a 50p tax rate in Scotland, I would not envisage enormous discrepancies in overall tax take between Scotland and the rest of the UK. There are a number of practical reasons why that would not take place.

It is possible to do a number of limited, specific good things and to convince the people of Scotland that that is a good idea. I do not personally believe that the argument over higher taxes has necessarily been won just because I advocate it, but the STUC definitely recognises the limits to such divergence.

Lucy McTernan: It is probably fair to say that there is a very live debate among the organisations that my organisation represents and works with about the role of taxation, not just to do with overall higher or lower levels but regarding how resources are distributed. That kind of debate, not just about more or less but about how we use the taxation system in a designed and creative way to bring about a different balance of resources across individuals, families and communities, is one that we would like to engage in more.

Alex Johnstone: But is it not the case that, if you want to redistribute through taxation, you need to tax more and spend more?

Lucy McTernan: I would not say that that was the case at all; it is about how you think about the taxation system and how you think about the economy in the round. The main thing that we have been calling for in recent months is a broader debate about the type of economy that we want. That would consider things beyond pure GDP. It is about what is important to individuals, families and communities. That could include forms or measures of wellbeing and human need—it is not just about cash. We would like to engage in a broader debate about the economy.

There are some specific points, which we raised in our submission to the Smith commission, around the role of charity in the taxation system. We currently have a very clumsy and clunky engagement between charities as particular entities and the tax system. The system could be designed to work with civil society organisations in a much more creative way that supports people through the organisations that support them, rather than directly. We would like that debate to be opened up a bit more.

Bill Scott: It is not necessary to raise taxes to raise more revenue. More revenue could be raised, for example, by getting more people into employment, or by increasing the amount of childcare that is available to parents, thereby encouraging more parents to be in full-time work, rather than part-time work or not in work at all. There are other ways to generate revenue, rather than just raising taxes.

We were keen for access to work to be devolved to Scotland because, for every £1 that the DWP spends on access to work, the Treasury gets £1.60 back in revenue. We could go about that sort of tax raising. Without necessarily raising the level of the tax, we would get more of a tax take. We would then be talking about the interaction of different policy areas with taxation.

10:45

Alex Johnstone: Bill Scott might be horrified to realise just how close to my way of thinking he is on such matters. Are we not perhaps mismatched in that we have spent an hour and 15 minutes talking about what we want to spend in Scotland after further devolution but we still seem to be avoiding the implications that that money has to be raised somehow? With current projections suggesting that the tax take on GDP for the UK as a whole is on its way down to about 35 per cent, even staying where we are will create a divergence, which could be quite notable.

Dave Moxham: I take the general point, but anyone who has read the analysis of the fall to 35 per cent that the Institute for Fiscal Studies produced would draw the conclusion that the IFS staff only briefly stopped splitting their sides laughing at the chancellor's projections before trying to write their analysis of them. That is the intended area of UK Government spending, but I do not think that it will happen, because some of the very basic infrastructure of the UK would fall apart if those plans were implemented. However, I take your point that the proportion of tax is lower than it was seven or eight years ago and that that will be a challenge for all.

It is absolutely reasonable for the Government in whatever jurisdiction to be able to lay out how, through modest increases in taxation and a change in the tax system, it intends to reap medium and long-term economic advantages. Referring to my example about the future jobs fund, it would be entirely reasonable for a finance minister in Scotland with new powers to say that, through a combination of taxation and borrowing, the Scottish Government wished to invest in job creation in Scotland so that it would reap such benefits in the medium and long term. That is fairly sensible mainstream economics in most countries in Europe and I see no reason why, with reasonable tax powers, a Scottish finance secretary would not be in a position to do that sort of thing.

Alex Johnstone: Notwithstanding the fact that I agree with Bill Scott, I take the view that it would take quite a time to achieve maximum effect. In broader terms, do the tax powers that the Smith commission proposes fit in with the model that the witnesses imagine?

Dave Moxham: I will respond briefly because I know that I am in danger of speaking too much.

The proposed powers move further towards that situation than previously and are positive. We would have gone further in relation to the tax basket, but the proposals go further than previously. Income taxes are important, and the ability to vary the bands within income tax is

particularly important. Therefore, the power is undoubtedly helpful in achieving my aims.

Mary Taylor: The SFHA has not commented on that question, so I offer a personal view. The transfer of tax powers creates the opportunity for greater fiscal responsibility over the amounts of money that are raised for the Scottish Government to spend. That can only be a good thing, build on the democratic engagement that there has been and lead to a much more mature dialogue on policy making in future.

Lewis Macdonald: I will give Dave Moxham the opportunity to talk a little more, if he would like that.

In considering fiscal options, the STUC considered full fiscal autonomy and increased devolution of tax powers backed up by a continuing block grant. I invite Dave Moxham to say a little more about why it went for the latter as opposed to the former and how he responds to the agreement that has been reached?

Dave Moxham: I will not quote the oil price, because I am not sure whether it is less than \$40.

The serious consideration for us was that the Scottish Government's picture of what was obviously full fiscal autonomy because it was independence included a range of additional powers on migration and reducing spending on defence that it thought it would be able to use to promote economic growth under independence. As a package, that was potentially persuasive. However, many of those proposed powers were clearly not going to end up with the Scottish Parliament through the Smith process, so a different calculation was required to look at how appropriate and useful for Scotland full fiscal autonomy would be without them.

Our conclusion—as I said, it came well in advance of the current oil situation—was that some element of a block grant that recognised Scotland's historical and future oil take, in addition to significantly enhanced tax powers, would provide a more stable and fair reflection of Scotland's overall fiscal relationship with the rest of the United Kingdom.

Lewis Macdonald: You certainly made the case for that in your submission. Do you feel that what has emerged from the Smith agreement—the increased devolution of tax powers and the continuation of block grant funding from the UK under the Barnett formula—provides that certainty?

Dave Moxham: I think that it does. The three pro-devolution and anti-independence parties gave some undertakings that appear to be reflected in the Smith commission's conclusions. I do not want to return to the same issue again, but

there is a lot of devil in the detail of the mechanisms that were used for setting the original level and the indexation. I am certainly no expert on that, however, so do not ask me to go into too much detail.

That also brings us back to the point about the new financial framework in which the mechanisms will operate, and the question of how flexible the block grant will be in its ability to recognise the impact of Scottish Government spend on UK coffers and therefore to reflect that in a year-on-year settlement.

Lewis Macdonald: That is helpful. Do the other witnesses agree that a continuing element of block grant funding from the UK Government through the Barnett formula for devolved powers and services in Scotland is an important part of the balanced settlement that Smith offers?

Mary Taylor: Yes—that flows from what I said earlier about the need for fiscal responsibility, which remains the case. The mechanism is clear and transparent. One issue with the Smith proposals concerns the detriment between the two Governments. My sense so far is that it is recognised as an issue that must be worked through, but we are not yet at the point at which we know quite what form that will take. My understanding from the discussions that we have had earlier this week is that, although the challenge is understood in theory, the practical delivery mechanisms have still to be worked through.

That brings us back to what will happen next Thursday, when we see the draft clauses. I am not sure that that issue is the sort of thing that will feature in the draft clauses—I am not sure whether it is susceptible to clauses or whether there is some sort of intergovernmental memorandum in that respect. I am not convinced that we will see something next Thursday that clarifies that area.

Peter Kelly: On the question whether it is right that the block grant element remains, I would say yes. We made the point in our submission to the Smith commission that, whatever the end result and the recommendations, the conclusion needed to reflect the outcome of the referendum.

We obviously argue about the detail of the outcome. I do not want to speak for my colleagues, but I think that many of us would have said that responsibility for pensions, for example, must be shared in the current context. In that respect, it is clearly acceptable that some of the revenue comes from block grant funding.

The Convener: Rob Gibson has a question on tax.

Rob Gibson: Yes—I would like to explore a couple of issues.

We have talked about getting more people into work. The STUC has stated in its submission that it

“believes that the empowerment of communities requires adequate control of land ownership and its use for the purposes of tax avoidance whilst, in many cases, subsidies are drawn down for farming and forestry activities.”

There is an issue regarding the avoidance of tax that could potentially reap benefits for the exchequer. There is potential through a land value tax—as has been mentioned briefly—to bring in different sources of income rather than continually working out the balance of the working poor to contribute. The Crown Estate’s revenues can be spent in local communities to boost services at a local level.

Do you agree that the debate about tax must take on the potential in Scotland for tax avoidance? Are we able to apply the debate to areas such as tax avoidance and consider the ability to implement a new form of taxation that would actually bring in money from those people who are not paying it at present?

Dave Moxham: I agree with what you said. The legislation that the Scottish Parliament has passed in respect of the existing tax powers has fairly strong provisions on tax avoidance—I would argue that they are stronger than the UK’s provisions. The application of those powers is obviously limited at present—they apply to only a couple of small taxes—but there is no reason why the principle, which is very close to what we would describe as an anti-avoidance principle, cannot be extended to all the taxes that will eventually be delivered through the Smith process.

I have one other point that relates specifically to land and land reform. Partly because of the devolution of the Crown Estate, among other reasons, we can see some additional potential for land reform that we think will dovetail fairly effectively with what the Scottish Government has at least stated that it wishes to do in that respect. The issue is not necessarily uncomplicated, but there is a missing element: capital gains tax and inheritance tax. If we want to complete the full suite of powers that will allow us effectively to tax something that is a very static and therefore taxable resource, we should add in those two taxes. The issue is not unproblematic, but we should be seeking to do that.

Rob Gibson: That is very helpful.

The Convener: We have completed all the questions on taxation. Alison Johnstone had a very general question that I did not allow her to ask at the beginning of the session, so she can go next.

Alison Johnstone: You have all spoken this morning about the level of engagement from all

those with whom you work. That has been such an important part of what has happened in the past few months, but I think that it is fair to say that, given the number of submissions that Smith received, those organisations were not all given the attention that we might have wished. Even now, I think that there is a feeling that we are not involving wider Scotland as well as we could or should be.

There is still a great deal of uncertainty around some of the recommendations. Some people will probably get the outcome that they expect and others will get something entirely different, because the recommendations can be defined both narrowly and broadly.

You have spoken about a citizen-led process as we move forward after the clauses are printed, and how we might best involve wider Scotland. You are looking for innovative ways of involving the public that go beyond the usual tick-box consultation exercises. Can you expand on that a bit? How might we ensure that we do not lose those important voices as the process continues?

Lucy McTernan: I will kick off. I am to some extent speaking on behalf of colleagues: not only those in the meeting today, but others outwith this room. There is a live conversation going on across Scottish civil society about the need for a process and a space for discussion on those very important issues that sits outside the closed rooms that currently exist and the rapid and rushed processes that we have been involved in.

We have drawn quite heavily on the experience of colleagues elsewhere in the European Community on the concept and theme of social partnership. Under that concept, it is not just Government or politicians who take decisions about how we are governed and what the priorities are for our society and our communities; there is a much more open form of governance that involves everyone, whether they are active in private business, the trade union movement, faith communities or the many organisations that make up Scotland's third sector.

11:00

We would like that theme of social partnership to be central to how we do democracy and governance in this country. In that context, we should look again at the difficult technical issues that have dominated much of this morning's conversation. In order to do that, we need a process and a space to be created for it to happen. We need some kind of citizen-led process. We have talked about a convention in which, on an on-going or periodic review basis, we can look at whether we have the correct balance of powers between the respective Parliaments

and, indeed, the correct balance between different levels of government and the engagement of communities within Scotland.

In the past couple of years in the Parliament, we have heard a lot of talk about the need for empowerment. I have already mentioned the jargon word "co-production". In the third sector, we worry about whether that is really happening or whether at this stage there is just rhetoric. Politicians and officials have to genuinely embrace the idea of working differently with communities. I hope that that takes us wider than the Smith commission and agreement specifically to a different set of intentions for the way that we operate.

Peter Kelly: I will follow on from Lucy McTernan's points.

The broader engagement that we have all called for, including the citizen-led approach to engagement and the use of very clear tools such as citizens juries, is not just about what will happen until May, until we have an agreement or just in the post-general election period when we might have legislation; it is about trying to change the way that we do democracy in Scotland. Many of us have made that argument for a long time, but it crystallised around the referendum, when we had so much engagement.

I particularly make the plea that, whatever processes we come up with that are agreed with representatives, we specifically look at how we engage with disadvantaged communities. Many communities are engaged and represented, but communities that are more affected by poverty are less likely to be engaged. I think that all of us here would have welcomed the fact that parts of Scotland that maybe felt less involved in democratic politics were involved in the referendum. We need to maintain that involvement, whatever the processes are.

Mary Taylor has mentioned several times the importance of intergovernmental arrangements. I would like to see ideas about where the engagement of civil society will fit in that area in the future. There should not simply be discussions between Cabinets or between the First Minister and the Prime Minister; people should be meaningfully engaged. That can be done. It has been done in the past.

Mary Taylor: I want to make a pitch for housing associations as part of the solution. There is not a local authority area in Scotland that does not have at least one housing association. Housing associations are membership organisations. People who want to take part in not only the provision of housing but a raft of things around housing in areas in which people may be suffering disadvantage can take part in their local housing

association. The connection between tenants who live in housing association properties and use housing association services and their responsibilities as committee and board members is part of the democratic governance opportunity that Lucy McTernan referred to.

We do not always need to create something from scratch; we already have housing associations, for example. There are already models for how things can work.

Satwat Rehman: I will add to that. I see it as the responsibility of all of us around the table—witnesses and MSPs—to consider how we engage.

Shortly after the referendum, I was at a Poverty Alliance annual general meeting in which the question was asked how we can maintain the momentum and develop more democratic governance, which felt so important last year and remains so important. Many of us are part of the established civil society. I see ourselves in some ways as part of the establishment, as well. There was a whole groundswell of activism and activity in the lead-up to the referendum. Some of the people who were involved in that will want to engage with the likes of us; others will want to create their own spaces and make their own voices heard.

The challenge is how all of us work with housing associations and whoever else is on the ground to capture those voices. Many different opportunities and ways came up during the referendum, depending on the community or constituency that we were trying to reach.

We also need to create the time to do all of that. After all, any type of engagement takes time and, as Lucy McTernan and others have made clear, part of the frustration with the Smith process post referendum was not having the time to engage. We must ensure that, whatever we do, we build in time to enable meaningful and on-going involvement, not just consultation.

The Convener: Before I come to Tavish Scott, I want to make a quick point. Last week, the committee agreed as part of its work programme to go initially to Hamilton, Aberdeen and perhaps Shetland to have wider focused discussions with communities as well as what might be described as town hall meetings in the evenings to allow people to come and talk to us. It would be useful if the panel were prepared to come and have a cup of tea or coffee with Duncan and me before we have those meetings to discuss the best way of going about the process. That would help us be much more effective in what we do in the various communities that we will visit. We will try to get something sorted out in our diaries that will work.

Tavish Scott (Shetland Islands) (LD): I would take the convener up on that, because we do not

even get a cup of coffee ourselves. That is the best offer you are going to get from a parliamentary committee these days.

In his personal introduction to his report and, more to the point, in the remarks that he made in the national museum of Scotland on the morning that the Smith agreement was launched, Lord Smith referred to devolution within Scotland. Indeed, some of you have mentioned that issue this morning. Do you agree with him and, if so, which area would you like to be devolved in that way?

Lucy McTernan: This theme has featured a lot in the discussions that we have had in the third sector. Our view is that devolution needs to go to the most micro level possible if you are to follow through on the overall intention of empowering and engaging people and building on the groundswell that colleagues have mentioned and which came through the referendum and if you are to bring about the different kind of democracy that we have just touched on.

However, I am worried that, with the way in which the debate is being pursued, the presumption is that further devolution within Scotland tends to mean putting more powers into the hands of local authorities. I do not think that that is what we are about, because local government suffers from many of the same problems that Government at Scottish and UK levels suffers from when it comes to engaging with citizens and communities and what they do. We need to ensure that when we discuss this issue we take a multidimensional approach and find new ways of engaging with communities.

Going back to your offer, convener, I will be absolutely delighted—over coffee or anything else—to give you advice from voluntary organisations about how to connect with people and open up the conversation about the issues and policies that affect people's lives in a way that helps them to connect.

Tavish Scott: I understand the theme that you have just outlined, but is there any specific policy area that you would highlight to the committee in that context?

Lucy McTernan: Are you talking about what is in Smith?

Tavish Scott: Anything you care to name. Is there a policy or policy area mentioned in the report that you feel should be at a more local level?

Lucy McTernan: That very broad and sweeping question is perhaps not for today, if what you are talking about is what is proposed for devolution from the UK Parliament. In fact, I think that, whatever area it was, my answer would be the

same: the issue is not what comes from one level of government to the next, but how each Government engages with the wider community.

Bill Scott: We are going to have a lot of time before some of these new powers are devolved—according to a UK Government minister, the next two years—to genuinely involve disabled people, for example, in co-producing a disability benefits system as well as carers in designing carers benefits in order to genuinely support disabled people to participate in community life. This is not about any particular level of government, but about all levels.

For employability, parameters for the work programme could be set at Scottish Government level but implementation could happen on the ground, working with local labour markets and others. That is where local knowledge could be used to address the physical and transport barriers that prevent disabled people from accessing work. The end users of services should be involved in shaping both the policies and the implementation.

Peter Kelly: The point about the further devolution of powers is really important. It is a question of the extent to which we devolve further powers to bodies such as local authorities to have greater control or influence over implementation. The work programme is an interesting issue. I think that some local authorities proposed yesterday that the work programme should be devolved to the local authority level.

Bill Scott made the point very well that it is a question of devolving powers to the level that makes sense. It is about applying the principle of subsidiarity and doing things where they need to be done. The example of the Scottish welfare fund is instructive because the Scottish Government has given responsibility to local authorities to deliver the fund, but it is done in the overall context of a unified system. I think that that is working well in Scotland compared with the situation in England and Wales, given what we hear from our colleagues there.

Therefore, in some cases it is a question of further powers being devolved to local levels in whatever form that takes and in other cases it is about implementation. However, the key point, which Lucy McTernan made and which I echo, is that, whether those powers lie at the national or local level, we need to involve people in decisions about how the powers are used.

The Convener: Tavish, do you have a follow-up question?

Tavish Scott: No. That was helpful. Thank you.

The Convener: Lewis Macdonald has a supplementary question on this area.

Lewis Macdonald: It is a brief question on citizen engagement. Clearly, you do not want engagement to be on just constitutional issues, but there is a proposal on the table for a UK-wide constitutional convention. How do you envisage civic Scotland engaging with that should it come into being?

Dave Moxham: I would want to see the terms of reference of such a convention—what it would and would not discuss—before I could commit myself to it. The important point for us is that we continue to see the devolution process in Scotland as a bilateral and not a multilateral one—that is, we should not have wait to take decisions because they are incumbent on other constitutional decisions being taken across the UK, even though they might be important. Therefore, as I said, we would need to see the terms of reference of a constitutional convention.

The Convener: I take it that that is the general feeling.

Lucy McTernan: All that I would say is that the committee might like to be aware of the fact that there are multilateral conversations all the time between different parts of civil society and the third sector. Just before Christmas, I had conversations about how further developments in the UK constitution would affect civil society in different jurisdictions. If that was a general theme, we would be interested and would undoubtedly want to follow up on it.

The Convener: Duncan McNeil has a supplementary question, and will be followed by Stuart McMillan.

Duncan McNeil: It is almost a rhetorical question, but it is directed to the panel. Should we accept that we need to do more on engagement? The first steps have been taken with the convener's offer of a meeting. There are challenges that we all need to think about; perhaps the panel has some initial thoughts on them. Is one of the challenges the capacity and focus of the Scottish Parliament, which are going to change quite dramatically? The Parliament was set up initially to deal with a limited set of powers, but more powers have come to it and more are still to come.

Do you agree that there needs to be a debate with wider society about the Scottish Parliament's capacity, and about what committees need to do to maintain their focus on, and sense of responsibility for, holding the Government to account and, indeed, for scrutinising all policy development, which is very important for what is implemented out there. Do you have any comments on that? We all need to look at that—parliamentarians and, more important, the people whom we purport to represent.

11:15

The Convener: I will take a couple of responses from Peter Kelly and Mary Taylor, but there are still a few folk to get through.

Peter Kelly: Duncan McNeil has raised an important point about the capacity for meaningful participation and involvement. I do not think that any of us would want a proliferation of meetings and consultations that made no impact on decisions that had possibly already been made. That is a crucial point for us to consider as we go forward. However, that should not prevent us from applying the principle that we should involve in decision-making processes people who are not in elected positions—there are ways to do that. Capacity will always be an issue, but there are ways in which the committee system could be reformed to involve people beyond those who are sitting around the table just now—although we like being involved. There are lots of ideas from civil society organisations; the challenge is to implement them. Nonetheless, I take your point about capacity.

Mary Taylor: Peter Kelly has said what I was going to say. I will not add to that.

Dave Moxham: I agree. It is maybe unusual for the trade union movement to be self-critical, but people need to be really aware that although we are civil society organisations that engage with Parliament, the referendum process has shown some of us that that is not enough. I am enjoying the meeting very much and I am glad to be here, but it is not enough for Parliament to have a relationship with existing civil society organisations and then think that it has done its job. That links in with the idea that we and others have raised about citizen juries and other ways of creating a representative democracy that is also able to do detail; doing the detail is often what is difficult. We have the time to do that, but unless there is, for example, a two-year referendum process it is hard for the person in the street to do that. We need to think about the mechanisms that we can use to supplement the consultative role that Parliament undertakes.

The Convener: We still have two other areas to look at.

Stuart McMillan: Dave Moxham touched on workplace protections and health and safety. In your submission, you highlight the issue that Northern Ireland has in that policy area. How do you see a Scottish Government—of any colour—utilising any powers that come to Scotland to improve health and safety in Scotland, bearing in mind what is already in operation?

Dave Moxham: As you know, the Smith commission recommended that none of the core health and safety powers be devolved, but that

there should be further investigation into what we might call enforcement powers and the oversight of enforcement powers—in particular, those relating to the role of the Health and Safety Executive. It is not entirely clear to us whether that will be the subject of a clause. It has certainly not been the subject of any discussion thus far within the stakeholder group, so we imagine that there will be an on-going discussion rather than a clause on the issue in 10 days' time.

Our view is that much more wholesale devolution should have taken place. Given that there are particular health and safety concerns in Scotland that make the situation here different, and given the devolution of the whole of healthcare—we keep saying that safety is one thing but the promotion of health in the workplace is just as important—it makes absolute sense that the role and capacity of the HSE in Scotland should be the subject of scrutiny by this Parliament in a situation that is potentially analogous with recommendations on the BBC and other bodies. Strategic oversight of the role of the HSE from now on would allow Parliament and the Scottish Government to examine all the budgets and engagements that the HSE has across a range of policy areas, and at how it could best promote health in the workplace.

As I said, we are disappointed that the Smith recommendations did not go further. Health and safety is also important to consider with respect to Tavish Scott's question about local authority devolution. A raft of health and safety is currently managed by local authorities and the inspectorates there. It would be good to bring that together under the purview of the Scottish Parliament and to make positive suggestions that are suited to Scotland's particular needs.

Stuart McMillan: I mean—

The Convener: We have only 10 minutes left. Dave Moxham has given a good answer. I have people whom I need to get in before we finish. I think that Mark McDonald has a question.

Mark McDonald: We touched earlier on employment law. I note that the STUC evidence said:

"Our greatest disappointment is in the failure to propose significant devolution in the area of employment and equality law."

We have managed to achieve a 50:50 gender balance in the witness panel today, but equalities legislation goes beyond gender. Given that equalities law is not coming to the Scottish Parliament—or, at least, that was not proposed by the Smith commission—what abilities exist to effect the changes that we want in respect of the equalities agenda? Is our ability to make such

changes significantly hamstrung by equalities law not being devolved?

Dave Moxham: Others will probably want to talk about equalities more generally, but equalities and employment law had to be devolved together or not at all. You cannot have an equal pay act at UK level but equalities devolved to Scotland—the two would have had to come as a suite.

It is disappointing that there was not more reference to equalities in the Smith commission proposals, even if the commission's ultimate conclusion on that had been that there should be no significant additional devolution. Very little in the proposals will change the current situation, as far as we can see. There are residual powers with respect to public sector duties and the role that the public sector as an employer can play in promoting equalities, but I cannot give you much good news regarding our reading of what the commission proposals said on equalities and whether they will make any difference to the current situation.

Bill Scott: I echo a lot of what Dave Moxham said. For example, if you wanted to address labour market inequalities among young disabled people, you would be hamstrung because the Equality Act 2010 says that you cannot discriminate on the basis of age, although that might be the group that you most want to assist in getting into work. At the moment, a blind eye is turned to that, but some Government initiatives could be hamstrung if a case was made against discriminating in favour of a person, even if in doing so Parliament was addressing a known labour market inequality. That is why control of equality law is so important to addressing employability and other issues more generally, for not only disabled people but women, black and minority ethnic people and people at the younger and older ends of the workforce. You might see inequalities that you want to address, but the 2010 act might be a barrier to doing that, rather than assisting it.

The Convener: The last question will come from Linda Fabiani. It is unusual that you are last in the queue to get a question in.

Linda Fabiani: I have a very quick question for clarification from Dave Moxham, from a trade union perspective. You said that equality law and employment law would have had to be devolved together, which makes sense. Does the same apply to all elements of workplace—*[Interruption.]*

I am sorry. Did you hear me anyway?

Dave Moxham: Yes.

Linda Fabiani: I have a voice like a foghorn so it never really matters.

I wonder whether that also applies to general workplace protection in terms of trade unions. I am

aware of the on-going discussion at Westminster about thresholds for strikes. I am also aware of the current PCS campaign, because there is a consultation about taking away the right to have union dues paid direct from wages. Is that something that could be dealt with separately from employment law, equalities and other things that we have been quite clearly told will not be devolved?

Dave Moxham: I should say as an aside that it makes me chuckle when people talk about potential races to the bottom on employment law, given the week of announcements that we have just had.

The link between employment law and equalities is absolute; we could not imagine splitting the two, and we have argued that they are in a suite of five powers that also includes regulation of trade unions, health and safety, and minimum wages, which set together are very coherent as a package. Could Parliament have regulated trade unions differently in Scotland while employment legislation was reserved? Probably. Could you have separated health and safety law and employment law? Probably, but it would not have been coherent. All those things should really come together.

Linda Fabiani: That leads to my substantive question, which is about coherence. Practically every one of the witnesses has expressed concerns that the package that has been put forward by Smith is not coherent. I know that two of you are on the stakeholder group, and there may be others, and I am glad that the discussions are on-going. How do you feel about the discussions and how can we go forward?

It has already been said that there is a bit of time before there will be any legislation. My view is that we should treat the Smith agreement as a minimum, because if we are truly talking about achieving coherence, there may well be other things that must come into the package; for example, job creation as well as workfare, and some of the other things that have been talked about in the context of welfare and taxation.

How do you feel generally about the consultation discussion that is going on with the Scotland Office? Is there room for sensible discussion to improve the very rushed package that is the Smith agreement?

The Convener: That is a big question. Probably the best way to deal with it is to ask the panel whether they think that there is room for more discussion on how we could take matters forward. We have only three minutes left, so perhaps the witnesses could come back to us with written advice about where we need to go from here and how we should deal with the legislation.

Linda Fabiani: That is fair enough.

The Convener: In the circumstances, there will be lots of other people who want to contribute.

I shall end with a question about welfare powers. Is it fair to say from what we have heard from today's contributions that everyone thinks that welfare should all have been devolved to the Scottish Parliament—or am I wrong about that?

Dave Moxham: That is not the formal position of the STUC, and the question is very much linked to our view about the extent to which there could be have fiscal devolution. Parliament would need much fuller fiscal devolution if it also wants devolution of welfare.

The Convener: I get that.

Mary Taylor: To clarify, I say that the SFHA said that in its submission to the Smith commission, but we are working with the current offer of powers.

The Convener: I am sorry. I probably did what Linda Fabiani did; I asked too big a question at the end, so forgive me for doing that.

Linda Fabiani: Can I come in first next time?

The Convener: If you had come in earlier, it would have been a great question.

On where we go from here, I look forward to having discussions with the witnesses and with Duncan McNeil.

At our meeting next Thursday, we will hear from representatives of the business community on the recommendations of the Smith commission.

I ask committee members to stay behind after the meeting so that the photographer can take a group photograph of us, but the witnesses are free to go.

Meeting closed at 11:29.

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