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Pàrlamaid na h-Alba

Official Report

FINANCE COMMITTEE

Wednesday 27 May 2015

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FINANCE COMMITTEE
16th Meeting 2015, Session 4

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)
*Gavin Brown (Lothian) (Con)
*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)
*Mark McDonald (Aberdeen Donside) (SNP)
*Jean Urquhart (Highlands and Islands) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Douglas Ansdell (Scottish Government)
Laura Meikle (Scottish Government)
David Phillips (Institute for Fiscal Studies)
Professor Alan Trench
Scott Wood (Scottish Government)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance Committee

Wednesday 27 May 2015

[The Convener opened the meeting at 09:31]

Decision on Taking Business in Private

The Convener (Kenneth Gibson): Good morning and welcome to the 16th meeting in 2015 of the Finance Committee. I remind everyone to turn off any mobile phones or other electronic devices that they may have.

Our first item of business is to decide whether to take item 5 in private. Do members agree to take item 5 in private?

Members indicated agreement.

Fiscal Framework

09:31

The Convener: Our second item is to continue to take evidence as part of our inquiry into Scotland's fiscal framework. I welcome David Phillips and Professor Alan Trench. Good morning to you both. Both witnesses have provided submissions in advance of giving evidence, so we will go straight to questions from the committee. I will ask some opening questions then we will go round the table.

We will look at David Phillips's submission first. Alan Trench is free to comment too—and vice versa when I touch on Alan Trench's submission. The first thing that I want to talk about is the no-detriment principle.

David, your submission states:

"The key point is that it is not possible to design a system that meets both no detriment principles, and is at the same time 'transparent, effective and mechanical'. But it is possible to design such a system that is broadly 'fair' if one is more flexible about the no detriment principles. Such flexibility will be key to implementing a workable system".

You go on to explain why there are contradictions within what Smith has said on no detriment. Can you expand on that a wee bit for the record?

David Phillips (Institute for Fiscal Studies): Yes. There are two no-detriment principles—actually, there are kind of three, but the framework has two.

The first no-detriment principle is that, when a tax is devolved to Scotland, Scotland should not be made better or worse off just from the devolution of that tax. That implies that we take off the block grant the amount of revenues that are devolved to that tax.

The way that I have interpreted that is that the spirit of that principle means that, in the years ahead, Scotland should not be worse or better off if things continue on as they were going to anyway, so if the Scottish economy performs in line with the United Kingdom economy, Scotland should not be made worse or better off under the devolution. That seems to be the spirit of that first no-detriment principle.

The second no-detriment principle is that, if a policy decision is made in Westminster, it should not make Scotland better or worse off if it is for an area of devolved competency. Likewise, if a policy is made in Holyrood, it should not have an adverse or positive impact on the budgetary position of the UK Government.

In my presentation that I summarised in my submission, I gave examples of where those two principles could conflict. One of the reasons

behind that is the difference in the relative size of the tax bases in Scotland and in the rest of the UK. For example, income tax revenues in Scotland are about 15 per cent less per person than they are in the UK as a whole so, to satisfy the first no-detriment principle, there would need to be a mechanism whereby if Scottish revenues grew in line, in percentage terms, with revenues in the rest of the UK, Scotland would be no better or worse off. If revenues went up by 10 per cent in Scotland and 10 per cent in the UK, you would want a mechanism that meant that Scotland did not suffer detriment, under the principle that it should not suffer detriment because it was growing in line with the UK.

A mechanism that does that can be designed. An amount would be taken off the block grant in year 1 and in subsequent years that would be indexed to the percentage growth in revenues in the rest of the UK. If revenues have gone up by 10 per cent in the rest of the UK, the initial block grant reduction is increased by 10 per cent. So 10 per cent more would be taken off the block grant than was the case originally. That means that, if revenues here go up by more than 10 per cent, Scotland gains, but if it is less than 10 per cent, Scotland loses and if revenues in Scotland grow in line with the UK, Scotland does not lose. That satisfies the spirit of the first no-detriment principle.

However, suppose that there was a change in tax policy in the rest of the UK and that was the reason why tax revenues rose by 10 per cent. That 10 per cent of additional revenue in the rest of the UK would be put into the Barnett formula, so Scotland would get more under the Barnett formula and then have an additional amount taken off its block grant. In that circumstance, Scotland would gain from a tax increase in the rest of the UK. That is not a detriment to Scotland, but it is a detriment to the rest of the UK, because Scotland would be gaining from additional taxes that are being paid in the rest of the UK and not in Scotland. That would not satisfy the second no-detriment principle.

It is hard to explain this verbally and easier to use a written example. Different methods of adjusting the block grant satisfy different principles. The methods to satisfy the first principle of there being no detriment from the act of devolution do not satisfy the principle of no detriment from policy action and vice versa. In the presentation that I sent to the committee, there are some worked examples that show that problem. Both principles cannot be satisfied, so it is a choice as to which principle is prioritised.

The Convener: Thank you for that clear explanation.

Professor Alan Trench: I largely agree with that. No detriment is a perfectly sensible high-level policy objective, but I am not sure that it is a workable, practical principle to use in any system, particularly one that is designed to work in a mechanical way. By its nature, the principle will be pretty subjective in its application and it is hard to see how it can serve that purpose.

Let us consider the history of the idea of no detriment. The first time that I am aware of no detriment being used was in the context of what is now the Scotland Act 2012. The command paper that was published in November 2010 set out the framework and said that there would be a no-detriment principle to adjust for the impact of UK tax decisions on the Scottish income tax take from the Scottish rate of income tax. My reaction on seeing that was to regard it as a very broad and potentially dangerous principle.

Subsequently, the Treasury went away and looked at the work that had been done in a Welsh context on similar proposals by the Independent Commission on Funding and Finance for Wales, which was chaired by Gerald Holtham, who was supposed to be giving evidence today and who I believe sent a note to the committee. That helped to resolve a lot of the problems. Gerald Holtham formulated the principle of the indexed deduction approach that David Phillips has talked about.

That solved one sequence of problems. The difficulty now is partly that excessive weight is being put on the principle in general and partly that excessive weight is being put on the indexed deduction method. The Holtham commission carried out careful analysis and said that there are a number of ways in which we can calculate the reduction of the block grant and adjust it. Different ones will be appropriate for different taxes, because of the different profiles of risk that are involved. The logic of the indexed deduction method is essentially that it leaves with the Scottish exchequer much of the responsibility for dealing with the consequences of devolved Scottish decisions, but it keeps at UK level—and therefore protects Scotland from—cyclic decisions that the UK Government would be responsible for under the current arrangements and under the arrangements that have been set out.

That situation starts to change the more fiscal devolution we talk about. Whether indexed deduction is the appropriate method to use for other taxes is one big question, and whether and when we need to use the no-detriment principle in this way is the second question—that is the bit that is particularly difficult.

The Convener: David, do you want to come back in?

David Phillips: Yes. I have a slightly easier way of explaining what I was trying to get at in my first answer. The fundamental issue relates to the different ways in which the Barnett formula and the indexed deduction methods can work. The reason why we cannot satisfy the two principles is that the Barnett formula works on the basis of changes in spending on a pounds-per-person basis. If we want to satisfy the second no-detriment principle—the one where, if there is a policy change in England, it does not have detriment in Scotland—the indexation for the block grant reduction also has to work on a pounds-per-person basis so that it offsets the Barnett formula. However, because a given percentage growth in revenues in Scotland is less in pounds per person, doing things on a pounds-per-person basis would mean that, if revenues in Scotland grew at the same rate as in England, Scotland would lose because it has lower growth in pounds-per-person terms and therefore its pounds-per-person growth in revenues would not be as fast as the pounds-per-person increase in the block grant reduction.

On the other hand, if the indexation of the block grant reduction is done on a percentage basis, that is different from the Barnett formula's pounds-per-person basis, so it would not satisfy the other no-detriment principle. It is all to do with the fact that Barnett is based on pounds per person. In my view, the most sensible way to do the indexation is likely to be on a percentage basis, given that a given percentage growth in Scottish revenues is different in pounds-per-person terms. It is all to do with Barnett and the block grant reductions being on different bases—that is why we cannot satisfy the two principles at the same time.

The Convener: Percentage growth would surely be impacted by demographic changes, for example if the population grew at a faster rate in the UK as a whole compared to the rate in Scotland.

David Phillips: That could have an impact. There is a real question about whether the indexation method should account for demographic change. Two points are worth mentioning. First, the Barnett formula on the spending side does not account for differential population growth. It updates the population factors every couple of years but it never updates the baseline spending—it only applies the increment. In effect, it does not account for differential population growth. We could say that, if the spending side does not account for differential population growth, should the tax side as well, or are we just picking the ways that benefit Scotland as opposed to the ways that are consistent?

Secondly, as one of the other people who has given evidence has suggested, if we account for differential population growth in the indexation,

that removes any incentive to Scotland to improve its demographic profile. For instance, the Scottish Government has said that it would like faster growth in the working-age population in Scotland. If the indexation method was adjusted for population growth, Scotland would get no benefit from that.

On the one hand, adjusting for population growth would benefit Scotland. It would mean that less would be taken off the block grant, to account for the fact that Scotland's population had grown less quickly, but it would not be consistent with the Barnett formula and it would remove incentives to grow the population, whereas the Scottish Government has said that it would like better demographics in Scotland.

09:45

The Convener: Professor Trench, you have helpfully called for the setting up of

“an independent body to help resolve disputes”.

Given what we have just heard, I think that that would be very helpful. You have also called for

“Keeping systems under regular review, rather than believing that a system can be introduced and then simply left to work.”

Professor Trench: Yes. Would you like me to elaborate on that?

The Convener: Yes.

Professor Trench: Let us start with the first point. We have a fundamental problem with the institutions that we use to deal with financial matters. The problems have been apparent for some time, and they have now become acute. Essentially, one institution does all those things at the moment: HM Treasury. The Treasury is also the finance ministry, as it were, for England as well as for the UK as a whole.

The whole system rests on nothing more than a Treasury statement of funding policy. It does not have a direct statutory or constitutional underpinning; it operates through the mechanism of annual supply and appropriation acts at Westminster.

Any disputes or disagreements need to be raised with the Treasury first and, if one could really be bothered, they can subsequently be pressed in due course to the joint ministerial committee through its dispute resolution mechanism. To be blunt, a fat lot of good that is likely to do anyone, other than the Treasury.

What we need is, at the very least, two new bodies, both of which, I am afraid, will impinge on the Treasury's ability to make decisions. First, there needs to be some genuinely independent body that is responsible for if not making then

advising on the calculations that underpin the system, whether it is the calculation of the quantum of the block grant or the calculation of the amount of any reductions in the block grant by whatever mechanism is used.

There is also a need to do post facto audit, to review what has gone on and to see what has actually happened. It is remarkable how little anyone does that. I think that I referred in a footnote in my submission to the only example of that that I am aware of, which was undertaken by David Heald and Alasdair McLeod. That was published in 2005, based on data from 2000 to 2003, if memory serves. That was a very early spending review period post devolution. That work was possible only because Professor Heald, as a committee adviser, had access to detailed quantitative information from the Treasury that was not normally published then and is not published now. As far as I can see, there is no particular reason why that should not be published—it just is not. Forensic examination shows that there appears to be something of a black hole in how the numbers have worked, even at a time when they were relatively straightforward. The issue is material.

What about the institutional structure of the potential body? One could draw on the parallel of the Office for Budget Responsibility, but I prefer the example that we discussed in some detail in the recent report from the Bingham Centre for the Rule of Law entitled, “A Constitutional Crossroads”, to which I have also referred. There are many problematic features of the Australian system, but the structure of the Commonwealth Grants Commission has proved to be effective and durable. The CGC has existed since the 1930s. It is composed of independent experts, who are mostly people from public service backgrounds who have worked for state Governments and the federal Government. There are usually one or two academics on the commission. They are expressly not elected politicians—the members of the commission have never held any political office. They are accepted as politically impartial, and they are able to do a job of work of advising the commonwealth treasurer about how the system works. They do so sufficiently effectively that the treasurer has always accepted the CGC’s advice. He or she has never tried to alter the recommendations that have come from the CGC. Institutionally, that is attractive.

The second body that I think we need is some better mechanism to deal with disputes and disagreement between Governments. It is difficult to have a UK Government minister deciding on a dispute between a UK Government department and a devolved Administration. There needs to be something genuinely impartial that can impose some stronger sanction on the UK Government

than the practically non-existent consequences that exist at the moment. At the very least, such a body could publish a report to state that the UK Government is refusing to act in a responsible manner, if that were its finding. That is where we would need to get to in institutional terms.

I am afraid that I have forgotten the second part of the question.

The Convener: Basically, I asked about the independent body to resolve disputes, which we have touched on, and about keeping systems under regular review, rather than leaving them to be introduced at some further point.

Professor Trench: Again, it is commonplace in federal systems to review such mechanisms periodically. The Australians, being remarkably well organised, have a five-yearly review of the basic framework that is used by the Commonwealth Grants Commission. Every five years, a fairly systematic root and branch review is carried out into the indicators that are used and what they should be. That is in light of directions from the commonwealth treasurer about what the system should seek to achieve—they are told what the system should achieve, and they go away and work out how to achieve it.

Other systems, for example in Canada, review less frequently. There are three or four significant elements to how the Canadian system works. There is the equalisation fund, two transfers called the Canada health transfer and the Canada social transfer from federal Government to the provinces, and a separate mechanism that funds the three territories. There is also the tax capacity of the provinces. Each of those is reviewed on a different cycle, but they are reviewed. Equalisation, which is the largest of the transfer programmes, is reviewed about every seven to 10 years—it is gearing up for another review now I believe.

The Convener: Thank you. You said:

“the mechanisms proposed by the UK Government in the command paper *Scotland in the United Kingdom: an enduring settlement* have significant shortcomings and are likely to rely on negotiations that will themselves be based on data of questionable accuracy. This system is unlikely to breed confidence in its fairness and unlikely to be stable.”

Could you comment on that? Has the Treasury grasped the need for a transformation? It is one thing for us to talk about it, but does the Treasury believe that it must take place? Can improvements be implemented prior to the Smith proposals being rolled out?

Professor Trench: I think that the Treasury is starting to learn the nature of the situation that arises. It is a learning experience—I do not think that the Treasury is where it needs to be yet, but that does not mean that it will not get there. Whether it will get there in time for the roll-out of

the Smith proposals, as you put it, will depend on the timescale for that. I understand that we are expecting a bill to be announced in today's Queen's speech and published shortly thereafter. It is likely to be passed before the end of the current session here and during the Westminster parliamentary session that opens today.

I do not know what that means for applying those further powers in a Scottish context—I do not know whether that will happen a year or two after the Scottish rate of income tax comes into effect next year. The long-ball option would be that it will happen after the next Scottish Parliament elections. I have no idea what the position is regarding that, and the white paper does not tell us anything very useful about it. We may learn more when the bill is published.

Can you remind me of the first part of your question?

The Convener: Basically, I was asking about transparency and how it can be improved ahead of the implementation of Smith. You said in your submission that the system is

“unlikely to breed confidence in its fairness and unlikely to be stable.”

Professor Trench: That appears to me to be the case—I am not sure that I can say very much more than that.

As you know, the data that we have on tax receipts across the UK is quite problematic. We also have a situation in which HM Revenue and Customs is struggling to identify Scottish taxpayers in order to make the Scottish rate of income tax system work. That is not helpful because, of all the taxes that we are talking about, income tax is one of the easiest to devolve. A lot more work needs to go into understanding how we attribute the origin of taxes in a geographical sense. That is necessary on both sides of this equation, not just to work out what Scottish revenues are or might be but also to understand what, as it were, they notionally would be, in order to assess how the first of the no-detriment principles that David Phillips talked about will actually operate. If this is supposed to be revenue neutral, we need to have better data in order to do better projections than we do at the moment.

The first and foremost point to start with is the need for better data and more published data. We have reasonable data for Scotland in the form of the “Government Expenditure and Revenue Scotland” figures. It is not perfect, but it is better than the data that we have for anywhere else. We have rather dubious similarly calculated data for Northern Ireland, we do not have anything for Wales, we have some generalised figures for the UK as a whole and we have some experimental

data from HMRC. We have to do a lot of work to make that more useful.

The Convener: David Phillips, in your submission, you say that, to ensure transparency and effective scrutiny, information on the calculations relating to the block grant and the Barnett formula

“should be published in full at every fiscal event which affects the devolved governments’ block grants.”

David Phillips: Yes. Recently, I tried to do a similar exercise to the one that was done in the 2005 paper that Professor Trench mentioned.

Professor Trench touched on the fact that, although the principles of how the Barnett formula works are published and quite a lot of detail is provided about how the individual departments’ budgets should feed into the Barnett formula, there is no published information on the calculations that are made at the time of each spending review or budget, and there are complicated issues such as how baselines change between periods and so on. The implementation is quite opaque, and information is not published.

In 2009, the House of Lords Barnett Formula Select Committee recommended that that information should be published, but that call was not acted on. I pestered the Treasury and managed to get hold of the spreadsheets that it uses to do the calculations, but we should not have to do that. The spreadsheets should be publicly available so that the work can be critiqued and analysed so that we can understand what the budget allocations are for Scotland, Wales and Northern Ireland.

In the answer to what I think was question 3 in the committee's call for evidence, I said that I thought that the Treasury or the proposed independent body that might take over the role should publish all that information so that it is open to scrutiny by Westminster and the devolved Governments. The Barnett formula is not just a principle; it is an operational thing as well. Many of the decisions are about what specific things—spending on the Olympics or Kew gardens, for example—are counted towards the Barnett formula. Seeing how all those things are counted and being able to replicate the figures and assess them is important for transparency and for maintaining the integrity of the system.

Professor Trench: I was the adviser to the House of Lords Barnett Formula Select Committee. It is not quite correct to say that the changes are not published, because they have been, subsequently. It is one of those things that the UK Government has done without formally announcing that it has done it. The Government puts the figures in some very odd places—I forget where I found the figures for Scotland. It publishes

figures for changes that have been made in relation to the baseline or when there has been something that triggers a consequential—a little addendum that sets that out is published each year.

I happen to follow the issue more closely in relation to Wales than to Scotland, and I know that the figures for Wales are, slightly oddly, published in the Wales Office's annual report, even though it is quite hard to see what they have to do with the Wales Office.

David Phillips: The only issue there is that it does not break down the calculations into their individual sub-components—it just gives a total amount.

Professor Trench: Indeed; it is very broadbrush, but it is more than we ever had before.

10:00

The Convener: I will touch on just one more area, because my colleagues want to come in.

The issue of borrowing is one on which you have different views, which is always interesting for the committee. David Phillips, you say in your submission:

“while for local government borrowing, there are effective means for central government to deal with any problems that may arise if a particular authority borrows what is felt to be an imprudent amount”.

You go on to say that

“the Scottish and UK governments should agree a limit on capital borrowing powers.”

Professor Trench, you say in your submission that

“*Scotland in the United Kingdom*, in particular, suggests a highly constrained approach, most notably in paragraph 2.2.6”.

You go on to say that

“borrowing choices as a zero-sum game, in which devolved decisions count against UK ones, is an inappropriate way to ensure fiscal devolution works.”

David Phillips: I was asking the question on the borrowing powers with the ideas of the Chartered Institute of Public Finance and Accountancy in mind. CIPFA's submission contains the idea that Scotland should move towards a system of prudential borrowing for capital borrowing powers. A similar system is used for local authority borrowing, and CIPFA argues that, because that works well for local authorities and we have not seen local authorities getting into trouble, why should we not give the Scottish Government a similar regime of borrowing?

Under a prudential borrowing regime, the Scottish Government would determine its own

borrowing limits subject to affordability, and the amount borrowed would be used only for capital expenditure and not current expenditure. It would be an overall prudential regime.

I am not saying that that is definitely the wrong approach. I am saying that there are potentially some differences in the politics between how things work at local authority level and how they would work for the Scottish Government. In particular, such a regime works well at local authority level for two reasons. First, the Government—the UK Government in England and the Scottish Government in Scotland—has the political power to intervene if it thinks that local authorities are borrowing imprudently, even though they have a regime that means that they should not be able to act imprudently in their borrowing. The Government could cap borrowing powers or intervene by sending in commissioners. In effect, it could take back control of those borrowing powers.

In principle, Scotland within the UK could have a regime like that, but the political ramifications would be substantially different from what they would be at local government level. It would cause a constitutional crisis if the UK Government commanded a prudential borrowing power and, at some point in the future, took it back from Scotland.

The Convener: You are assuming that Scotland would get into some kind of bother.

David Phillips: Indeed. I am not saying that it would, but there is the potential for that to happen. Given the political situation, there might not be the good will on either side for such a system to work. There is at least a risk of that.

The second issue is bailout. If local authorities get into trouble and they fail and need to be bailed out, the amounts are likely to be relatively small. The politics of that would be that people would grumble and they would not like it—people in Glasgow might have to bail out people in Edinburgh, for example. However, the politics of a bailout between the UK Government and the Scottish Government after fiscal autonomy or further devolution would be of a different order of magnitude.

I am not saying that a prudential borrowing regime is a non-starter, but the political issues are quite different from those that apply to prudential borrowing at local authority level. Those would need to be considered carefully by the Scottish and the UK Governments before they decided to go down that route.

If those risks are seen as being too high, a regime with an expanded amount of capital borrowing powers, with a limit, might be a more workable approach that would not have those

political problems. Because the limit is known in advance, there is no potential for grievance later on.

The Convener: It seems that your approach is wholly negative. It is odd that a Government in Edinburgh would have fewer borrowing powers than the local authorities over which it exercises significant powers. Do you not think that that is a pretty illogical place to be?

David Phillips: I agree that you might come to that conclusion if you looked at the government levels on their own and saw that the higher level of government had fewer powers than the lower level of government. However, the issue that I was raising in my submission was the fact that the political risks are different. It is not just a question of the level of government; it is a question of whether, given the political situation and the institutional arrangements, the same mechanism is appropriate. I am not saying that a prudential borrowing regime would not be the right answer; I am saying that there are political issues that mean that it might not be the right answer, even though it works well for a lower level of government.

Professor Trench: It is hard to find any objection to the idea that the Scottish Government should have a prudential borrowing power. That issue is not a concern to me. Greater issues arise as a result of the more serious borrowing power that is necessarily implicit in fiscal devolution, which is a power to borrow to address the volatility implications. If one looks at the figures, the amount that you would borrow in those circumstances is much greater than the amount that you are likely to borrow in any five-year period under any prudential power.

That is the point at which things can start to become difficult. We are talking about substantial amounts of money, so fiscal deficits would have to be run and there would be substantial debt service costs. You have to address the question of bailout from the outset—you have to work out who is the lender of last resort.

Again, there are experiences around the world that we can look at. Some countries have very constrained borrowing powers for sub-state Governments, in some cases because sub-state Governments have gone bust in the past and the result has been to constrain considerably their borrowing thereafter. By contrast, there are some Governments that operate with practically no constraint whatever.

Canada is an intriguing example. The provincial Governments go off and borrow very substantial amounts of money on the capital markets by issuing their own bonds. There is absolutely no guarantee of a bailout from the federal Government, and the market appears to believe

that. There are cases in which the market does not believe that and thinks that there would be a bailout from the federal Government, which in effect reduces the risk premium that the sub-state Governments would pay on their interest charge. Equally, the Canadian provinces have quite a wide spread of interest rates and risk premiums, although I do not think that any of them has ever defaulted; that has certainly not happened since Newfoundland entered confederation. When Newfoundland was an independent dominion, it overborrowed and went bust as a result. That story resulted in Newfoundland ultimately becoming part of Canada.

In federal countries—this is not a risk that presents itself in the UK context—that situation can affect federal level public finances as well. It has affected Brazil's public finances. When the richer states of Brazil went off and borrowed a great deal and were unable to pay it back, they had to be bailed out by the federal Government. As a result, the whole borrowing regime in Brazil needed to be reconstructed, because the creditworthiness of Brazil and the exchange rate of its currency were affected.

That happened in the context of some of the largest and most prosperous states of a pretty large country. In relation to Scotland, the risk from a UK point of view has to be different, because Scotland has less than 10 per cent of the population of the UK as a whole. The issue becomes one of UK-wide equity. A system cannot grant Scotland free money simply because Scotland wants it, if that causes disadvantage to the rest of the UK. Finding the way through that is the difficult part.

The Convener: What is the answer, then?

Professor Trench: I hesitate to offer an advanced answer. I am sure that your advisers have been following the work of Angus Armstrong of the National Institute of Economic and Social Research, who has been considering that question in some detail and who is strongly of the view that there needs to be an extensive borrowing power, with the scope to go bust.

I disagree with Dr Armstrong, because I think that there is sufficient risk for the UK Government that it cannot simply say that there will be no bailout of Scotland or that Scotland can borrow freely but at its own risk without there being at least an implicit assumption in the markets that there would be some bailout if things were to go wrong.

My own view, which is not a particularly carefully researched one, is that the best way through this thicket is probably for there to be some sort of ceiling—how that would be calculated, I do not know—up to which the UK Government expressly

agrees to indemnify Scottish bonds and above which it expressly says that it will not indemnify any borrowing. Therefore, if Scotland wanted to borrow beyond that amount, it would very clearly do so at its own risk. I think that that is about the best way of balancing the various considerations that are involved.

The Convener: David, do you want to make a final point before we move on?

David Phillips: As Alan Trench says, there is a real need for Scotland to have further current borrowing powers to smooth the cyclical volatility. To some extent, depending on what block grant adjustment mechanism is used, some of that volatility will be taken up by the block grant mechanism. That is the whole point about the index method of Holtham insulating Scotland from the aggregate cyclical risk.

There will still be idiosyncratic, Scotland-only cyclical risk, which could be quite substantial the more taxes are devolved to Scotland. At the moment, under the Scotland Act 2012, current borrowing can only be used to borrow for forecast errors, but the Scottish Government might forecast a recession and need to be able to borrow for that. There is a need for substantially larger powers on the current side. That is one area in which we need to go much further than is provided for at the moment. There was an indication in the command paper that the UK Government was pushing down that road.

The Convener: Thank you. I open up the session to members.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): On the block grant adjustment, the scenarios from David Phillips were useful. My sense from listening to different people is that the proposal that relates to the percentage change in UK tax revenues is the one that commands the most support and I imagine that it will be the one to happen.

I may be missing something here. You said that Scotland would benefit from tax increases in the rest of the UK, but does that not work in two ways? Is the assumption that Scotland would get more through Barnett consequentials? Surely an increase in tax taken in the rest of the UK would increase the amount taken off the block grant. Is that not right?

10:15

David Phillips: The scenarios that I was talking about were where Scotland would benefit from spending in the rest of the UK. I will give a simple example that shows that.

Let us suppose that, in the rest of the UK, income tax is put up by 2p in the pound. That

raises about £10 billion, which is about 8 per cent of income tax revenues in the rest of the UK. Using the percentage indexation method, if income tax revenues in the rest of the UK have gone up by 8 per cent, you would take 8 per cent more off the Scottish block grant to account for that. Eight per cent of Scottish income tax revenues would be about £850 million, so you would take an additional £850 million off the block grant.

Under the Barnett formula, if there was a £10 billion increase in spending in the rest of the UK, that would lead to about £1 billion for Scotland. If you have taken £850 million off the block grant to account for the higher revenues in the rest of the UK, and then Scotland gets £1 billion through the Barnett formula, Scotland gains about £150 million from a tax change that has not affected Scotland but has affected only England, Wales and Northern Ireland. That is because the Barnett formula works on a pounds-per-person basis and the percentage method of indexation is based on percentages, and the pounds and percentages do not necessarily line up, because a given percentage increase in revenues in Scotland is not the same as pounds-per-person increase in the rest of the UK.

It could be the case that Scotland gains a bit from tax increases in the rest of the UK but that it loses a bit from tax decreases in the rest of the UK. The reason why I have come to the conclusion that that would be okay for Scotland is that those things would balance out over time. Income tax revenues will sometimes go up in the rest of the UK and they will sometimes come down, and those things should balance out, but there could be some small knock-on effects from individual tax changes in the rest of the UK, just because of the interaction of the Barnett formula with the block grant.

Malcolm Chisholm: That is assuming that all the tax increase is spent on devolved areas.

David Phillips: That is right. If it does not go on devolved spending, you get into an interesting situation. My perspective on this is slightly different from one of the other people who have given evidence to the committee. If that money was spent on something that was not devolved, such as defence, no additional money would flow through to the Scottish Government, but £850 million would still be taken off the block grant.

Some people have suggested that that is unfair, because a tax change in the rest of the UK has funded some non-devolved spending and caused a reduction in the Scottish Government's budget, which means either cutting spending in Scotland or having to increase Scotland's own income tax to make up the difference. I think that, in the context of a system in which there are still

reserved, non-devolved matters, it is not unfair. That is the way that the system has to work for fairness to be in place, because if Scots are benefiting from spending at the UK level—whether it is on defence, state pensions, foreign affairs or the existing national debt—fairness requires that Scots, as well as those in the rest of the UK, contribute to that spending. In the first instance, that can be done by cutting the Scottish Government's block grant. In the second instance, if the Scottish Government wants to make up for that, it can also increase its income tax rate, just as happens in the rest of the UK. My perspective on that is a bit different from that of some others.

Malcolm Chisholm: We could make lots of comments on that, but at least you have given us a clear and helpful explanation.

Moving on to the Barnett formula, I believe that you, like most intellectuals, want to change it or get rid of it, and I suppose that a lot of back-bench MPs do as well. My own sense is that it is significant that none of the members on the front benches in the House of Commons does, because they understand the politics of it. However, what I want to pursue is whether we actually need to do that or whether, under the new regime, it will operate as it is supposed to operate in terms of convergence. The main reason why there is no convergence, as far as I understand it, is that the population of the rest of the UK is growing faster than the Scottish population.

I can see Professor Trench shaking his head, so perhaps he will explain his position on that. My understanding is that, under the new regime, if the rest of the UK's population grows faster than the Scottish population, we will lose out in the block grant adjustment because the tax revenues in the rest of the UK will increase at a higher percentage than ours. Will the new block grant adjustment regime actually make the Barnett formula work more as it is supposed to work in terms of convergence, so that there would no need to get rid of it, as you propose?

David Phillips: To some extent, it depends on what indexation method is used to index the block grant reductions for the tax devolution. The first in the order of methods that will lead to the Barnett squeeze taking place more quickly is indexation, not in percentage terms, but in pounds-per-person terms. That would lead to the fastest squeeze, as Professor David Bell showed in his analysis. A given percentage increase in revenues in the rest of the UK is more, in pounds-per-person terms, than in Scotland. If indexation is in pounds-per-person terms, Scotland's growth would have to be faster just to keep up with the rest of the UK, so the squeeze would definitely take place under a pounds-per-person indexation.

With percentage indexation, which is the one that I talk about mostly, Malcolm Chisholm is right: if the Scottish population grew less quickly and the growth in revenues per person in percentage terms was the same, that would also lead to the squeeze increasing, relative to the position today.

Finally, if block grant reductions are increased not in percentage terms but in pounds-per-person terms, that would not lead to any squeeze at all, as the population effects would be counteracted.

Therefore, it depends on the precise indexation method that is used to adjust the block grant over time, but Malcolm Chisholm is right: under the method that I discuss, that squeeze would take place.

Differential population change is one of the reasons why the Barnett squeeze has not happened so much. Another is because—this applies to recent years—the squeeze does not take place when spending is being cut; it takes place only when spending is being increased.

There are other factors in the background that have meant that the squeeze has not taken place. One big factor was the devolution of rail spending in 2006-07. Scotland's percentage of rail spending went up from around 3 per cent to 8 per cent overnight. Spending jumped in those years.

There were some other changes, as well. Formula bypass happens, too. Top-ups are made for the devolved Governments.

Malcolm Chisholm: Professor Trench was shaking his head.

Professor Trench: Yes. Let me try to address the convergence issues.

The arithmetic and the structure of the Barnett formula mean that there should have been dramatic convergence, particularly during the huge public spending boom of the early noughties—roughly from 1999-2000 to 2007-08—but that did not happen. It should have happened, but it did not.

I am not sure about the rail spending point that Mr Phillips mentioned, but I am very dubious about formula bypass, because there is very little evidence that it went on at that time. Indeed, formula bypass has become very hard to achieve and very open when it is achieved, because decisions are made about what is within and outwith the block grant.

What happened to the population of Scotland—not that of the UK as a whole—during that period is material. For most of that period, Scotland's population was still falling at a quite dramatic rate—0.3 per cent, or thereabouts, a year, I believe. Since 1999, we have rebased the numbers that are used for the Barnett formula

every three years through the spending review process. It did not happen regularly before then, and that is part of the reason why convergence did not happen during the 1980s and the 1990s. However, it appears that, when we look at spending on a per capita basis, even during those short spending review periods the rate of population decline in Scotland was sufficient to cancel out the convergence effect. Therefore, the population factors and their accuracy become very important.

It is worth noting that the Office for National Statistics figures for population change for the next 15 to 20 years suggest a much slower rate of population decline in Scotland—the figure is around 0.1 per cent a year. That means that convergence should start to happen.

Do you want me to talk a little bit about the Barnett formula, as well?

Malcolm Chisholm: That was the point I was raising, so I think that you are agreeing with me that there will be more convergence.

Professor Trench: I think that that is very likely. You addressed Mr Phillips about people wanting to get rid of the Barnett formula.

Malcolm Chisholm: Yes. Was that provocative? I thought that it was a fairly safe point to make.

Professor Trench: Indeed. I have to admit to being a member of that club as well. Indeed, we very specifically say that in the recent Bingham centre financial report. That is partly because when we were drafting the report and considering how to put the recommendations, we thought that there was very little point in not saying, “Get rid of the Barnett formula,” because what we were proposing amounted to doing that.

We could have avoided talking about getting rid of the Barnett formula, which would not have got us a headline, but that would have been misleading. Thinking about what the Barnett formula is, we use the term to cover three things. One is the quantum of money that is paid to devolved Governments every year from the Treasury; the second is the formula itself—the means by which that amount is calculated; and the third is the administrative machinery that goes with it and the fact that the Treasury retains so much authority in relation to all the decisions about it.

As I said in earlier answers to the convener, once you have started to take apart and reconstruct the administrative machinery—once you have started to do the fairly systematic review that you need to do of the formula and how you calculate the numbers—you are ultimately going to have an effect on the quantum anyway. The quantum is not the target, but once you have

taken apart the two things that lead to the quantum, you might as well say that you are getting rid of it.

I suspect that what you would end up with would have certain characteristics in common with the Barnett formula. I cannot see any way that you could reconstruct the grant element of funding without using England as your reference point, which is what the Barnett formula does, because you get a consequential share of changes that are made in spending for England. It is inevitable that that will have to be your reference point because there is no other suitable reference point.

However, with that exception, you are going to end up with something that is so changed that, even posthumously, it would be a favour to Lord Barnett to take his name off a formula that he had long been seeking to disown.

Malcolm Chisholm: I could pursue that but I do not really have the time, as I want to ask one more brief question about David Phillips’s update, which is very topical and very interesting.

I want to ask about national insurance contributions, because you make two statements that appear to be contradictory. On the one hand, you say that

“NICs are ... just another income tax on earned income”.

You refer to Mirrlees, and we know that Mirrlees wants to merge the two. However, you then go on to ask

“who would pay for the pensions of people who had worked in England and retired to Scotland ... ?”

I do not really understand why you ask that question, because I do not think that the Scottish National Party is proposing that pensions should be paid any differently from how they are paid at present under the devolution of national insurance contributions, unless I misunderstand its position.

David Phillips: My initial reading of the manifesto suggested that it was looking for the devolution of not only national insurance but, potentially, welfare in its entirety. That is why I raised that point.

I completely agree—and it is a long-standing position of many researchers at the IFS—that national insurance is just another income tax. However, the UK Government maintains the pretence that it is a social security contribution. There are notional links between NI contributions and benefits received.

I asked who would pay those pensions because if there was full devolution of NICs and welfare, such questions would need to be answered. I think that the answer would be that the pensions would be paid by the Government where the pensioners lived and there would be an adjustment to the

block grant to account for pensioner population. However, some technical issues would be involved, given the pretence that we have a contributory system in this country.

Malcolm Chisholm: But does the general view of the Institute of Fiscal Studies support the Mirrlees position that we should just get rid of it? At present, there is still a fund, but it is not clear to me what its purpose is.

David Phillips: The fund is notional. It does not really link in any way to what gets paid out in benefits. It is an accounting exercise.

Malcolm Chisholm: Is it notional? You still hear that so much comes from the fund and so much comes from general taxation.

David Phillips: You do, but unless something is completely separate it is just what we call dodgy hypothecation. It does not matter where the money comes from because you just pay, wherever it comes from. What you label it as does not really matter.

10:30

Professor Trench: The intricacies of the national insurance fund are something that I would not recommend anyone to try to get their head around. They are quite bizarre, because the fund is underwritten by general taxation—the consolidated fund—so any shortfall is made up from general taxation. However, the fund is used to pay not only benefits such as pensions but a variety of other bizarre charges, including an element of funding for the national health service. It is a system that has badly needed reconstruction for a long time, but nobody has done anything to it since, I think, 1975. In essence it is the system that was put in place in 1948.

David Phillips: It is still our view that the systems should be merged. The devolution settlement as it stands—with income tax devolved and national insurance not devolved—prevents that from happening. Devolving NICs as well could give you a situation in which either Scotland on its own or the rest of the UK on its own, or both, could seek to merge the systems, notwithstanding the political difficulties of letting people realise how much tax they are paying.

Malcolm Chisholm: Okay, that was helpful. Thank you very much.

John Mason (Glasgow Shettleston) (SNP): I would like to touch on some of the areas that we have touched on already, including the Barnett formula. Professor Trench, you talk about

“a more rationally-constructed grant”,

which I assume means less than we are getting at the moment. *[Laughter.]* Mr Phillips, you say that

“such a system would be ‘fairer’ than the existing system, which involves a block grant that has no relation to current needs”.

Again, I assume that means that we would get less. Is that in fact the case?

David Phillips: I have not done a needs assessment, so I do not want to come to any firm conclusions on that. However, the most recent needs assessment—a good piece of work by Gerald Holtham in Wales—suggested that Scotland was receiving more funding than it would if it was getting the amount equivalent to what it would need relative to England. That is not saying the absolute amount—you could argue what the absolute amount should be. However, Gerald Holtham’s work suggested that the relative amount that Scotland receives is higher than it would need to be if compared to England. Scotland stands out as being relatively well off in terms of income per capita and yet having very high spending.

John Mason: Surely, while needs form one part of the equation, the other part of the equation would be that a no vote was meant to make sure that we were not any worse off—there was a commitment there and there is the idea that we need compensation because we have given up sovereignty. Are those not factors as well?

David Phillips: On the politics side you are right. Fundamentally there is a question about what form of equalisation and fiscal redistribution should take place in a fiscal union. There are various ways of looking at that, including a needs basis; a revenue equalisation basis, which is equalising not on needs but on the revenues capacity side; or a contributions-based basis, in which the amount that is paid in affects the amount that is paid out. There is a range of options.

On the political issue about whether a commitment has been made to the Scottish people to keep the Barnett formula, it seems to be the position of the Scottish Government and of the UK Government at the moment that the Barnett formula is there to stay. That is a political decision. Whether that decision is fair in the round, I leave to the politicians to decide.

The levels of spending in Scotland compared with other parts of the UK look relatively high, according to the most recent assessment—not my assessment, but Gerald Holtham’s. On that basis, moving towards a needs-based assessment would seem fairer. I agree that there is a question about how that fits into the political promises or pledges that have been made to the Scottish people.

Professor Trench: I have already talked about the problems that are implicit in the present Barnett arrangements. I do not want to repeat that, but it is all relevant in this context.

We sketched out a mechanism for a rationally constructed grant in the paper “Funding devolution: Fiscal options for strengthening the union”, which I am sure you have seen before and which we published in 2013. A much more effective way of trying to manage devolution and finance generally would be to combine the elements of grant and fiscal devolution.

In addition, it is worth bearing in mind that, under the Smith proposals, taxes that flow directly to the Scottish exchequer—both fully devolved taxes and the assigned share of VAT—would equate to something between 50 and 60 per cent of the Scottish budget, depending on how we cut the figures for Scottish devolved spending. The Barnett formula accounts for only about half of that or even a little bit less. There is and can be no objection to higher levels of public spending in Scotland if Scottish taxpayers pay for it. The question is how much of any higher level of spending should be covered by taxpayers from outside Scotland.

John Mason: Is that not the promise that was made in the vow?

Professor Trench: The promise that was made in the so-called vow was to maintain the Barnett formula but it is also subject to the Smith proposals for fiscal devolution.

John Mason: Was the implication not that Scotland would not lose out?

Professor Trench: That is the implication. The problem with that is that it involves a set of assertions or assumptions about what will happen in the future, which, by definition, we cannot guarantee, not least because of the behaviour and effects of devolved taxation. That, in essence, is what we grapple with when we talk about no detriment. The inevitable problem is that, if devolved tax decisions work, they should shape the tax environment and the public revenues. The question is where the responsibility for that lies.

David Phillips: If the Scottish population does not grow less quickly than that in the rest of the United Kingdom, the Barnett formula implies that a squeeze will take place. Therefore, in the longer term, the Barnett formula would not necessarily be beneficial to Scotland. A needs-based formula might deliver more if the squeeze starts to come into effect.

Professor Trench: That is certainly true. The Holtham figure is that Scotland’s relative needs come in at about 104 or 105 per cent of England’s. The Barnett element of block grant funding for Scotland is something in the order of 118 per cent of UK average, so there is a substantial benefit to Scotland from it at the moment. That is, I would think, a logical argument for the Scottish National Party to resist any call for fiscal devolution

whatever, and I note that there has been a remarkable absence of that demand.

The convergence factor will take a long time to get down to that level but, ultimately, it will do so because convergence will drive Scotland down to 100 per cent of English spending. That is logically where convergence would take you.

John Mason: We have mentioned the concept of an independent body to arbitrate between the two Governments in a range of areas if there are disputes. The example of Australia has been given, which is fine, but is the reason that it works there not the fact that Australia has a proper federal system and, I think, a written constitution? We do not have those, and to have an independent body would be for the Treasury and Westminster to give up ultimate control, which is surely impossible for them.

Professor Trench: I do not see why.

John Mason: Devolution fundamentally means that they are graciously granting us a little bit of freedom.

Professor Trench: I do not believe that that is how devolution works and I am not sure that that way of thinking about it is a particularly useful way of trying to understand the relationships that are emerging in these islands.

John Mason: You think that the relationship will change.

Professor Trench: Yes. For the UK to work as a devolved union, it needs to change.

John Mason: To set the budget, the whole framework would need to change. The bigger part—that is, the UK—would set its budget first. The smaller part—that is, Scotland, Wales and Northern Ireland—would then tweak round the edges. However, at the moment, the situation is the exact opposite. I would hope that Westminster would be willing to change that. Is there any likelihood that it will do so?

Professor Trench: Yes.

John Mason: Good.

Professor Trench: I talked about an independent body to deal with disputes, but I am rather doubtful that the idea of it arbitrating disputes is necessarily where that would need to go to. It is more likely to be a form of mediation than arbitration. I ought to add that that is not part of the Australian architecture. In a sense, it is a measure of the success of how the Commonwealth Grants Commission does its job that there has never been a need for such a dispute resolution mechanism. If there is a political dispute, the matter would go to a body called the Council of Australian Governments, which is the Australian Government’s equivalent of the UK’s

joint ministerial committee. If there is a legal dispute, that would go to the courts.

John Mason: In effect, the commission makes a decision and all sides, so far, have accepted its decision.

Professor Trench: Yes, because it is able and in a position to do its job properly.

John Mason: You think that we could get to that position here.

Professor Trench: That has to be the aim.

David Phillips: I agree that that has to be the aim. The politics is rather different here than it is in Australia. We would have to be mindful of the fact that one of the components might not want to be part of the overall union. The politics of that could have an impact on the operation of these systems. I am not sure that there is a way round that, but everyone must be mindful of the political situation here, where the union is not as stable as it is in Australia.

John Mason: We have talked today and to previous witnesses about the idea of having a framework that is, on the one hand, mechanical—the word “mechanical” has been used and, I think, the word “automaticity” comes into one of the witnesses’ submissions—whereby something is set up, it works its way through and it is left to get on with it. On the other hand, we could have a framework that is subject to review and negotiation. Some people have suggested that we should negotiate every year, but that would take away virtually all the mechanical side. I think that a period of five years for Australia and perhaps seven years for Canada has been mentioned. Is there a right answer? I would, in part, want to set up a system that would work for 10 or 15 years before we had to go back and look at it.

Professor Trench: If you could put in place something that worked for 10 or even 15 years that would have many attractions, but I suspect that you would find yourself needing to do quite a lot of maintenance along the way.

You would probably be better off going in for a regular service, as it were—and knowing that in advance—rather than having to take that metaphorical car to the garage rather more often because this bit or that bit has gone wrong, the windscreen wipers have fallen off, or you suddenly need to replace the wheels or something.

David Phillips: The two approaches should not be seen as being in conflict. The idea of a mechanical framework, which works on a year-to-year basis, has attractions. Indeed, the methods of indexing along the Holtham lines, where you deal with the tax changes directly and the interactions of the Barnett formula fall out directly, have their

attractions, because they avoid the year-to-year negotiations that would be needed.

Even if the framework works on a year-to-year basis, it would not all be automatic, particularly if the no-detriment principle is invoked for the knock-on effects of policies—that is, the compensating transfers among the different Governments. However, in as far as it is possible to do it year to year, there are benefits to the framework being mechanical. However, I agree that it would have to be reviewed. I am not sure whether there would be an optimum duration.

I am not sure whether it would make political sense to have the reviews taking place in non-election years. If the reviews were to happen then that would perhaps take the politics out of it, but that may just be hoping for too much.

10:45

Mark McDonald (Aberdeen Donside) (SNP): Let us discuss further the process around the budget. Professor Trench, you were very confident that the Treasury’s behaviours will change and develop. That is slightly out of step with some of the other evidence that we have received, which has indicated that the Treasury is unlikely to alter the way in which UK budget setting takes place. What leads you to assume that that change is likely to take place? The Chancellor has had what I refer to as a rabbit-out-of-the-hat approach for quite some time, and that has become behaviourally entrenched in UK Treasury budgets.

Professor Trench: We have to distinguish between the various elements of what the Treasury does and how it does them. The central element, unquestionably, is the annual UK budget. I would agree with people who say that the Treasury will not change how it does that; it is certainly not a likely change.

In other respects, the Treasury has to accept that aspects of what it does must change, because that is the logic of the situation. The politics is such that there is increasing awareness of that and there is a will to address those questions.

Mark McDonald: You have both talked about whether we need more information about how the block grant operates. A great deal of mystery surrounds how it operates and more transparency is being called for. Is there any reason why that information could not be given in advance of the July budget, as opposed to waiting until the enactment of either SRIT or the Smith powers?

Professor Trench: There will be practical difficulties in providing more information about how Barnett works, not least because we need to specify it much more clearly than I suspect we have done. I suspect that David Phillips and I both

have ideas about what would be needed. We would need to ensure that the Treasury understood that and published it.

Those are practical difficulties. In relation to this year's budget, there is no particular reason why historic data could not be provided.

David Phillips: The Treasury could publish some spreadsheets that it sent me. They exist on its hard drive and they are relatively easy to understand. I am not in a position to publish them, because I got them directly from the Treasury, but they can be published. I cannot see a reason why, subject to people agreeing it, they should not be published on the day of the budget, along with the other documentation.

Mark McDonald: The IFS submission says that devolution of social security

"may result in a system better suited to Scotland's particular needs and preferences."

We took evidence last week from Professor Michael Keating, who spoke about the tax and welfare mix in Québec. He said that Québec

"has been able to resist the tendency to greater social and economic inequality in the rest of Canada."—[*Official Report, Finance Committee*, 20 May 2015; c 29.]

Is there the opportunity for the same approach to be taken in the Scottish context following the devolution of further powers?

David Phillips: I would raise two points in response to that. If there was substantial further devolution of welfare powers, or is there was devolution of national insurance contributions alongside income tax, that would give much greater scope for policy variation. As I said in the update to my submission, it is not just about increasing or decreasing benefit rates; it is about completely restructuring the system.

In principle, there is scope to do things quite differently. You could have higher taxes and higher tax credits and benefits. You could reshape the system to redistribute more or less over life cycles. There is a range of things that you could do. However, you will be constrained by the extent to which people's behaviour responds. People in Scotland may change the amount that they work and change the amount that they report to the tax authorities. You will also be constrained by the migration response, or people moving between Scotland and the rest of the UK. If there were substantially higher taxes at the top, you might see people leave Scotland to live in the north of England or even move down to London, if they are in the financial services industry. Although there would be scope for policy variation and difference, the extent to which it could actually achieve drastic change would be affected by the mobility of people and behavioural response.

I am not sure about the specifics in Canada. My impression is that Québec's economy has done somewhat less well over the past 30 or 40 years than that of the rest of Canada. I think that there has been some movement of top earners and top businesses from Montreal to Toronto, although I am not sure to what extent that has happened because of differences in tax regimes as opposed to the potential for secession. Differences in tax rates, when they are large—and differences in benefits, when they are large—can have behavioural responses.

Mark McDonald: Later in your submission, you look at the SNP Government preference for increased carers allowance and other social security measures, and say:

"None of these could be delivered by the Scottish Government under plans set out in draft legislation to implement the Smith Commission".

That does not seem to tally with what you have just said about the use of tax powers and so on.

David Phillips: I do not think that that was in my formal submission. Was it on the website, or was it with something else that I sent over?

Mark McDonald: I do not have the page marked up; I pulled it out to put in my questions.

David Phillips: Oh yes—sorry, I can see it now.

Under the Smith commission proposals, the Scottish Government will have the power to make changes to the systems in the devolved areas of competency. Actually, it could make the changes in some of the areas noted in my submission and in others it could not. There may be a small mistake in that paper. You cannot change the work allowances on universal credit. On halting the move from disability living allowance to personal independence payments, most of that will have been done by the time that the powers under Smith have been transferred. PIPs will be among the things that are devolved to the Scottish Government under the Smith commission's powers. The Government will be able to undo those changes if it wants to at that stage, but it will not be able to halt the transition as it actually takes place.

Forgive me—I cannot remember whether carers allowance is one of the areas that is being devolved.

Professor Trench: It is being devolved.

David Phillips: It is. Unfortunately I made a mistake in this document; I admit that. The Scottish Government cannot do universal credit, but it can do DLA and PIPs once the powers for them are fully devolved. What it will not be able to do more generally is increase other benefits. As we saw in the draft clauses, the top-up powers,

which it was initially thought would allow the Scottish Government to top up any benefit, seem to be restricted to top-ups for discretionary payments. It will also be unable to make any further structural changes to the benefits system.

In the submission, I was saying that further powers for devolution would allow much more in the way of changes to the benefits system—there were mistakes in the submission, unfortunately—but there will be some powers for that under the Smith commission.

Mark McDonald: We are looking at the fiscal framework that is going to be established, and we have spoken about the no-detriment principle. From your perspectives, how much flexibility is there to allow for meaningful policy divergence? A fiscal framework will be developed, but within it there will be multiple no-detriment elements. How constraining do you see them being of the flexibility that is needed for the real policy divergence required for a different economic approach to be taken?

David Phillips: It depends on how seriously the no-detriment principles are taken in terms of their compensation elements. For example, the Treasury has said that, if the Scottish Government was to decide to have a more generous system of support for unemployment by topping up unemployment benefit and giving higher rates of benefit to unemployed people, people might stay on unemployment benefit for longer because it gives them more income. That would mean that the Scottish Government would be paying more, and the UK Government would be paying more because the standard element of unemployment benefit and universal credit will remain part of the UK Government.

That was one of the reasons why the UK Government was concerned about top-up payments under the initial interpretation of the Smith commission powers for top-ups. The UK Government therefore talked about the need for compensation packages, in which the Scottish Government would have to pay the UK Government to cover the impact. Similarly, there was discussion of whether the Scottish version of the work programme would be less effective than the UK Government's version and, if it was, whether the Scottish Government have to pay the UK Government for the additional benefit payments.

Mark McDonald: Surely there is a flipside to that. If it was successful in Scotland and there were compensatory savings to the Department for Work and Pensions, would they be retained at the UK level?

David Phillips: No. The idea is that the compensation payments would work in both directions.

There are two ways of thinking about all this. If compensation payments have to be made every single time, will there be knock-on effects? There are knock-on effects whenever there are policy differences, and calculating them is fraught with difficulty. Different assumptions will be made and different modelling will be used by the different sides. It will therefore be hard to get agreement. If the idea is taken seriously and compensation payments need to be made in either direction every time there is an effect, it will become incredibly difficult very quickly to calculate them and that could discourage policy differentiation.

On the other hand, it could be accepted that, under the no-detriment principles, we could not apply such compensation in every single case. It would have to be done when there was a particularly egregious example of a knock-on effect—how agreement would be reached on such examples is another question—and it would have to be the exception rather than the rule. Compensation in such cases would not have such a big influence so there could be more scope for policy differentiation.

There will always be knock-on effects, but that is part of policy differentiation. Other countries, such as the United States, do not have no-detriment principles in their system and there is great policy differentiation in income tax rates, corporation tax rates, sales tax rates and even benefit rates across states. Although it is responsible to impose some kind of limit on how far differentiation can go, or at least to give the costs for when differentiation becomes too great, the no-detriment principles might or might not have an impact, but that depends on whether they are invoked every time or just used for very serious cases.

Professor Trench: I agree with most of what Mr Phillips has said about no detriment and how it should work.

On top-up powers, as one of those who were responsible for first proposing the approach of allowing the Scottish Government to be able to top-up and supplement welfare levels or introduce new benefits, I regret that the command paper and draft clauses do not go as far as they ought in delivering that principle. That is an important element of how a post-Smith world should work and I regret that it is not there. I understand that there are some serious practical difficulties from the UK Government's point of view, but I do not think that they have been adequately addressed.

I will just say something about Québec. I think that Professor Keating may slightly exaggerate the extent to which Québec has pursued a different

social policy to that of other parts of Canada. It may be a matter of nuance and I am not quite sure about what period he is talking about, but an important thing to bear in mind in the Québec context is language, not because it reinforces Québec's difference but because it segments the markets. That means that mobility of labour between Québec and the rest of Canada is a very different business compared with what it would be between Scotland and the rest of the United Kingdom. It is much harder for people to move from Québec to other parts of Canada, because they need to have good English in order to do so as well as a desire. Of course, that language hurdle does not exist in the Scottish context.

11:00

Mark McDonald: I have a final question on intergovernmental relations and interactions. The committee has received evidence that there needs to be a much more formalised process of intergovernmental relations than that which exists at present. Do you have any views on how that should operate?

Professor Trench: I have plenty of views. I am never quite sure what "formalised" means, and I am very sceptical about things like statutory underpinnings because I am not sure that they do any good or how well they work. They seldom exist and even more rarely serve any useful purpose in other parts of the world.

I think that we need to be more systematic about this issue and need much better information about it. The best people to get information out of the Executives that conduct most of these things are legislators. I would therefore look particularly at members of the Scottish Parliament to be trying to get more information from the Scottish ministers about what is going on in the same way as I would hope members of Parliament at Westminster would try to put greater pressure on UK Government ministers to tell us what is going on. At the moment, all that we get is the annual communiqué or report from the joint ministerial committee, which is pretty terse and not very helpful.

Mark McDonald: Mr Phillips, do you have a view on that?

David Phillips: I have nothing to add on that point. I agree with most of what Professor Trench said.

Gavin Brown (Lothian) (Con): Mr Phillips, you have explained in your paper and verbally here today quite a lot about how a block grant adjustment mechanism might work in relation to devolved taxes. You touch on this in your paper, but can you say a little about how a block grant

adjustment mechanism might work in relation to any welfare elements that are devolved?

David Phillips: In principle, the two adjustments could work in a comparable way, if not exactly the same way. The simplest way might be to index the block grant addition to what happens to spending on comparable benefits in the rest of the UK. That would be the analogue of what might happen on the tax side but, for a couple of reasons, it could be more complicated.

First, there is the fact that structural changes to the benefit system seem to happen more frequently than they do to the tax system, or at least to the income tax system. In principle, you would want the block grant additions to reflect changes in the UK system. As Alan Trench said, it is fair enough if Scotland wants to pay for higher welfare from its own tax revenues, but should funding for higher welfare come from the block grant?

In principle, you would want the system to reflect any big reforms to the UK system. For instance, if the UK were to delay PIP and cut the amount spent on disability benefits, you would want to give the Scottish Government less money; if it wanted to continue to pay more, it would have to fund that itself. However, going along that line is likely to lead to more political difficulties.

Secondly, given the more rapid ageing of the Scottish population, if you had full devolution of welfare, including pensions, would you want taken into account the known differences in demographics that will affect Scotland? In that case, the index might be the population age over the state pension age and some adjustments would be made.

In principle, you can use the same methods as you do for tax, but because of the more frequent and large structural changes, such as the recent introduction of universal credit and PIPs, and because of the known demographic factors, there may be more scope for debate about whether you should take those additional things into account. There could be more difficulties involved. Does that make sense?

Gavin Brown: I know what you are driving at. Do you have any additional points to make on that, Professor Trench?

Professor Trench: When we did the welfare devolution work, that was one of the problems that was lurking in our minds. It is something that we had some ideas about, but nothing very clear. I am afraid that it is one of those cases where the Scotland and United Kingdom command paper badly flunks the test: it does not answer the problem.

The solution will be something like this: you will identify appropriate proxies for a level of funding in relation to the devolved welfare benefits and there will be an element of funding that will need to be in the annual managed expenditure element of the budget, rather than the departmental expenditure limit in the budget, which would flow into and be equally functional with the block grant, so that it could be spent as the Scottish Government saw fit. Your proxy might be as crude as to say that in 2016 or 2018—or whatever year we are talking about—Scotland accounted for X percentage of the UK recipients of benefit Y, and we will assume that Scotland continues to have X proportion of people who will be entitled to that benefit, subject to changes in the demography of Scotland. An amount would be added to the block grant on that basis.

I was disappointed that there was no serious analysis of those problems in the command paper—it skated over such difficulties—because that is what a white paper should be doing.

Gavin Brown: Okay. Professor Trench, you talked earlier about an independent body being required for the purposes of trying to predict what the block grant ought to be, to carry out a post-event audit and also for resolving disputes.

Professor Trench: Not quite. We need two bodies—a second one to deal with disputes and disagreements.

Gavin Brown: That was going to be my question. There are three functions. Is it your view that the first two functions would be operated by one body and the dispute resolution would come under another?

Professor Trench: Yes, those two things are entirely different. We are talking about a specialist expert advisory body to carry out a technical job and then a mechanism to resolve disagreements and disputes, which I suspect is more in the nature of mediation and arbitration and needs to be able to do an element of both. You certainly could not have your UK finance commission—to give it a notional name—as the body that might well be the subject of the dispute also involved in resolving the dispute. That would offend every principle of justice. You would need a different mechanism, as we need for addressing intergovernmental disputes more generally. That is what we are driving at.

Gavin Brown: That is helpful. For the first body, you said that we could learn lessons from the Commonwealth Grants Commission and gave us some helpful evidence on that. In terms of the dispute resolution body, is there an equivalent body elsewhere—you said that there is not one in Australia—that we can draw lessons from?

Professor Trench: There is not, but the reason for that is interesting and reflects on the difference between other places and the UK and the nature of devolved government in the UK. This comes back to a point that Mr McDonald raised earlier, which is the unwritten nature of the constitution.

Federal systems all have written constitutions, which tend to be rigid formal frameworks that are difficult to amend—if they can be amended at all, because in many cases they cannot be. When there is a sufficiently entrenched disagreement that cannot be resolved by political means in the proverbial smoke-filled rooms—I suppose that they are seldom smoke filled now—the matter will end up in the hands of the court, and the court will play that role.

One example of that can be found in Germany. Periodically, the principles—not the detail—of the German equalisation mechanism get out of kilter. On a roughly 12 to 15-year cycle, the matter is referred to the Federal Constitutional Court by the Länder that pay the most into the system. The court will say that the system has ceased to apply its principles properly and it needs to be reconstructed, and the states go away and come to a political deal, having been told to by the court. That has now happened three times, and I am fairly confident that it will, in due course, happen again.

I would not like us to use the courts in that way. I think that it reflects a failure of political governance and it puts courts in a difficult position, because these are not issues that British courts are well equipped to resolve. They do not have the expertise and they are not accustomed to having that role—they might become more accustomed to having that role, but they certainly would not have the right level of financial and technical expertise.

I think that there should be some alternative framework that puts an impartial body in place. When I say a body, I am thinking about a group of perhaps three individuals.

Gavin Brown: Professor Trench, you said that your view was that there should be some sort of ceiling below which the UK Government would indemnify borrowing and that, although the Scottish Government could go higher, anything above that ceiling would not be indemnified. If we are talking just about the Smith powers—let us use those for the sake of argument—do you have any sense of what those limits or powers would be in monetary terms?

Professor Trench: I said that my answer was not a particularly well researched one, so I will have to duck that question.

Gavin Brown: Does the IFS have a view on the level of borrowing that might be appropriate under the Smith powers?

David Phillips: We have not looked into the numerical issue. All that I can say is that, on the current site, there would need to be higher borrowing—at the moment, it is £500 million. There would need to be a lot more flexibility about how is that is used; that is for sure.

How much higher should the figure be? That would depend on a quantitative analysis of the kind of risk that the Scottish Government would be bearing under the package of Smith powers, and that would need to be reassessed if any additional powers were devolved.

The aim would be to ensure that the borrowing powers give enough flexibility and room for manoeuvre to the Scottish Government, given the amount of risk that the Scottish Government would be bearing. That is an exercise that involves not just picking a number from thin air but looking at the risks that the Scottish Government would face.

Gavin Brown: In terms of principle, do you take the view that the limits should be comfortably higher than you would anticipate being needed? Presumably, the last thing that we want would be for a limit to be set and then for it to be found that the limit was off and that, in fairly short order, it needed to be extended. Do you think that we should go higher than we think we are likely to need or should we go for a mid-level figure?

David Phillips: I have not really had a chance to think about that in depth yet.

Professor Trench: I would be inclined to think that there is every reason for the limit to be a generous one and, therefore, to be higher than we would expect the Scottish Government to need.

The approach would necessarily have to be flexible, because this is something that will evolve. As we have been discussing in the context of no detriment, the tax situation can change after a few years. We have a high deficit at the moment, essentially because we have maintained a constant or a somewhat increased level of public spending when tax receipts have dropped significantly. One must deal with the fact that, if one is devolving tax powers, any missing tax receipts will be missing from the Scottish exchequer, not the UK Exchequer, and the borrowing powers must be able to cope with that adjustment.

Richard Baker (North East Scotland) (Lab): Professor Trench, I want to ask you about the issue of Barnett convergence. We are debating the introduction of a needs-based formula. That means that, eventually, the issue that we are discussing might not be to the detriment of Scotland because, ultimately, Barnett convergence will be complete and there will be parity of spend. You said that that might take quite

a long time. Do you have any details on how long that period might be?

Professor Trench: My slightly glib answer might be, “Ask me again in July once we have seen the UK budget.”

Richard Baker: That seems a short amount of time to get more information on what it would be.

11:15

Professor Trench: What drives Barnett convergence is nominal increases in public spending. Those increases were both nominal and real, and they were huge during the noughties. That is why it is so remarkable that convergence did not happen during that time—if ever there were circumstances when convergence should have been happening, it was then.

I suspect that we are unlikely to see a similar increase in public spending for a substantial period, or a Government that is able to engage in such an increase in public spending. I would be fairly cautious about saying, “It’ll happen in five years anyway,” because I am fairly sure that it will not. It will happen over time, assuming that Scotland remains as attractive a place to live as it seems to be, so that therefore the population stops declining or even grows.

David Phillips: I have no predictions for when convergence will take place. It is unusual for me to be in agreement with him, but the work that Jim Cuthbert did in his submission, showing the interactions of expansion and growth, population growth and the lags between how often the population is updated, is a good piece of work. It shows how those three things interact and what that implies for the point at which they converge. Is it 100 per cent, 105 per cent or 110 per cent?

That is a good exercise. It does not give us the answer because it does not state what spending or population growth will be in the next few years, but we could probably run some scenarios using forecasts for population growth in Scotland and England, and different projections—such as that by the OBR on what we will be spending over the next 50 years—to see what sort of convergence we are looking at.

Richard Baker: Introducing a needs-based formula, or whatever it is, as part of the process would presumably not be to the financial benefit of Scotland in that timescale.

David Phillips: Looking at the next five or 10 years, it is unlikely that convergence would be down to a level below 105 per cent, which I think is what the Holtham commission said the needs-based level would be. We have not made a needs-based assessment at the IFS, and it is not clear what the needs-based level would be at the

moment. I agree that in the short to medium term it is difficult to see a needs-based assessment that would lead to higher funding than Scotland currently receives.

Richard Baker: Finally, given the current absence of a group of individuals—presumably appointed by the Scottish and UK Governments—to help mediate over disputes between Governments, the point that you made, Professor Trench, about scrutiny of how the Joint Exchequer Committee does or does not meet and work, is important. This committee, and presumably also select committees in Westminster, must scrutinise that closely. Presumably there should be standing items for committees both here and in Westminster.

Professor Trench: Indeed. Part of the issue at Westminster is that responsibility for these matters is fragmented between a number of departmental select committees, in particular the Treasury Committee and the Scottish Affairs Committee. Ensuring that the issue has a high enough profile, particularly for the Treasury Committee, is something of a challenge. It has not shown much interest in devolution issues until very recently—towards the fag end of the last Parliament it started to do some work on that.

Richard Baker: Presumably it would also be appropriate for the Scottish Affairs Committee to consider the issue.

Professor Trench: One would expect so. Particularly given its likely composition in the new Parliament, one would expect it to be particularly vigilant.

Richard Baker: Thank you.

The Convener: Thank you, all; that concludes questions from the committee. I have just one point: you talked about Scotland's population declining by 0.3 per cent a year in the 1990s, and by 0.1 per cent now, but Scotland's population is at record level. It has grown in recent years.

Professor Trench: The decline went into reverse for a couple of years, as I recall around 2007. It is a relative decline rather than an absolute decline.

The Convener: Thank you very much for answering our questions so directly once again.

11:20

Meeting suspended.

11:30

On resuming—

Education (Scotland) Bill: Financial Memorandum

The Convener: Our next item of business is to take evidence from Scottish Government officials on the Education (Scotland) Bill's financial memorandum. I welcome to the meeting Douglas Ansdell, Laura Meikle and Scott Wood. Members have received copies of a briefing paper along with all the written evidence that we have received, so we will go straight to questions from the committee. As normally happens, I will ask the initial questions and we will move on to questions from committee members.

In its evidence, the Convention of Scottish Local Authorities says:

"The Bill proposes new duties on Local Authorities and these require to be fully funded by Scottish Government."

Given that there will be additional burdens on local authorities, why has the Scottish Government not agreed to fund them?

Scott Wood (Scottish Government): Does your question relate to a specific set of provisions in the bill? There are different arrangements for each of the parts.

The Convener: The bill seeks to impose new duties. During the first session of Parliament, about 15 years ago, I remember that the general view was that, if the Scottish Executive was imposing new burdens and new duties on local government, it should fund them rather than expect local authorities to miraculously fund those burdens from their own resources.

Here we are in the fourth session of Parliament and we are still seeing the Government introducing a bill that will have an impact on local government and saying that it will fund the bill partially but local authorities will somehow have to find resources from their existing budgets. That is the wider issue. We could look at a specific measure, such as the expectation that capital funding for Gaelic provision will be 75 per cent from the Scottish Government versus 25 per cent from local government, but the general question is why the Scottish Government is proposing to put new duties on local authorities but not proposing to fund them.

Douglas Ansdell (Scottish Government): May I answer this one from the Gaelic point of view?

The Convener: Sure.

Douglas Ansdell: COSLA has taken the line with us that a new duty needs to be fully funded. I bat that straight back; we do not recognise that.

The duty on local authorities has been in legislation since the Education (Scotland) Act 1980, which provided that children should be educated in line with their parents' wishes. Many parents who wanted Gaelic-medium education have used that provision. There are provisions in the Standards in Scotland's Schools etc Act 2000 and in the Gaelic Language (Scotland) Act 2005 under which Gaelic plans containing commitments can be prepared.

With the Education (Scotland) Bill, we are putting in place a transparent, consistent and timed process for parents to make their request to local authorities for Gaelic-medium education. I do not see that as a new duty. It will put a new structure or shape on the duty that is already on local authorities to provide education and to provide Gaelic-medium education if that should be the parents' wish.

The Convener: Paragraph 38 of the financial memorandum says that local authorities are expected to cover 25 per cent of the costs of that. The question remains about why they are expected to provide additional funding.

Douglas Ansdell: We have two grant schemes to support, in principle, Gaelic education in local authorities. Before describing those schemes, I will say that it is reasonable and legitimate to expect Gaelic education to be funded from the local government settlement because, after all, it is just the education of young people in schools, which is legitimate.

We have two grant schemes—one for revenue and one for capital funding. We are open to—indeed, we welcome—bids from local authorities for capital or for revenue to help with the expansion of Gaelic-medium education.

The support that local authorities need if they want to advance or expand Gaelic education varies greatly. Sometimes a local authority simply says that it could benefit from capital help to buy portakabins or renovate rooms for Gaelic-medium classes, so sometimes the request is for capital and we look towards our resources to assist with that.

Sometimes the request is for revenue. The local authority asks whether we can help with support for a teacher's salary, for example, or for other things such as that. Sometimes a request does not come, because a local authority is content to proceed to establish Gaelic-medium education in its area from the resources that it has already received.

The Convener: Paragraph 41 of the financial memorandum says:

"The process for a local authority to respond to a parental request could be managed by two local authority officers as part of their workload over a period of about

fourteen weeks. This cost has been estimated at £25k p/a per request."

Why is that such a huge amount of money? It seems an awful lot to spend £25,000 per annum on each request.

Douglas Ansdell: This is a tricky one. The figure involves us stepping into someone else's working life and guessing how much time the process would take. The provisions put in place a process that will need to be managed in the local authority. The process will involve the local authority working with the parents who have made the request. We tried to work out what percentage of the officials' working day it would take to do that and what salaries the officials would be likely to receive.

In talking to local authority colleagues, we tried to establish the burden, the time that it would involve and the amount of work that it would take to follow through the process. We based our estimate on that and we came up with the figure as best we could from those elements.

The Convener: It seems to be a colossal amount of money to process a request for someone to get Gaelic-medium education, unless I am missing something.

Douglas Ansdell: We are costing the percentage of the salaries of the individuals who do the jobs.

The Convener: What is the colossal bureaucratic nature of the process for it to take £25,000-worth of salary? How many countless hours are the officers spending on it? I do not understand why it would take so many hours to process a request.

You are saying that it will take two officers 14 weeks to process someone's application for their child to get Gaelic-medium education. I would not have thought that processing such a request would take that amount of time and money. That has made COSLA nervous, because it is saying that, although the estimate is based on there being one request a year, there could be half a dozen or a dozen—who knows? Why is the amount so much? What do these people have to do?

Douglas Ansdell: Reports will need to be written, which will take the officials time to do. Information will need to be brought in from education bodies such as Education Scotland and from Gaelic bodies such as Bòrd na Gàidhlig. Officials will work with elected members in local authorities by giving advice and preparing papers. That will all take a percentage of the officers' time. We tried to calculate the percentage of their salary that that would amount to.

It is worth mentioning that, if we put in place a process that is over in, for example, 10, 14 or 15

weeks, it will be much shorter and less burdensome than the current process. In some areas of the country, there have been examples—the Scottish Parliament information centre paper on the bill refers to them—of parents who have been knocking on local authority doors for six, seven, eight, nine or 10 years asking for Gaelic-medium education. That takes up a lot of time in relation to local authority business. If we added up the cost of officials' time for that, the figure could be much higher. There is an argument that the bill will lead to a timed and transparent process that will be much cheaper in terms of local authority time.

The Convener: I will not explore that further, although colleagues may wish to do so.

I know that we have had corrections to the figures, but I notice from table 4 in the financial memorandum that the funding for children's rights will be £187,000 in the 2016-17 financial year and will stabilise at £330,000 from 2017-18 until 2020-21, whereas you expect a year-on-year increase for Gaelic-medium education. Why is that? Will that sum continue to increase ad infinitum, or will 2020-21 be the last year in which the sums continue to increase?

Douglas Ansdell: We suggested the increases on the Gaelic side because, if a local authority opens Gaelic-medium provision, it will look for support with things such as a teacher's salary or the transport of children to school. If the local authority looked for that support in 2018-19, for example, it might look for the same support in the following year—2019-20—when another local authority might look for similar support for a teacher's salary or the transport of children to school. Therefore, we see the figure going up as other authorities open Gaelic-medium provision.

Other things go on in the background. A local authority might often look to the Scottish Government for support with a Gaelic teacher's salary, for example, but a few years down the road, the local authority might mainstream that salary. There is movement in the support that the Scottish Government gives local authorities, and sometimes something that might be considered a burden, or a bit of additional support for one, two or three years, is mainstreamed by the local authority after a few years.

The Convener: I have a final question before I open up the session to colleagues. There are concerns about the availability of teachers, which the financial memorandum mentions. What constraint is there on implementing the policy vis-à-vis the availability of teachers?

Douglas Ansdell: The lack of availability of Gaelic teachers has always been a serious concern, and it affects some areas more than

others. A number of new measures are being put in place to increase the number of Gaelic teachers who are attracted into the profession and placed in Gaelic classes. Over the past three years, the numbers of teachers who have gone through the system have been higher than they have ever been, and we have more routes into Gaelic-medium teaching than we have ever had before.

We are making good progress and the numbers are better, but there remains a serious concern. We must continue that work and ensure that all parties—local authorities, the Scottish Government, the Scottish Further and Higher Education Funding Council, universities and Bòrd na Gàidhlig—work together as positively as possible to address the issue.

The Convener: If someone in the Scottish Borders wanted Gaelic-medium education for their child, one would not expect a surplus of—or any—Gaelic teachers in that area. What process would have to be gone through? The council would have to recruit a teacher. What timescales are we talking about for rolling out the policy in such a case? I know that it is difficult to be precise, because an individual would have to be recruited and persuaded to move to that part of Scotland, but what concerns do you have about that? How would they be addressed?

Douglas Ansdell: We would approach that as we would approach a need in any other area of the country. Even some areas that we might think would be more familiar with the Gaelic language still need to recruit Gaelic teachers.

The local authority could approach the matter in the standard way by putting an advert in the press or going to Bòrd na Gàidhlig, which keeps a register of teacher needs. It could look for a probationer coming through the system to step in and support Gaelic teaching, or try to grow its own, if you like.

Teachers who live and work in the Scottish Borders Council area may be Gaelic speakers and may consider transferring to teaching in Gaelic. There is a one-year course available known as GIFT—Gaelic immersion for teachers—for which local authorities can put forward teachers who can speak Gaelic but are teaching in English. Local authorities can retrain their teachers and place them in Gaelic-medium classrooms.

The local authority could follow different routes—the standard route of advertisement, retraining a serving teacher or selecting a Gaelic-medium probationer teacher. The Scottish Government or colleagues at Bòrd na Gàidhlig would be happy to advise and support in any way that we could.

The supply of teachers remains a concern.

11:45

The Convener: Indeed. I used the Borders just as an example; I do not know the situation in that area—I picked it randomly.

You are saying that, even if there is a duty on local authorities to provide Gaelic-medium education, it could still be a year or two before a child was able to be taught in a Gaelic unit. First, capital has to be found to build a unit, and secondly, a teacher has to be recruited and so on. We have to go through a process. Is that correct?

Douglas Ansdell: If there were a parental request in the Scottish Borders for Gaelic-medium education, and if we followed the process through and there were sufficient parents in the Scottish Borders who wanted their children so educated, there might be a school that was suitable and had adequate accommodation for Gaelic-medium classrooms. An advertisement could go in the press and a teacher could be recruited. There is not necessarily a delay in the process.

We have constructed the provisions in the bill to provide for an initial and then a full assessment. We hope that, in the full assessment, the local authority will have the opportunity to explore the issues in depth and come to a judgment as to whether it is reasonable to establish Gaelic education in the area.

John Mason: To follow on from what we have talked about in relation to Gaelic, I got the impression from some of the submissions that the organisations hope—I presume that the Government also hopes—that there will be quite a serious expansion of interest in Gaelic through the bill. Bòrd na Gàidhlig talks about the proposal

“in all likelihood giving rise to additional requests beyond ‘normal’ levels”.

COSLA talks about the Government expecting

“the Bill to lead to faster growth in GME throughout Scotland. This statement does not seem consistent with the estimate in the FM for the number of additional units which will be created.”

The submission from Fife Council says:

“The potential for expansion in the period covered by the FM (2016-2021) is modest and potentially understated.”

Are we being too cautious and pessimistic about how much interest there might be?

Douglas Ansdell: All that we can do is look at the growth that we have had in the past and the interest that we believe is out there. I can tell you what growth we have had, for example—the information is in the papers that relate to the bill. There has been growth in Gaelic education generally: the numbers are going up; the numbers going into primary 1 are increasing; and, in a

number of areas, Gaelic units are expanding to be Gaelic schools.

As for the question of how many units have been established, three new units have been established in the past six years. We expect the bill to lead to an increased rate of growth. As you picked up from the papers and responses, a number of respondents have said that they expect the bill to lead to an increased rate of growth. Bòrd na Gàidhlig has said that it will probably lead to a rate of growth above normal.

Our estimate is not that the lid will come off or that the bill will lead to requests everywhere. We still think that growth will be modest. If at the moment we have three new units every six years, which is in effect one unit every two years, an increase in growth would be one new unit every year. For Gaelic-medium education, which is a very small sector of Scottish education, that would be a good result—it would lead to significant growth in the Gaelic education sector. Our best estimates come from looking at what growth we have had over the past six or seven years and estimating that the bill will lead to an increase, but our estimate is that there will be nothing more than modest growth of perhaps one request per year.

John Mason: That is helpful.

I will move on to the idea of compulsory registration. In its submission, the General Teaching Council for Scotland questions the figures. For example, compulsory registration would not just involve a one-off cost at the beginning—there would be on-going costs. The Scottish Council of Independent Schools talks in its submission about the training that existing teachers might need. It quotes as an example a figure for a course at the University of Buckingham, which I assume is not the cheapest place in the world, of £3,995 per person. I wonder whether we have built in enough for costs.

Scott Wood: There are a couple of issues to respond to. First, on some of the costs that the GTCS evidence highlights for preparing for the commencement of the provisions, it is important to recognise that the independent sector has a long-standing commitment to working towards voluntary registration. We understand that some activity that is described in the GTCS submission has been on-going and forms part of the programme to support the transition towards registration. However, we recognise that the imposition of timescales through the bill could impact on how and when the money is spent. We are more than happy to have a conversation with the GTCS about how we can support it in the transition, in advance of commencement. That is our position on the GTCS costs.

On the costs that are associated with training for teachers who are working towards registration, we need to take as flexible an approach as we can for the purposes of the transitional arrangements. We have discussions scheduled with the GTCS and the SCIS to agree the transitional arrangements and we do not want to pre-empt those discussions. However, we want to be as flexible as possible. Options include teachers securing additional qualifications, but we are also looking at establishing alternative categories of registration. That might allow existing teachers in the independent sector to continue working in their current posts or in that sector without the need to secure an additional qualification; the focus could instead be on assessing an individual's existing skills and knowledge.

John Mason: Am I right in saying that some teachers will be closer to what they need for registration than others are?

Scott Wood: Yes. We expect the policy to impact on around 700 teachers in total. They hold a range of qualifications. Ultimately, the best route to registration for each of them will depend on the qualifications that they have, their skills, knowledge and experience, and their longer-term plans—whether they intend to continue working in their current post in the independent sector or plan to work in the state sector in the future, for example.

John Mason: I want to touch on the attainment of pupils from the most deprived backgrounds. South Lanarkshire Council has made an interesting comment about how this all ties together. There is the Scottish attainment challenge fund with £100 million, but the council says that there is a lack of transparency about how that money has been allocated and about whether the money is connected to the bill and the getting it right for every child agenda. There are three aspects there—are they all related to each other?

Scott Wood: They are related. They form part of a broader package of measures that we are taking forward to narrow the attainment gap. An awful lot of focus has been placed on that in recent times. I understand that the Scottish attainment challenge funding has been directed to education authorities with the highest concentrations of deprivation. However, we are also actively considering how we can support disadvantaged communities elsewhere in the country; those discussions are on-going.

As I said, the provisions form part of a package of measures. You will be aware that we are looking to recruit 32 attainment advisers to support local authorities across the country. We are also looking to establish literacy and numeracy hubs, and we have an on-going programme of work for

the raising attainment for all programme, which is designed to help us to understand what works and to develop our evidence base on narrowing the attainment gap. The due regard duty that is included in the bill forms part of a broader package of measures and a universal approach to narrowing the attainment gap.

Malcolm Chisholm: That is what I was going to ask about, so you have already answered my question, but that is the bit of the bill that I was most interested in and I think, without being dismissive of the other sections, that it is by far the most important part, promoting equity of attainment for disadvantaged children and closing the attainment gap. I was therefore surprised that there was absolutely no sum of money attached to it. That seemed rather odd, although some money has been announced for seven local authorities, so I suppose that that will help in those areas. In a way it rather downgrades the duty if there are no resources consequent upon it.

Scott Wood: We would not necessarily agree with that. It is important to reflect on the increased priority and resource that has been directed towards addressing that challenge in recent times. I have touched on some of the developments that have taken place. You referred to the £100 million that is being invested through the attainment Scotland fund but, as I have already mentioned, we are also committed to the appointment of 32 attainment advisers across the country and to the establishment of the literacy hubs, and we have been delivering the raising attainment for all programme for some time now.

Given the level of priority that is now being attached to the issue, it is our view that, if we were placed under a duty of this nature at this point, we would satisfy it. The purpose of the duty is to ensure that the level of priority that has now been placed on the issue is maintained and that the momentum that we are developing is sustained.

Malcolm Chisholm: It raises interesting general issues about the nature of financial memorandums. If the bill had come out a year ago, would you have attached some money to it? Is the reason why you are not putting money into it the fact that you have already announced money for it, or is there no intrinsic necessity for more money in order to achieve this objective.

Scott Wood: We need to make an assessment of the investment that is currently being made and the range of initiatives in place at the point at which we are drafting the financial memorandum and, based on that evidence, we must form a view about whether we think that additional investment would be required to satisfy the duty. That is the process that we have gone through to prepare the financial memorandum.

Malcolm Chisholm: It is particularly interesting in this case because, although there is a substantial sum of money, it is going to only seven local authorities. Somebody working for another local authority might say, "How are we supposed to achieve this objective?"

Scott Wood: I return to the point that the attainment Scotland fund is only one part of a package of measures to support every local authority across the country in narrowing the attainment gap. I reiterate that we are supporting the appointment of the 32 attainment advisers and the raising attainment for all programme, which involves 23 of the 32 local authorities and more than 180 schools at the moment. We are taking a universal approach to the issue, but we have also targeted some resources towards those local authorities with the highest concentration of deprivation. As I said, discussions are on-going about how we can support the other local authorities that also face challenges.

Malcolm Chisholm: I would have expected some of that to be described in the narrative of the financial memorandum. It is striking that the most important part of the bill gets five lines and a one-off cost of £50,000.

Scott Wood: I hope that the evidence that I have offered today provides some clarity about the approach that we are adopting on the issue and why we have set out the figures as we have in the financial memorandum.

Gavin Brown: I want to pursue a similar issue but on a slightly different specific point. The financial memorandum states that the estimated total cost of the bill's provisions is £254,000 for the financial year 2016-17, which is the first year, rising to £560,000, and by 2020-21 the figure is £736,000. Those figures are amended slightly—by about £50,000 or so—by the addendum that you have sent today, but they are broadly in the same ball park.

You are saying what the total costs of the provisions will be in the financial memorandum but, obviously, you are not going to narrow any attainment gap by investing £736,000. That will not have any impact, but you have also brought in this £100 million. Can you tell me whether that £100 million is an annual figure, or how many millions we should add to those columns for each of the five years covered by the financial memorandum, so that we can see how much is being invested?

Scott Wood: The £100 million from the attainment Scotland fund is being invested over the life of the fund, which, I think, is five years, or perhaps it is four years. I can write to the committee to clarify that.

A range of activity is going on in local authorities that seeks to narrow the attainment gap. I have touched on some of the national activity, but local authorities are delivering services all the time in ways that address the challenges. For the purposes of the financial memorandum, we are focusing on the costs directly associated with the new legislative proposals.

12:00

Gavin Brown: When you write to us, will you say how much additional money is going into each of the financial years set out in the bill?

Scott Wood: We can certainly write to you with further information on the attainment Scotland fund, if that would be helpful.

Gavin Brown: That would be very helpful.

To follow up Malcolm Chisholm's question, you are saying that we need not worry about the figures in the financial memorandum being low, because the Government is throwing in an extra £100 million. However, initially at least, literally zero pounds will be going through the attainment fund to anyone other than the seven local authorities. What additional money will go to the other 25 local authorities, which will have a legal duty placed on them under the act but which, at least in year 1, will not get any of the £100 million.

Scott Wood: I say again that it is important not to focus solely on the £100 million attainment Scotland fund. We are taking a range of measures in partnership with all local authorities with a view to narrowing the attainment gap.

We have set out in the financial memorandum the cost associated with the duty that we are placing on local authorities. Given that we are taking a broad package of measures, which are designed to support local authorities in narrowing the attainment gap, we are not of the view that there necessarily will be any costs associated with the legal duty, so long as the level of priority that we are placing on addressing the issues is maintained. Indeed, the duty's purpose is to ensure that that priority is attached to the issue.

Gavin Brown: Let me phrase my question in another way. If the bill is passed in its current form, which, I guess, many would anticipate happening, part 1 places a duty on local authorities to reduce inequalities of educational outcomes and narrow the attainment gap. Therefore, once the act is in force, which would appear to be in 2016, that duty is imposed on local authorities.

Scott Wood: Yes.

Gavin Brown: Seven local authorities will benefit from the attainment fund, which will

presumably be in 2016. The duty will be placed on the other 25 local authorities from 2016. You say that other measures are in place, but it is not clear what they are. What additional money is linked to the bill that the other 25 local authorities will require in order to fulfil the duty? My question is really the same as the one that the convener asked right at the start of the session. I cannot see how the other 25 local authorities will get any extra funding to deliver a duty that we all want them to deliver.

Scott Wood: The purpose of the duty is to ensure that due regard is given to the desirability of addressing this issue and to ensure that, where resources are allocated, the decisions that are made attach priority to narrowing the attainment gap. We recognise that local authorities work in a financial envelope and that they have a limited budget to allocate. Indeed, the duty takes account of that. A due regard duty suggests that priority must be attached to an issue but that other factors can also be taken into account when reaching decisions. A factor is the finances that are available to local government. We recognise that local authorities are working with a budget; the issue is about how they use that budget to place particular emphasis on the need to address the attainment issue.

I have touched on some of the other activity that we are taking with local authorities across the country, which is designed to support them in progressing their work in the area. There is not much more that I can add at this point.

Gavin Brown: Not here today, anyway. However, you are going to let us know about the attainment fund.

Scott Wood: Certainly.

Gavin Brown: You talk about other things that are happening. You do not need to mention what all those are right now, but could that information be given to us, too? At the moment, I just cannot see how local authorities that are not to get the attainment fund money can make progress on what will be a statutory duty from 2016. On the face of it, aside from the attainment money, the 32 local authorities are, between them, getting £67,000 in year 1 and £104,000 in year 2. I am sure that more work must be being done and that you will be giving them more through other measures, but it is not clear to me what those other measures are.

Scott Wood: The local government settlement provides funding to support a range of public services, which obviously includes education services. Money is going to local authorities, but they need to attach a degree of priority to education provision in their area, and at national level we are taking forward a package of

measures to support them in achieving that. I will not run through the range of activities that we are undertaking again, but I am happy to write to the committee to set that out in more detail and talk about our plans for the attainment Scotland fund.

Gavin Brown: That is what I asked—that is fine.

The Convener: On that point, you talked about 32 attainment advisers, but is raising attainment not already the job of teachers, heads of department, headteachers and directors of education? Surely if there is an issue of attainment, they should already be focusing on that at classroom, department, school and local authority level.

Scott Wood: Absolutely. Through the appointment of attainment advisers we are trying to support local authorities in identifying what works best to address the attainment challenges that some children will face, and it is about providing additional capacity, knowledge and expertise to support their considerations. Through our discussions on the Scottish attainment challenge, and the participation of a significant number of local authorities in the raising attainment for all programme, we get a clear sense that local authorities are currently attaching a greater degree of priority to addressing the issue. A degree of urgency is certainly being attached to the issue, and our challenge is to ensure that that priority is maintained, and perhaps to put in place more robust measures to allow us to measure our progress.

The Convener: Is there no sharing of best practice at the moment within schools and across local authorities? Is that part of the work of the attainment advisers?

Scott Wood: We expect that there is. One key purpose of the raising attainment for all programme is to share best practice—to test models for change and improvement and to share that practice across local authorities and schools. Twenty-three local authorities are currently involved in that programme, and 180 schools. We are looking to build on that activity and provide dedicated support and resource to every local authority across the country, so that they can implement what works to narrow the attainment gap.

The Convener: Thank you.

Jean Urquhart (Highlands and Islands) (Ind): This is really just on a point of information. Mr Ansdell, you mentioned that local authorities could mainstream what we referred to in the past as the Gaelic-medium education unit. What are the financial implications for that? Is there a tipping point? I know that, in a couple of schools now, the majority of children registering will be taught in the

medium of Gaelic. Does that mean that the school is a Gaelic school with an English-medium unit?

Douglas Ansdell: There are a couple of things in that. The mainstreaming of Gaelic costs sits with local authority officers. I am aware of conversations—for example, local authority officers might say, “In a Gaelic school we have five, six or seven teachers. Three or four of them are paid for by local authority money, so their costs are mainstreamed, and we look to the specific Government grant to support the other two, three or four.” Local authority officers work with Gaelic costs. For example, they might think about opening up new provision, and within a local authority discussions will go ahead about the mainstreaming of another teacher salary, and perhaps diverting a bit of specific Government grant to some new provision. The question of the mainstreaming of costs and where a local authority might look to the Scottish Government for support is largely a discussion that takes place within local authorities. As requests for support come to us we get involved in those discussions to an extent.

When Gaelic starts, it is seen as something additional and there is often a request for support. In some areas of the country, the Gaelic side of a primary has increased to the extent that it is the majority. There is recognition being given for that now, and the phrase used is “Gaelic-status schools”. We currently have nine primary schools that are recognised as Gaelic-status schools because a significant majority of the pupils receive their lessons through the medium of Gaelic. That significant majority could mean that 60, 70, 80 or even 90 per cent of the pupils are Gaelic-medium pupils.

Of course, there is an argument that 80 per cent of the pupils in a school receiving their education through the medium of Gaelic does not seem like something that needs additional support but sounds like the mainstream activity in that school. Gaelic-medium education is a feature of our education system that is part of the discussion that we are having with local authorities as some of them move toward recognising some schools as Gaelic-status schools. We are discussing that matter with local authorities and discussing what support is needed in that context.

The Convener: I went to Bellahouston academy in Glasgow, where everyone in the first year of secondary did Gaelic. I was one of 19 out of 350 who chose Gaelic over French from there on in. However, Gaelic was just part of the main stream at the time for anybody who lived in the school’s area. It was not that the school was a special one for people who were interested in Gaelic; it was just an ordinary school in south Glasgow. We took Gaelic because the education authority at that

time decided that it was part of our culture, but apparently we were the only school in Glasgow that did that—it was a tradition. Unfortunately, that no longer happens.

Mark McDonald: An area in which I have a particular personal and political interest is additional support needs. I note the bill’s proposed extension of rights to cover children with additional support needs. Paragraph 48 of the financial memorandum states:

“some costs may be associated with these rights, which are currently unknown.”

Paragraph 47 states:

“It has not been possible to accurately assess the cost of extending rights and an estimated amount has not been included in this memorandum.”

In its written evidence, East Lothian Council states:

“as a result of increasing ASN rights, this will increase ASN referrals as a whole.”

The council also refers to an 88 per cent increase in ASN referrals over the last five school sessions.

I should point out that Fife Council and South Lanarkshire Council have estimated that there would be minimal cost involved in extending ASN rights, but that is based simply on the tribunal process and perhaps not on decisions on placings and so on that might have to flow as a result of that. Are the costs that you looked at based purely on the tribunal process, or have you also considered the knock-on effect of additional ASN places potentially having to be allocated in schools?

Laura Meikle (Scottish Government): The process that we went through to establish the costs was based on costs across all the rights and not on the tribunal alone. Obviously, I am aware of East Lothian Council’s position. However, it may be premised on the belief that both children and their parents will use their rights, but in fact it will be one or the other and not both. Our position in the financial memorandum of not expecting a significant amount of costs is based on the experience of the Welsh tribunal, whereby children had rights in Wales only for the tribunal for a pilot period but they were not used at all; and on the experience of our own tribunal, whereby children with capacity—generally, when children are about 12—have been able to make disability discrimination claims but, again, those rights have not been used at all.

We recognise that there might be some additional costs, but we are not expecting the level of requests or use of the rights to be of the order that East Lothian Council has suggested. The estimates in our calculations might be on the high side. We have been unable accurately to tie down

exactly how many children may use those rights in future, partly because we were unable to establish the cost of the rights and partly because of the experience of other jurisdictions. We have not been able to build a model for that, so we have erred on the side of caution. The issue is mentioned in paragraph 48. As you would expect, we have had to indicate that we will review the situation. I recognise that that is not a brilliant position to be in, but it is genuinely not for the lack of trying to nail the costs down.

12:15

Mark McDonald: In paragraph 44, you say:

“parents currently have the rights to make these requests on behalf of their children”.

One could ask how many parents are aware of the rights that they have in this respect. There is the potential that extending this right will focus people’s attention on this area, which means that you might have underestimated the number of requests. By definition, any legislation that creates or extends a right draws attention to that right. Parents who may not previously have been aware that they could exercise those rights may now choose to do so.

The follow-up question is this: how early in the process will you look at what is happening and judge whether the behavioural change that you anticipate has played out?

Laura Meikle: In our discussions about the calculations, we anticipated that exact point—the fact that there is a bill will draw attention to those rights and may result in an increase in requests from parents. It may be that children will use the rights who would not otherwise have done so, or it may be that they could not do so before but they now may wish to use the rights instead of their parents. We factored that in.

We will review immediately. The Scottish ministers are under a duty to report to Parliament each year on a number of elements, including the cost of provision. That formal duty will conclude next year, but we will continue to report and to record this type of information right the way through, so that we have a current picture and a future picture. We will review the provisions one year on from the commencement of the bill.

The Convener: I am pleased to say that that concludes our deliberations on the issue. Thank you for your contributions.

12:18

Meeting suspended.

12:18

On resuming—

Subordinate Legislation

Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015 (SSI 2015/184)

The Convener: You will all have received a copy of a letter from Nigel Don MSP, the convener of the Delegated Powers and Law Reform Committee, in which he draws our attention to the concerns of his committee. For example, he says:

“The setting of a limit for requesting permission to appeal to the Upper Tax Tribunal or the Court of Session is a matter of considerable importance.”

He goes on to say:

“the Committee was particularly concerned about the implications of shortening time limits for permission to appeal and how this would impact on the rights of those wishing to make an appeal.”

I am happy to take comments from members. I know that the deputy convener, who is a member of the Delegated Powers and Law Reform Committee, wishes to say something.

John Mason: The Delegated Powers and Law Reform Committee felt quite strongly about the regulations. As the Government accepts, it is a matter of some importance about people’s right to appeal.

As it says in the letter, it is broadly accepted that, if timescales were relaxed, it would give a person more rights. That is not really a problem—no one will object to that. The concern was more about allowing the tribunals to shorten the time limits that people would have to appeal. In fact, it was suggested that, if there was no restriction on that, they could shorten it from 30 days to five minutes. Obviously, that is an extreme example, but that would seriously infringe on the rights of the person who could be making the appeal. The convener of the Delegated Powers and Law Reform Committee wrote to you, convener, because the whole committee felt quite strongly that that was really pushing things too much.

Gavin Brown: It was quite a good letter from Nigel Don. It certainly led me to look seriously at the issue.

My view is that there is probably a drafting error in the regulations. The Government is right. It is at the tribunals’ discretion whether they relax the rules a bit, but it is pretty unusual to allow them to shorten the statutory timescales that are laid out to protect those who are involved in a case. The regulations say that the tribunals may

“extend or shorten the time for complying with any rule, practice direction or direction”

or the time limit for permission to appeal. I wonder whether the Government did not really mean to shorten the time limit for appeal. It would strike me as odd. As the deputy convener said, five minutes would be an extreme example, but even if it were cut by a couple of weeks, that could put pressure on someone who wanted to appeal or take advice before doing so.

It is a negative instrument so, as I understand it, there are two options. One is that individual members can lodge a motion to annul with the chamber desk and Parliament will consider that. However, one other option or suggestion might be that our convener writes to the Cabinet Secretary for Finance, Constitution and Economy on the matter. We have not specifically taken evidence on the matter so there is not that much that we can add to what the Delegated Powers and Law Reform Committee said. However, given that that committee does not regularly write letters like this to us, and given that it seems to make a reasonable case, my preference would be that we write to the Government to say that we have had a representation from the Delegated Powers and Law Reform Committee, that there appears to be a case to answer and that we seek the Government’s view on the matter.

The Convener: To be honest, those were exactly my thoughts. The clerk and I discussed the issue and that was the line that we thought was appropriate to take. It is surprising—we tend not to get any letters from Nigel Don and we have had them in successive weeks. A letter to the cabinet secretary would be appropriate, if colleagues are happy with that approach.

Members *indicated agreement.*

12:22

Meeting continued in private until 12:25.

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