



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

FINANCE COMMITTEE

Wednesday 3 June 2015

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
FISCAL FRAMEWORK	2
CARERS (SCOTLAND) BILL: FINANCIAL MEMORANDUM	43

FINANCE COMMITTEE
17th 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:

Dr Maureen Bruce (Scottish Government)

Jamie Hepburn (Minister for Sport, Health Improvement and Mental Health)

Sean Neill (Scottish Government)

John Swinney (Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Finance Committee

Wednesday 3 June 2015

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Kenneth Gibson): Good morning and welcome to the 17th meeting in 2015 of the Finance Committee. I remind everyone present to turn off any mobile phones and other electronic devices. The first item of business is to decide whether to take agenda item 5 in private. Are members agreed?

Members *indicated agreement.*

Fiscal Framework

09:30

The Convener: Our second item of business is reports from a recent fact-finding visit to Stockholm. Gavin Brown will start.

Gavin Brown (Lothian) (Con): I thought that it was a fascinating trip. The lessons for me were on two broad themes, the first of which concerns how we might structure a Scottish Fiscal Commission. We met the Swedish Fiscal Policy Council, the Swedish National Institute of Economic Research, which does the forecasts, and the Government, which does its own forecasts.

A number of issues are worth thinking about. First, most of the groups to whom we spoke were surprised at how our current body is resourced. Secondly, we should think about the level of flexibility that such bodies in Sweden seem to have and appreciate, and which their Government seems to like them having. They can take the initiative on various bits of work. Maybe the biggest thing for me was the cementing of the consensus that whatever body is set up and however it is set up, it has to do its own forecasts if it is to provide a valuable service to the Government and the country. That was the first broad theme.

The second broad theme was the preventative spend agenda, on the subject of which we met a number of other organisations, including a group called OpenLab. The preventative spend agenda has huge political support, in theory; everyone is behind it. In practice, however, over the last five years or so there has not been anywhere close to as much progress as we would like. In some areas there has been a degree of inertia. Some of the innovation and approaches that we saw in Sweden and might be the key that will unlock that agenda again and push it a bit further forward.

Thus, the two broad themes were how we might set up our Fiscal Commission and how we might move forward, as a committee or as a country, with the preventative spend agenda.

The Convener: Thank you. Richard Baker, do you have anything to add?

Richard Baker (North East Scotland) (Lab): The visit was hugely informative. Gavin Brown has summed up neatly the key areas that we explored and on which we had the most useful dialogue with the various groups that we met.

On the work of the Swedish Fiscal Policy Council and the issue of forecasting, it had a plethora of forecasts—almost too many, one might say. Having said that, having a separate, independent body that provides its own forecasts

is seen to be crucial. It clearly helps Sweden to have robust scrutiny of its forecasts and also helps the fiscal policy council's work on broader issues of economic policy. That was a very useful model to explore.

The Swedish point of view on the independence of such bodies was interesting, because the NIER and the Swedish Fiscal Policy Council are Government agencies. However, there seems to be a culture in Sweden that Government agencies can be very independent and critical of Government. Appointments are made by the bodies themselves. Having said that, if a new structure is going to be set up—a body that reports to Parliament rather than Government—it would probably be much more in line with European Union rules and the advice from the Organisation for Economic Co-operation and Development on how such institutions should be structured. The people we spoke to in Sweden also acknowledged that.

One of the advantages that the Swedish organisations have in relation to the way that they are structured—which I think would not be the ideal model for us—is that they have access to the right amount of data. There are close links between the different organisations and with Government, which means that they have access to all the data that they need to make accurate forecasts. That will be an issue for a Scottish Fiscal Commission, but it was certainly an advantage for the bodies in Sweden.

As Gavin Brown said, people in Sweden are having the same debates as us on preventative spend, particularly in health, where there is an ambition to spend more on prevention and the same political difficulties about how spending can be removed from one area of the service to be invested in prevention. It is clear that there is no magic bullet and that they are also struggling with that agenda.

However, the work on innovation in health services was very interesting. We heard about that at OpenLab and from independent consultants in healthcare innovation. It involves more use of information technology for diagnosis and, to some extent, treatment, including more individual access to health services through information technology such as iPads and iPhones. That was extremely interesting and we must be able to learn from it in Scotland.

It was encouraging to hear that OpenLab—which we visited and which looks to encourage innovation and innovative thinking in the development of new services and technologies—is working with Queen Margaret University in Edinburgh. As links already exist, the committee could explore that further in the future.

The Convener: I endorse what our two colleagues have said. It was an intense and productive visit.

It was interesting to see the level of consensus on some of the core issues. For example, Sweden has a surplus target whereby the budget must be balanced over the economic cycle with a 1 per cent surplus. One of the key aspects of that is that all the political parties agree on a maximum spending limit for the Swedish economy, which is interesting. It is almost a self-denying ordinance for all the political parties that they will not go beyond that envelope for the upper limit, which they develop over a three-year period. The surplus target relates to the economic cycle, although there are arguments about what that economic cycle is.

I was impressed by the way in which the Swedish Fiscal Policy Council does its work. It seems to be a robust group of individuals and it has occasionally challenged the Government, not on changes in policy but on its implementation of its own policy. In effect, it exists to hold the Government to account over whether it is implementing its stated policy objectives. That would be important for our Scottish Fiscal Commission and we will no doubt address the point with the Cabinet Secretary for Finance, Constitution and Economy.

Innovation was important as we could more or less directly transfer many examples to Scotland, although there are some unique aspects of Sweden that we could not transfer. There are certainly many ideas.

OpenLab was interesting because of the way that the people there talked about design theory and considering matters from the user's perspective rather than the producer's. They talked about doing things in reverse by asking what people want and what policies can be developed to help or support them rather than developing the policy and then determining how it will impact on individuals.

John Mason (Glasgow Shettleston) (SNP): Is OpenLab an independent organisation or is it part of Government?

The Convener: It is funded by three different organisations including universities and Stockholm county and municipality.

Incidentally, Sweden's structure has the central Government, 18 counties and 290 municipalities. We found it quite extraordinary that health is decided at the county level but welfare is decided by the 290 municipalities. I thought that that would mean that the 290 municipalities, which have populations ranging from about 5,000 to 900,000, would administer welfare but it is not about administration. Welfare policy, including the

amount of money that is paid in welfare, is actually developed municipality by municipality. During the referendum campaign we had a lot of arguments about whether Scotland could have a distinctive welfare policy from the rest of the United Kingdom, but Sweden seems to have distinctive welfare policies at the municipality level, which seems extraordinary.

The taxation structure is also different in that 19 per cent of gross income goes to the municipality and 12 per cent to the county. The figures can vary, but that is the position in Stockholm. Only if someone has a certain income level do they pay taxes to the state, and only 30 per cent of people do so.

The state funds defence, social integration, foreign policy and so on. It is interesting to see how matters are devolved to small community level. It is a completely different structure to ours and it was fascinating.

The Swedish Parliament's finance committee has 17 members rather than the seven that we have and 8 political parties are represented on it. Given that it meets for a couple of hours at a time, I imagine that the members do not get the time for in-depth questioning that we do.

It is not a question of saying that Sweden does everything better than we do; that is not necessarily the case. The municipalities have a lot of power. We were told by one of the finance committee members that there had been a plan to expand the railway that runs from northern Sweden to Stockholm by adding another couple of lines of track. Because one of the municipalities along the route does not want the expansion, the plan is snookered. There does not seem to be a national mechanism to overturn that.

Do those who were not in Stockholm have any questions?

Jean Urquhart (Highlands and Islands) (Ind): Can I ask what OpenLab is?

The Convener: it is an organisation set up by the county, the universities and a third partner. I do not think it was the municipality, but we can check that.

Richard Baker: Is there private sector involvement?

The Convener: Yes, it was the private sector.

The three organisations pay jointly for the structure. A staff of seven people take on commissions, such as looking at how to get people more interested in participative sport, because great sports facilities are being built and the aim is to get people to use them.

The staff ask people what kind of sports they would like to take part in, what would attract them

to the new facilities, how much they would be willing to pay, what kind of times would be suitable, and so on. The staff try to look at things from an end-user perspective.

OpenLab has broadened its approach. I cannot quite remember what the guy was doing with the glue in the lab downstairs but I think that he was developing a kind of tourniquet and someone was developing different traffic management systems.

Basically, OpenLab is for brainstorming. Students come for 10 or 20-week courses and they are given assignments to develop ideas from the outside in, looking at things from the broadest perspective and trying to come up with solutions.

Jean Urquhart: That is interesting.

Mark McDonald (Aberdeen Donside) (SNP): I went to Malmö with the Local Government and Regeneration Committee, when we had an inquiry into the future of local government, so I am familiar with the municipality structure.

How are the borrowing and financial powers at county and municipality level monitored? We have spoken about how any additional borrowing powers would be monitored here and a discussion is taking place about bailout and what mechanisms would exist. Was there much information on how that works in the Swedish context?

The Convener: The budget has to be balanced. At the county and municipal level, if an authority overspends in the first year, it has to make it up in subsequent years.

Mark McDonald: It is similar to the rules that apply to the Scottish Parliament in that the budget has to be balanced.

The Convener: But not in every single year.

Mark McDonald: So if you overspend in year 1 you have to pay it back in year 2 and adjust the budgets accordingly.

The Convener: That is right. The authority does have a bit of flexibility.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Can the authority borrow and pay back over a longer period of time?

The Convener: An authority can borrow on a prudential basis for capital—for example, for infrastructure—but not for revenue.

09:45

Jean Urquhart: The Swedish fiscal commission—is that what it is called?

The Convener: The Swedish Fiscal Policy Council.

Jean Urquhart: What does it look like? Richard Baker suggested that it had more access to agencies than other departments. Is there any similarity between what we are trying to do and the council's funding and work?

Richard Baker: It provides a model that we should look at. There are six board members, I think, who are generally economists—we met the chair, who is a professor—and the council publishes an annual report in spring. As the convener said, the report looks at the Government's policy and at whether it is meeting its stated policy intentions through its economic policy and budget approach.

The council does not do its own forecast; it relies on forecasts that are produced by the National Institute for Economic Research, which is also a Government agency but it is very independent of the Government. The council looks to those forecasts and comments on them. Although it is a Government agency, its members are drawn from academia and they recommend to the minister who should be appointed to the board when replacements are made. As far as I am aware, the finance minister never turns down those recommendations, so the council has a degree of independence. The European Union mentioned that it would be better if the council was fully independent of the Government, given that level of scrutiny, but the culture in Sweden means that Government agencies are seen as independent bodies.

The Convener: One interesting thing about the Swedish budget concerns when the maximum expenditure is decided. There are 27 departments, and each is given a maximum budget. Altogether, there are approximately 500 appropriations, so there are smaller budgets but they are within the 27 headings. For example, although responsibility for transportation is at county level, there is some national transportation. There will be different things for rail, airports or whatever, and budgets can be adjusted within that. The important thing is that the maximum amount in each of the 27 categories is not exceeded. Incidentally, Sweden has reduced its debt considerably to 30 per cent of gross domestic product—it was 75 per cent in the 1990s. It had some of the highest levels of debt in Europe, but it now has one of the lowest debt to GDP ratios.

Our next item of business is our final evidence session on our Scotland's fiscal framework inquiry, and we will hear from the Cabinet Secretary for Finance, Constitution and Economy. Mr Swinney is joined by Government officials, Sean Neill and Stephen Sadler. I welcome our witnesses to the meeting, and invite Mr Swinney to make an opening statement.

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): Thank you, convener, and my apologies for detaining the committee.

I welcome the opportunity to take part in the committee's inquiry into Scotland's fiscal framework. I looked at the summary of evidence with interest and I note that common themes are emerging related to the both the process for agreeing the framework and the substance of the issues to be agreed. Those concern the need for transparency, openness, accountability and parliamentary scrutiny; the fact that the agreement needs to be fair and sustainable; and the fact that, to achieve that, the structures and working relations between the Scottish and United Kingdom Governments need to be reformed and made more effective. We need to look at how we work together to reach an agreement, as well as tackling those complex issues.

I will take each of those points in turn. I, too, agree that transparency is a necessary requirement for the effective operation of a fiscal framework for Scotland, and I will seek early agreement on that with the United Kingdom Government. As I noted when I last discussed the issue with the committee on 28 January, there must be a balance between what can be discussed in public with the committee and the negotiations that we undertake with Her Majesty's Treasury. It is certainly my intention for the committee to be provided with as much information as possible, and as timeously as possible, on the sequence of measures that are being taken.

I have also been clear that effective parliamentary scrutiny of the framework is important and that the Scottish Parliament will want to be assured that a robust and coherent fiscal framework is in place before it gives legislative consent to the Scotland Bill.

The fiscal framework must be fair, workable and understandable, so it is important that both Governments can come to a shared understanding of how the various elements should work and what the implications may be. Elements of the fiscal framework are not well defined—the principles of no detriment are perhaps the most obvious example—and the UK and Scottish Governments must work together to address that. As Lord Smith noted in his report:

"There should be a shared understanding of the evidence to support any adjustments."

That means that both Governments will need to carefully consider how we can practically embed that shared understanding into an agreement on the fiscal framework that is clear, fair and transparent.

The Scottish Government agrees with the Smith commission recommendation that we need to review the intergovernmental machinery to make it more effective and efficient. Smith recommended that the memorandum of understanding between the UK Government and the devolved Administrations be reviewed. That work is under way, and it is being led by the joint ministerial committee secretariat, which comprises officials from the UK Government and the three devolved Administrations.

In tandem with that, I will look to agree with the UK Government the most appropriate governance arrangements to progress the bilateral work on the fiscal framework, including the role of the joint exchequer committee. Effective parliamentary scrutiny of the arrangements is important, and I hope to be as transparent as possible about progress.

On where we are now, I met the Chancellor of the Exchequer on 2 March to discuss implementation of the financial elements of the Smith commission agreement including the fiscal framework. We agreed that Scottish Government officials should work jointly with Her Majesty's Treasury officials in the period up to the UK election in order to make progress. That allowed officials to prepare a draft work plan and timetable for approval by UK and Scottish Government ministers as soon as possible after the UK election, and that work is progressing. I hope to meet the Chancellor of the Exchequer on Monday to discuss the next steps in the process.

The Convener: Thank you for that helpful opening statement. One thing that you did not touch on is the future role of the Scottish Fiscal Commission, which is a topic on which we have taken evidence. Indeed, you are probably aware that members of the Finance Committee have just returned from a two-day visit to Stockholm, where we met the Swedish Fiscal Policy Council.

There is quite an element of consensus among the committee and certainly among our witnesses on the Scottish Fiscal Commission's role. For example, most of the witnesses agreed that it should be

"responsible for providing independent analyses and forecasts."

In order to be more effective, it should be able to do that itself according to best practice guidelines that have been produced by the OECD, rather than just commenting on the Scottish Government's forecasts.

There is also a widespread consensus that the Scottish Fiscal Commission should have a role

"in challenging the Government on the route it is taking and on its fiscal sustainability, not just in the short and medium term but also in the long term",

and that the Fiscal Commission should be beefed up to provide the people of Scotland with

"more objective macroeconomic projections."

The Swedish Fiscal Policy Council's remit includes assessing

"whether fiscal policy is in line with long-term sustainable growth and long-term sustainable high employment."

In effect, it analyses the Government's policies to see whether it is delivering what it said it would deliver. What is your view on that?

John Swinney: Many of those issues have been considered in our previous discussions on the Scottish Fiscal Commission. I am certain that all the issues that you have raised will be considered when we look at the outcome of the consultation that is under way on putting the Scottish Fiscal Commission on a statutory footing. The Government intends to introduce a bill in the final year of the current parliamentary session to fulfil our commitment to put the Fiscal Commission on a statutory footing.

A range of opinions exist on the full and proper role of an independent fiscal commission. I am in absolute agreement with the committee and the body of evidence that you have highlighted that the Scottish Fiscal Commission must be independent. It must be independent in practical terms and it must be seen to be independent in all its actions. That has been uppermost in my mind in how I have taken forward its establishment. I have made it clear to the commission that the Government will give sympathetic consideration to providing whatever resources, approaches and arrangements it needs to have in place to guarantee that independence.

I have previously set out to the committee my view that the role of the commission should be to validate and question the forecasts that are made by Government. I hold that view because I think that it is a more transparent reflection of what actually happens here. In the evidence that he gave to the committee on 21 January, Edward Troup, who is the second permanent secretary at HM Revenue and Customs, said, in effect, that although the Office for Budget Responsibility is praised for its independence and its distinctive forecasting ability, it is HMRC that gives the numbers to the OBR, just as it used to give them to the Treasury. I think that that was a pretty honest reflection of the arrangements. I would rather just accept that that is an honest reflection of the arrangements, instead of trying to suggest that the OBR—or the Scottish Fiscal Commission—is able independently to generate all this information and to come to a conclusion when, in fact, that is not really the case. Work that has been undertaken by HMRC feeds into the assessments that are made by the OBR. My view

has been that for the Government to produce the estimates and pass them on to the Fiscal Commission is a more transparent approach.

As I have said to the committee previously, the commission essentially has a veto over the forecasts that I bring forward. It would not be sustainable for me to present my forecasts to Parliament, only to say no in response to the first question that members would ask me: "Have they been validated by the Fiscal Commission?" If I was to do so, my forecasts would be in some difficulty. The commission has the ability to test and to veto the forecasts that I make. However, those forecasts are made on a transparent basis—we share the workings and the methodology with the commission.

I turn to the role and the scope of the Fiscal Commission. One of the views that the convener cited was that the commission should judge the long-term sustainability and workability of the Government's policies and proposals. To go back to the discussions that we had on the Fiscal Commission process earlier in the parliamentary term, I rather think that that is the business of Parliament. It is for Parliament and its members, who have been elected from across the country, to challenge the Government on whether it has got its policy framework correct. I do not think that it falls within the role or the scope of an appointed commission to consider what are fundamentally political choices for which ministers are accountable to Parliament. Members have the opportunity to challenge and scrutinise those choices, and that is the proper and true function of Parliament.

The Convener: I do not want to labour the point, but I have a question. You said that the forecasts could be vetoed by the Scottish Fiscal Commission. What would be the criteria for a veto?

10:00

John Swinney: The Scottish Fiscal Commission could say that my forecasts were not evidenced by the material that I put in front of it. When the commission reported last year on two occasions that the estimates that I had made were reasonable, I judged that to be a fair basis on which to present those forecasts to Parliament. If the commission had come back and said, "We cannot verify these numbers and we do not agree with them", I would have been in a somewhat more difficult position.

The Convener: One thing that Sweden has that we do not have here in Scotland is a much more comprehensive array of data and statistics. One obvious reason for that is that Sweden is an

independent state with full access to all those information sources.

As you know, we took evidence from your officials on the issue of data. There are considerable concerns—which you have known about for years—about the quality of data. For example, the basis for calculating the VAT that is paid by Scottish households is the household expenditure survey, which pulls together three years' responses from a sample of 500 Scottish households a year.

We have been told about the Scotland's national action plan proposals, but what is the Scottish Government doing to ensure that the data that is available is much more robust than it has been in previous years? We are going to take some very difficult decisions in the years ahead.

John Swinney: It is important that we look at the different components. The income tax data is currently generated by survey material, although we are working to strengthen that data. It will get stronger when the Scottish taxpayer base is defined, which is a process that is taking its course and will be effective from the start of the tax year 2016-17.

One of the elements of the Scotland Act 2012 is that there is a shadow period of at least two—but perhaps three—years in which we will assess the relationship between the actual tax that is collected and the forecasts that have been made, so steps are in place on income tax to strengthen the data that is available in this new territory.

With regard to the other devolved taxes, we have in place the collection arrangements for land and buildings transaction tax and landfill tax and they will begin to generate more refined projection data as those taxes take their course. The aggregates levy and air passenger duty will have their own mechanisms for collection. The only other area in which data is relevant in relation to the current range of Scotland Bill powers is the assignment of VAT. There is quite a bit of work to be done to get clarity on the most robust basis for assigning VAT. There are a variety of different ways in which one could undertake that calculation, and it is important that the area is subject to a lot of scrutiny and consideration to ensure that we come to the correct conclusions on that point.

The Convener: With regard to correct conclusions vis-à-vis Barnett, witnesses have expressed concern about Treasury data and the fact that the Treasury's calculations for Barnett are not always published, or that they are published in such obscure and byzantine publications that they are difficult even for academics, let alone ordinary members or parliamentarians, to track down.

In your discussions on the intergovernmental machinery, will the Scottish Government press for greater transparency on the Barnett formula, its inner workings and the publication of some of the calculations that the Treasury produces? There often seems to be no rhyme or reason with regard to why specific things come through Barnett and how the Treasury comes to its conclusions.

John Swinney: We interrogate data very closely at spending review and financial event times to verify that a proper and full calculation has been made of the Barnett consequential.

There is an explanation of the basis on which the comparability factors are applied between different budget lines in the United Kingdom budget. There will be budget lines for health expenditure in the UK budget for which we attract 100 per cent comparability for Barnett formula purposes. However, that will not be the case for other lines—for example, the lines for local government. Local government finance is undertaken differently in England from how it is undertaken in Scotland, and our comparability factor for local government finance is—if my memory serves me right—around 20 per cent. Our comparability factor for defence expenditure is zero. There is a rationale behind whether the comparability factor is zero, 20 per cent or 100 per cent, and my officials are habitually involved in ensuring that we are satisfied that those comparability factors reflect a proper assessment of the eligibility for Barnett consequential.

Beyond that, at every financial event, we look very carefully at the allocation of consequential to determine whether the comparability factors have been applied properly. That leads to additional scrutiny of whether the correct judgments have been arrived at to ensure that expenditure has been allocated in a particular way that can deliver particular consequential. Would that process benefit from more transparency? I think that it would. Many of the issues are tied up with the delivery of the statement of funding policy, and—as I have rehearsed with the committee on many occasions over the past eight years—the way in which the statement of funding policy is arrived at is a source of great dissatisfaction to me.

The Convener: The issue of transparency was a major one for many witnesses. We are advised:

“There is considerable doubt among the respondents on whether it is possible, or indeed desirable, to create a fiscal framework that meets all the objectives: fair, transparent, effective and mechanical. The Institute for Fiscal Studies considers that any system meeting both of the no detriment principles cannot also be transparent, effective and mechanical.”

How do you feel about that statement?

John Swinney: A lot of that depends on how extensively the no-detriment principle is applied.

Unless the principle was applied beyond the primary devolution of the power or responsibility and an appropriate transparent block grant adjustment was made, it would be difficult to fulfil the various criteria that you have set out, convener.

There is another question about how we arrive at block grant adjustments, which I have discussed with the committee before. As I have said, in the land and buildings transaction tax debate and the landfill tax debate we had a difference of opinion with the UK Government to the tune of about £60 million, which represented in excess of 10 per cent of the tax that we believed could be generated. We used one methodology while the UK Government used another. The methodology that we used was more soundly based, because it was based on individual transactions in Scotland rather than a subset of a UK-wide picture. However, I found it difficult to get UK ministers to accept that we might have a better methodology than the one that the Treasury had come up with.

That is a fundamental issue throughout such discussions. Is it possible or conceivable that we might come up with a better and more reliable mechanism for assessing the tax than the Treasury? Is that possibly imaginable? It does not look to me to be a particularly tangible prospect from the UK Government's perspective. I was very confident that the methodology that we put together was based on a model that was driven by Scottish property transactions, not by a subset of UK property transactions, when we know that the property market in Scotland is fundamentally different from the Scottish property market, particularly because of the effect of London.

To address your fundamental question, convener, there has to be a willingness on the part of the Treasury to recognise that another organisation might have a better methodology for arriving at a particular conclusion.

The Convener: I will switch to borrowing for a moment. We have had a variety of suggestions about borrowing. You will know that the Scottish Futures Trust supports a prudential regime, but the Institute for Fiscal Studies is not quite so keen on that. There is an agreement that there should be sufficient borrowing to allow budget smoothing to cover any forecasting risk and any economic shocks. What is the Scottish Government's view on borrowing at this time? Do you believe that there should be no limit or do you think that a limit should be set?

John Swinney: I have to accept that we are part of the United Kingdom and that therefore our arrangements have to be compatible with the fiscal framework of the United Kingdom. To say otherwise would fly in the face of a constitutional

reality. There has to be compatibility between our approach on borrowing and the framework in which we operate and the framework of the United Kingdom.

There is a need for three key elements to be delivered in relation to borrowing. First, there must be credible opportunities for the Scottish Government to invest for the long term through a distinctive approach on capital borrowing that meets our requirements. As the committee will appreciate, we have taken a different approach to the rest of the United Kingdom on capital investment. I would want to see that opportunity entrenched in the post-Scotland-Bill arrangements.

Secondly, there has to be enough flexibility to enable the Scottish Government to deal with the greater financial risk that we will be carrying because more of our budget will be dependent on taxes raised as opposed to the block grant delivered, so there has to be greater ability to deal with that risk.

Finally, there has to be sufficient flexibility to reflect the changing dynamics of the constitutional arrangements to take into account the fact that we are taking forward more distinctive fiscal responsibility in Scotland, and having greater control over and flexibility in borrowing is an essential component of that.

The Convener: Do you agree that a relatively high level of borrowing in Scotland would mean that borrowing in the rest of the UK would need to be lower in order to meet a particular borrowing target and maintain market confidence? That is a point that a number of witnesses put forward; it is the system that is established in a number of countries.

John Swinney: I said at the outset that we would have to accept that there would be a requirement to operate within the UK's fiscal framework. The question becomes whether we are being given any more material flexibility as a consequence of the borrowing arrangements or whether we are essentially having to operate within a particularly restrictive framework. I suppose that that is the key question that has to be determined by the borrowing arrangements.

The Convener: Canada is a country where sub-state legislatures do not have borrowing limits set by the federal Government, so it is possible.

John Swinney: It is possible, but it is for me to look at the reality of the financial framework of the United Kingdom and the fiscal mandate for which the United Kingdom Parliament has legislated and to pragmatically reflect the political outlook of the current UK Government. I could argue for that, but I would rather argue for things that I have more chance of winning.

10:15

The Convener: Indeed. Do you believe that the Scottish Government, if it borrows, should be able to borrow on the open market?

John Swinney: Yes.

The Convener: Okay. I have a final point before I allow committee colleagues in.

Earlier, we briefly talked about the adjustments. We have received a lot of evidence, particularly from the Institute for Fiscal Studies, on adjustment mechanisms and how difficult it will be to ensure that any adjustment mechanism—even one that is periodically reviewed—will not potentially have a major downside for Scotland because of the difference in the proportion of income tax that is raised in Scotland relative to that which is raised in the UK, for example. What method of indexing would the Scottish Government prefer to be implemented? Is that still under discussion?

John Swinney: Those issues are under discussion. Again, I go back to my discussions with the UK Government about land and buildings transaction tax. I appreciate that a lot of water has gone under the bridge since then, but the UK Government's original command paper said that there would be a one-off adjustment on the devolution of stamp duty and landfill tax. My interpretation of that was that there would be just one adjustment and that would be it—that there would be a sum of money and that would be the end of the story. However, it became clear that the UK Government's view was that there had to be a one-off adjustment and some form of indexation. It tried to apply other things, which we managed to see off.

I eventually accepted that there was an argument for indexation, and I suggested that we should relate that to the GDP deflator. Various mechanisms could be used essentially to update block grant adjustments and keep them in line with changes in values. A variety of mechanisms could be used if we decided to go down the route of indexation, but I remind the committee that the UK Government's original proposition was for a one-off adjustment and no indexation.

The Convener: Yes, indeed. I will not go into that any further, as I am sure that colleagues will want to come in on it.

I thank you for your answers so far and open up the session to colleagues.

Richard Baker: I want to return to the future of the Scottish Fiscal Commission. I accept what the cabinet secretary said about the role of the OBR. In effect, it uses Treasury forecasts in its work, but it strikes me that, just because it does things in that way, that will not necessarily be the best system for Scotland. We know how important

accurate forecasting will be for our fiscal policy. On that basis, would it make sense to empower the Scottish Fiscal Commission to generate its own forecasts?

There are two reasons for doing that. First, if the Scottish Fiscal Commission is to review the Government's forecasts, surely it needs to have its own forecasting role anyway, and the best approach would be to produce its own forecasts.

The second reason relates to the insight into the experience in Stockholm that we had as a result of our visit there. The independent body that provides forecasts there—the National Institute of Economic Research—has provided forecasts that were not wildly different from the Government's forecasts, but there is a good check and balance in providing accurate forecasts. Is giving the Scottish Fiscal Commission that role worthy of further consideration?

John Swinney: I do not want to close down any discussion of that point at this stage. A consultation is under way, and I happen to be in front of the committee midway through the consultation process. I am giving my opinions as they are today, but I stress at the outset in answering Mr Baker's question—perhaps I should also have said this in answering the convener's questions—that I do not want my remarks today to be perceived in any way as closing down particular options. I will consider all those questions.

Mr Troup's comments to the committee were helpful in the sense that they clarified the nature of the OBR process. The Swedish example that Mr Baker has given essentially involves the Government doing the work and the Swedish Fiscal Policy Council doing the same amount of work. That is rather resource intensive. The way that I have taken things forward is to say that the Government will do the work, but I will ensure that the Fiscal Commission has the capability to interrogate and scrutinise to its independent satisfaction all the work that the Government does. I have acknowledged clearly today that I would be unable to sustain a fiscal forecast that was different from the conclusions that the Fiscal Commission arrived at.

There is a pragmatic question about whether we need to set up two processes. Because I am the finance minister, I have to do the work to calculate the forecast; the question is whether we need to set up an infrastructure comparable to the one that I have to use in order to generate those numbers, or whether we can give the Fiscal Commission absolute access to everything that we do and every way that we do it, so that it can verify that there is a robust process and arrive at a reasonable assessment as a consequence. Politically, I make it clear to Parliament that,

essentially, I accept that what the Fiscal Commission says can veto my projections.

Richard Baker: I thank the cabinet secretary for his answer. I appreciate that we are midway through the consultation, and I am grateful that at this point he does not wish to close off any avenues or considerations in the consultation process. However, it is worth saying that there are examples across Europe of such bodies using independent, rather than Government, forecasting.

One issue that has come up again and again—the convener mentioned it, too—is access to data. Indeed, the Scottish Government's officials at one point said that they had problems accessing certain UK Treasury data from HMRC. Has the cabinet secretary raised that issue with the chancellor directly, or would it be worth raising it with him? Access to appropriate data for the Fiscal Commission and for the Scottish Government will be crucial.

John Swinney: Before I answer the question, I want to highlight one of the points that the Swedish Fiscal Policy Council made to the committee in written evidence. In 2013, it said that its role

“is not to make economic forecasts or budget estimates, but instead ... to assess and make independent judgments”.

Therefore, I am not sure that the Swedish Fiscal Policy Council is—

Richard Baker: It relies on forecasts that are made by the National Institute of Economic Research, which is a Government agency but is a separate body from the Government and makes its own forecasts. That might provide a bit more information.

John Swinney: I suspect that some of that is dealt with under the arrangements that we have in place for the verification work that is undertaken by the Fiscal Commission. As I said, we can consider those points.

On the question about data, we regularly discuss with the UK Government questions of data access. I have not personally raised them in my discussions with the chancellor, but they are part of the official discussions that we have about the quality of data available to us. That was an implicit part of the discussions that took place around the block grant adjustment for land and buildings transaction tax. I was clearly advancing a set of forecasts that were based on an evidenced model, which I thought was of superior quality to that being used by the UK Government. We will, of course, continue to advance that argument, because we need to have that quality of information. As I said to the convener, when some of the new powers come to us, and particularly when it comes to income tax calculation and VAT

assignment, it will be a necessity to have very good-quality data.

Richard Baker: Cabinet secretary, you have touched on the importance of having transparency around the mechanisms through which various issues are decided, including the no-detriment policy and adjustments to the budget. Do you agree that you should report regularly to the Finance Committee on the operation of the joint exchequer committee and whatever mechanisms exist between the two Governments and that there should be regular reporting by the chancellor or appropriate ministers at the UK level to committees at Westminster?

John Swinney: Yes. I also think that the mechanisms must function more effectively than they have done. The joint exchequer committee has not met since 2012, and that is deeply unacceptable. It did not meet for a variety of reasons, probably not the least of which was the referendum that was taking place, which meant that there was difficulty in—to put it gently—getting a meeting of minds around the table. There has to be a meaningful framework.

Bruce Crawford and I spent a long time discussing the remit of the joint exchequer committee with UK ministers because I was determined that it should operate on a different basis from that of the statement of funding policy. The statement of funding policy is discussed with me but is agreed between the chancellor and the Secretary of State for Scotland, and I am not a party to that agreement, which I find absurd. The joint exchequer committee must operate on a basis that enables me to reach a point of agreement, instead of any agreement being explained as the Treasury having decided, “This is the way it’ll be,” so that is what gets applied.

The line of argument that I have taken is that the joint exchequer committee should be a mechanism that fulfils the spirit of the speech that the Prime Minister made the day after the election, in which he said that he intended to govern on the basis of respect. That principle needs to be applied to the working of the joint exchequer committee to make it meaningful. In that respect, I accept that there must be transparent reporting to both Parliaments.

Mark McDonald: On the issue of transparency in the operation of the Barnett formula, we took evidence last week from Professor Alan Trench and David Phillips of the IFS, and Professor Trench said:

“In relation to this year’s budget, there is no particular reason why historic data could not be provided.”

David Phillips said that he had managed to get hold of the spreadsheets that the UK Government

uses to do the calculations and could not see a reason why,

“subject to people agreeing it, they should not be published on the day of the budget”.—[*Official Report, Finance Committee*, 27 May 2015; c 27.]

Have you made any representations to the UK Government on its publishing the Barnett information? Do you think that the Government should publish that information alongside the budget that we expect to be published in July?

John Swinney: I see no reason why it should not. I would have to explore what other information was being sought, but what the director general of finance receives from the UK Government on the day of the budget is, in essence, a spreadsheet that shows the changes to public expenditure that are being announced by the chancellor and how those are judged by the Treasury to be applied through the Barnett formula. The number of budgets that are affected varies depending on the degree of change that is being announced.

The spreadsheet goes through different budget lines, the currency, the capital department expenditure limit, the resource DEL, the operating DEL and the annually managed expenditure, and it sets out the perspective of those changes for future years. It is a crucial document. It gets pored over by my officials to ensure that it is a proper reflection of what has been announced in the House of Commons and takes into account all the changes as we would consider them to be made.

We scrutinise the various technical mechanisms for the transfer of that money as well, to ensure that there are not different public announcement and technical change levels to the budget arrangements in the House of Commons. For the record, there has never in my experience been such a difference, but we undertake that verification nonetheless.

Are the comparability factors published? I am not sure.

Sean Neill (Scottish Government): They are in the statement of funding policy.

10:30

John Swinney: Yes. The comparability factors are in the statement of funding policy, which is already published.

I would be happy to explore what further information individuals believe should be published in order to enable a judgment about that to be arrived at. When I report to Parliament that I believe the consequentials from the budget to be X and Y, that is a product of that information. I probably will not publish the letter that comes from a Treasury official to the director general of finance, although I see no reason why that could

not be published on the day of the budget. I certainly would have no objections to that, but it is Government-to-Government correspondence and I would have to check whether the Treasury would give consent for that to be published.

Mark McDonald: On the issue of transparency, you have highlighted the discussions that you had about LBTT and the block grant adjustments and how, in the lead-up to the decisions being taken, a change was made at the UK level that materially altered those discussions. Has there been any indication of the approach that the Treasury is likely to take to how the budget process will work, given the significant change that is likely to come about through tax powers being devolved as a result of Smith and with the Scottish rate of income tax coming in advance of that? Frustrations have been expressed about the chancellor's ability to stand at the dispatch box and produce a rabbit from a hat that nobody expected while the Scottish Parliament is in the middle of a consultation about rates and bandings.

John Swinney: I have not explored that with the chancellor. To be fair, the chancellor operates within a UK parliamentary environment for budget handling and I operate in a Scottish parliamentary environment—and those environments are very different. It is not for me to say to the chancellor, “Look, you have got to change your whole way of budget handling in the United Kingdom, because the Scottish Parliament does it this way.” I could try to make that argument, but I have my doubts about how we would get on with that.

There are, perhaps, some questions that this Parliament needs to think about, given the fact that we are making an increasing number of tax decisions. One question is the extent to which the Parliament is confident that its arrangements properly protect Scotland from gaming—I think that the committee used that terminology when it looked at the issue in the past. That is the question of whether our arrangements can be undermined by decision making in a different, Westminster context.

Mark McDonald: My next question leads on from that and into the matter of intergovernmental relations. Last week, the IFS seemed fairly certain that the Treasury would adapt itself to the new circumstances of devolved tax powers. However, other evidence that we have received suggests that it is unlikely that the Treasury will change the way that it does things. You may have been hinting at that in your previous answer. Do you think that the way in which intergovernmental relations are developed and how formalised they are might have a greater influence on Treasury behaviour?

John Swinney: That is a cultural question about whether it can be accepted that the view

that we, as a devolved Administration, put forward or the proposition that we arrive at could have as much validity as, if not more validity than, something that was produced by the Treasury. I expect that really deep cultural question to come out of the process.

We cannot operate satisfactorily on the basis that we have to accept what the Treasury says. If we just had to accept what the Treasury said as the last word, why would we bother developing better and more informed mechanisms? You can have all the rules you want, but that cultural question must be addressed. I fought very hard to get the joint exchequer committee's remit structured around the basis that we should arrive at an agreement about the issues, and that is the right way for it to be structured.

In response to Mr Baker's questioning, I have accepted that I cannot say that the joint exchequer committee has functioned in a proper and effective fashion since it was established—other than to get to that point. The agreement that we reached on the block grant adjustment and the land and buildings transaction tax was reached after a one-to-one discussion between the former chief secretary to the Treasury and me.

If we are to have good, orderly, transparent arrangements that we can report on to Parliament—that is what Mr Baker was rightly arguing for—our basis of working must accept that there may be a better way of doing something than the way that is suggested by the Treasury.

Mark McDonald: My final question is on the no-detriment principle. We have no detriment 1 and no detriment 2. You have articulated how no detriment 1 works—if it was applied, there could be a more mechanical process for the calculation of the Barnett formula in the future.

There has been a lot of discussion about how no detriment 2 could work in principle and in practice. The essential point is that there should not be a detriment created through the exercise of policy and that, if there is, there may need to be some compensatory factor. Some of the discussion has revolved around how cause and effect can be determined and how it can be decided whether any policy was the ultimate factor in a detriment being created.

There is also the issue of the point at which the detriment materialises. Let us take air passenger duty as an obvious example. It could be argued that a decision that was made in Scotland could have a detrimental impact on airports in northern England—there has been some discussion as to whether that would be the case. However, any detriment—real or otherwise—that was created might not materialise until several years down the line. At what point would the compensatory

mechanism kick in? Have you given any thought to how no detriment 2 could work in practice?

John Swinney: No detriment 2 is fraught with difficulty, whereas it is easy to conceive how no detriment 1 would operate: there would be a transfer of power and responsibility, and a financial adjustment would have to be agreed and made. That would be a tangible way in which to proceed.

There are two principal arguments against no detriment 2. First, it would be almost impossible to agree without significant dispute and debate. The Institute for Fiscal Studies made that point very clearly to the committee in its evidence last week. Secondly, there is a philosophical question about whether it would be justified. If we take on a responsibility and make a success of it, we should bear the fruit of that; if we get it wrong, we must bear the consequences. I am confident that, if we exercised a responsibility that was devolved to us and did not get it right but then went to the UK Government to say that we had not got it right and wanted some support to deal with that, the UK Government would say no. That would undermine the point of devolution, which is that account should be taken of the consequences and implications.

The one possible exception to that is the question of forestalling, whereby the UK Government has accepted that the actions that it took in changing stamp duty land tax when it did would have an effect on our revenue generation in year 1 of LBTT. It has accepted that direct financial consequence of its actions at the moment of devolution, and that has been taken into account in the forestalling discussions.

Mark McDonald: That feeds into some of the evidence that Professor Heald gave to the committee around the potential for tax gaming, which you have mentioned. Given that the Treasury itself would have a much wider array of income levers at its disposal, it could make changes that might materially affect Scotland but could compensate for them through other taxes that it was not within the powers of the Scottish Parliament to change in order to offset any detriment that was created.

John Swinney: That takes us into a wider discussion about the appropriate levels for the powers and responsibilities that are held by the Scottish Parliament. Mr McDonald will not be surprised to learn that he and I share the view that those powers and responsibilities should be broader than they currently are, which would enable a Scottish Parliament and a Scottish Government to take a broader range of decisions that would be more reflective of the circumstances in which we find ourselves. However, I do not think that what he proposes could be captured in the

no-detriment principle; it is, in essence, captured in the approach that is taken to public expenditure and would apply through the Barnett formula.

Jean Urquhart: At the time of the vow, it was said—and I paraphrase—that Scotland would become one of the most devolved fiscal regions, or the most devolved fiscal region, in the world. That suggests that, politically at least, there is quite a high expectation of Scotland, given the extra powers.

The Cuthberts' recent paper expresses a concern about Scotland being given power over only one tax and being responsible for living within our means, without being given responsibility or the ability to grow the economy through further powers. That argument has been made in the chamber; the Government has said that the Smith commission does not go far enough. Are we in a position in the negotiations to correct any of that or to raise those issues?

John Swinney: We have that opportunity. When the Prime Minister came to Edinburgh a few weeks ago to meet the First Minister and me, he agreed to consider further proposals that we would put to the UK Government beyond the agreement of the Smith commission. The Scottish Government will supply those points and proposals to the UK Government. They would be along the lines of the points that Jean Urquhart has raised about needing to establish greater balance within the proposals that emerged from the Smith commission.

Jean Urquhart: Do you accept that, if Smith was enacted as it is, Scotland could be worse off?

John Swinney: Essentially what the Smith commission report does is place greater responsibility on the Scottish Parliament and the Scottish Government, and it conveys greater risk to the Scottish Parliament and the Scottish Government. Therefore, we have to have in place the mechanisms to enable us to balance that risk and ensure that it is effectively and carefully managed for the benefit of the people of Scotland.

Jean Urquhart: Another criticism has been that the Smith proposals were put together very quickly—perhaps too quickly—and were ill considered in a sense. Do you feel that that process is still going too quickly? Do you believe that enough time will be given to negotiate a better set of proposals?

10:45

John Swinney: I cannot prejudge what consideration the UK Government will give to the additional proposals that we make to extend the powers that the Smith commission recommended.

I can only take the Prime Minister at his word: he said that he would consider them in good faith.

The parliamentary process for handling the legislation arising from the Smith commission report is becoming slightly clearer—it is not crystal clear yet, but it is becoming clearer. The legislative process will take place at United Kingdom level over the next few months. We will have to wait and see what time is allocated for that to ensure that it is done properly and adequately.

There are a couple of other major issues that will affect the handling of that process and whether appropriate time is given to it. Those relate principally to the fiscal framework and its significance in relation to a legislative consent motion that the Scottish Parliament will be asked to support. I have been crystal clear with the committee and the UK Government that we will not put a legislative consent motion to the Parliament until such time as an acceptable fiscal framework is in place. There are a lot of big issues in the fiscal framework—as the committee has been hearing—and we need to have the opportunity to consider those questions properly.

Jean Urquhart: On that point, if what you were proposing was accepted by the Scottish Parliament but was rejected by the Westminster Government, what would happen next? Would the Scottish Parliament have to live under the Smith proposals as put forward by Westminster, regardless of whether we agreed with them?

John Swinney: No—well, it would depend on a number of things, such as whether the Scottish Parliament was prepared to pass a legislative consent motion. That is an important point and, if the Parliament was not prepared to pass such a motion, the question for the UK Government would be whether it would ignore the Sewel convention and apply the changes without the consent of the Scottish Parliament. That has never happened before, so we would be in new territory. I think that that should be avoided.

Jean Urquhart: I would like to ask one more question. Do you see the Smith commission position as it currently stands—without developing further powers for the Scottish Parliament—as unworkable or unacceptable?

John Swinney: No. The Scottish Government accepts the conclusions of the Smith commission as a further devolution of additional responsibilities to the Scottish Parliament. It has to be translated in full into legislation, which it was not in the draft clauses published in January or the Scotland Bill published last Thursday. That process must be completed satisfactorily and there has to be a fiscal framework that goes with it, enabling the Scottish Parliament to exercise the responsibilities with due ability to deal with the increased risk that

we are carrying as a result. Those are two key judgments in how we take forward our handling of the issue.

Gavin Brown: There have already been a couple of questions on block grant adjustment in relation to Smith. Where are we in relation to block grant adjustment for LBTT and landfill tax for 2016-17?

John Swinney: We have no agreement in place and there have been no discussions about it.

Gavin Brown: Are there any discussions on the agenda? Is there a meeting lined up?

John Swinney: I suspect that it will be part of the discussions that we have about the wider fiscal framework. One of the points that the Treasury ministers were anxious to ensure was that there was no read-across from the one-year discussion that we had about 2015-16 into wider provisions.

Gavin Brown: Thank you.

The committee has been told by experts that there are two broad ways of managing assignment of VAT; it can be done by place of consumption or by place of production. We have not heard an alternative to either of them. Does the Scottish Government have a view at this stage on how VAT ought to be assigned?

John Swinney: That is one of the issues on which I will be looking carefully at the implications of different methodologies as part of the discussions that I have with the UK Government on the question.

Gavin Brown: As a matter of principle, do you have a view at this stage about whether it should be one of—

John Swinney: As I am sure Mr Brown will understand, it is a rather material point to the negotiation.

Gavin Brown: You were asked by the convener and one or two other members about borrowing, and you gave some of the background to the issues that would need to be considered in relation to borrowing under the Smith powers or any other arrangement. Does the Scottish Government have a view at this stage on the likely quantum—the likely amounts—or are you really just talking about the principles?

John Swinney: I set out earlier the principles that I think have to be taken into account. First, we have to have a borrowing regime that enables us to borrow for capital investment purposes in addition to our CDEL allocation. Secondly, we have to have the ability to borrow for the revenue risk that arises out of exercising the degree of responsibility that we are carrying. Thirdly, there has to be sufficient flexibility for the Scottish Government to make judgments about the most

appropriate level of borrowing, notwithstanding the fact that I accept that we have to operate within the restraints of the UK fiscal environment.

Gavin Brown: The principles are clear, but are you saying that the Scottish Government at present does not have, or is not willing to put on the record, a view of what sort of figures you might be talking about?

John Swinney: That is correct.

Gavin Brown: You have said that you are living within the limits and so on and that you do not think that you would get terribly far with this idea, but as a matter of principle do you think that the Scottish Government should have unlimited borrowing powers, or at least limited only by the markets or those who would be prepared to lend to you? Alternatively, should some sort of limit be put into whatever fiscal agreement is reached?

John Swinney: Philosophically, I believe that the Scottish Government should be free to exercise appropriate and sustainable borrowing, limited by its own judgments. That is, philosophically, where I come from. However, I accept that there is a UK fiscal framework and mandate, and there is the political outlook of the UK Government, which I cannot ignore when trying to give the committee answers on what I think will be realistic settlements of the borrowing question.

Gavin Brown: We have heard three theories at this committee about whether the Scottish Government borrowing should be underwritten, ultimately, by the UK Government. Some have said that it should all be underwritten; some have said that none of it should be underwritten; and others have suggested that it should be underwritten to a certain limit but that anything above that limit should publicly not be underwritten. Does the Scottish Government have a view on whether some or all borrowing should be underwritten?

John Swinney: My view is that the Scottish Government should only undertake borrowing that it considers to be sustainable. Therefore, the judgments that we arrive at have to be sustainable fiscal judgments about the borrowing that we incur.

Gavin Brown: I think that everybody would accept that point, but should it be explicit in the fiscal framework that ultimately it is underwritten? Markets will obviously take a view and that could affect the rates. Should it ultimately be underwritten by the UK Government, or should there be something within the fiscal framework that says that it is not underwritten and that it is entirely a matter of judgment for the Scottish Government?

John Swinney: That is a very material point of negotiation within the fiscal framework.

Gavin Brown: So you have no firm view that you are willing to put on record.

John Swinney: I am here to be as helpful as I can, but there is a negotiation to be undertaken.

Gavin Brown: I will leave that just now.

You have been asked by several members about the Fiscal Commission. You say that there is a consultation going on and that you are listening and are open to ideas, but the impression that I got from you—this may be unfair—is that you have pretty fixed views on whether there should be independent forecasts.

John Swinney: I have given the committee the caveat that a consultation is under way and I am looking at it. Equally, I cannot deny that I have come to the committee relatively recently and given a pretty firm view that I believe that the Government should do the forecasts and the Fiscal Commission should challenge and verify them. That is a crystallisation of my position, but I am open to consideration of the issues.

Many of the judgments that I have to manage relate to whether costs within the public sector are justifiable. I have to incur the cost of having in place the necessary expertise to provide me with robust fiscal forecasts. Essentially, some of the debate is inviting me to make provision for that twice. In general, I do not like to make provision for something twice from the public purse and, in its scrutiny of my actions, the Finance Committee does not generally approve of it, either.

I am trying to take a pragmatic approach that enables the work to be done, and then to be challenged, scrutinised, investigated, interrogated and potentially vetoed, without us incurring the cost twice. That is my pragmatic view but, if the committee or the consultation exercise takes a different view, I will consider it. Ultimately, I am the person who has to defend the cost involved in carrying out that exercise twice.

Gavin Brown: I would say that 99.9 per cent of the time I would agree with you.

John Swinney: Ah, but there is always an exception to prove the rule.

Gavin Brown: In all seriousness, it is all about ensuring that we have back-up and checks and balances. When we are only talking about two taxes the consequences of getting it wrong are relatively small, but once we get to the stage where there is also income tax, VAT and so on, for every tax that is added the consequences of getting it wrong grow.

The point that was made to us pretty strongly by NIER in Sweden was that, in their view, it is

extremely difficult for a body to validate someone else's forecast if it has not done its own initial forecast. NIER felt that, if a body had not done a reasonable amount of the workings and thought carefully about the models and assumptions, it would be hampered in judging someone else's forecast by simply looking over their workings.

John Swinney: Let me make two points on that. First, to go back to one of the points that Richard Baker—or perhaps it was the convener—made about the discussions, the fact was that when the Swedish exercise was done by both parties there was very little difference, if any, between the forecasts. I am not as close to these points—

The Convener: I am sorry to interrupt you, cabinet secretary, but one of the points that was made by the Swedish Government was the fact that another body was doing the forecasts made it much tighter, disciplined and accurate in its own forecasting, because it knew that there was another body looking over its shoulder. That body may have come to many of the same conclusions, but it tightened up the Government operation and made its forecasts more accurate, because the Government knew that an independent body, which was well respected and had full access to the media, could also make the forecasts. That is the crux of the matter.

John Swinney: That brings me to my second point, which is about the way in which the Fiscal Commission has operated to date and the way in which it can operate in the future.

During the summer of 2014, I did not just send the Fiscal Commission a sheet of paper and say, "How do you like these numbers?" The Fiscal Commission had the opportunity to interrogate the model that we had put in place to calculate those taxes and to scrutinise it to the commission's satisfaction. Essentially—I want to make this absolutely clear on the record today—the Fiscal Commission can ask us anything that it wants to and can scrutinise and interrogate our approach.

Ultimately, I accept that the Fiscal Commission has the ability to go to Parliament, and obviously to the media, and say that it does not have confidence in the forecast that the finance secretary has put forward. That would be disastrous news for me, if that were the outcome.

The Fiscal Commission places an obligation upon my officials and me—exactly as you indicated, convener—to operate on the basis that we are subject to very firm scrutiny and that we have to be reliable and robust about what we are doing.

11:00

Gavin Brown: I will not dwell on this for the simple reason that it will be a far longer debate for another day at the end of the consultation period but, in my view, the commission will be in a better position to judge your forecasts if it has done some of its own workings, too. For LBTT and landfill tax, we basically got a statement that said that the commission endorsed the numbers as reasonable. I did not get the impression that it could have come up with alternative numbers. It could have questioned some of your assumptions, but my firm impression was that it could not have come up with a figure of, say, £250 million instead of £260 million.

John Swinney: I profoundly disagree. This is a significant discussion for us to have, because it gets to the nub of what is going on here. If the Fiscal Commission had put two extra letters in that sentence and said that it believed the figures to be unreasonable, I would have had to go back and run the numbers again. That is all that it would have taken—the commission to have said that it believed the figures to be unreasonable—and I would have been back to the drawing board.

I profoundly disagree with the argument that there is nothing else that the Fiscal Commission could have done, because I would have had to go away and work on those numbers to get to the point at which the Fiscal Commission had the confidence to tell Parliament that the numbers were reasonable.

The Convener: The commission might think that the figures are reasonable but it might not think that they are accurate—or, at least, not to the degree that they perhaps should be.

John Swinney: By using that terminology, the Fiscal Commission was giving a clean bill of health to the estimates that the Government had put forward. That is what we asked it to do and that is what it did. If it did not think that that was the case, it would have said so.

Gavin Brown: Let us pick a number—say, for example, that you said that you thought that you would collect £250 million. My impression was that the commission would not have been in a position to say, "No—we think the figure is £270 million," or, "We think it's £230 million." My impression was that it could look at the modelling and say, "Yes, that seems reasonable," but that it could not come up with an alternative figure. I may be wrong, but that was the pretty firm impression that I had.

John Swinney: The commission could have asked us to look again at particular assumptions, and we could have run the numbers again. If it had said that it thought that our estimates about property price growth in Scotland were wrong and had asked us to go away and run the calculation

at X per cent rather than Y per cent, we would have rerun the numbers.

Because of the interrogation that it had undertaken of the model, it would have known about all the assumptions that underpinned the model that we had put together. It could have challenged any one of them—whether on property prices, the number of transactions, the value of properties or the incidence of sales. It could have challenged any of that and got us to run alternative numbers.

Gavin Brown: I will not dwell on that. We clearly disagree slightly, but it is an issue that we can explore in greater detail when it is the only item on the agenda.

The other question that the convener put to you about the Fiscal Commission was on the idea that it could give some kind of commentary on the fiscal performance of the Government. You seemed to resist that, because you felt that that was the role of Parliament. I simply put the question, do you not think that the OBR performing that role has enhanced parliamentary scrutiny at a UK level, as opposed to detracting from or usurping it?

John Swinney: The response that I gave earlier related to the context of an assessment of proposals and policies, which to me is the territory of Parliament. That is what Parliament should be considering.

Preparing independent economic forecasts is a perfectly permissible role for a fiscal commission to undertake, but one of the points that struck me about the committee's consideration of the concept of the Fiscal Commission some time ago was that the committee wished it to be established in such a way that, although it was to have responsibility for looking at just two taxes at the time that it was established—LBTT and landfill tax—we should remain open to developing the role of the commission as our responsibilities were extended. I reflected that in the way that the commission was taken forward, and that is the basis on which the consultation paper has been constructed and the draft bill has been set out.

Gavin Brown: Finally, on no detriment—or no detriment 2, as it now seems to have been called—you said earlier that it was “fraught with difficulty” and that you questioned whether it was justified. Did you make those points during the Smith commission discussions? It was in the agreement and you were involved in reaching that agreement. Did you make those points at that time, or have you now looked at the issue and realised that it is a bit more tricky than you first thought? What is your stance on that?

John Swinney: The words of the Smith commission are words that I signed up to at that

time. What I thought was the most important issue was the block grant adjustment, and that was uppermost in my mind in terms of what I contributed to the Smith commission. I think that I have made it clear to the committee that it has been a pretty fraught process. My primary consideration was to make sure that the block grant adjustment was correct. As I now look at the detail of the Smith commission report and the concept of there being some further calculation beyond, I think that that calculation is more fraught with difficulty.

Malcolm Chisholm: With reference to the block grant adjustment, you said that with LBTT there was originally no indexation, but you have now proposed indexation to the GDP deflator. Was that not always implicit? Was the original idea that there would always just be that sum of money and that it would not even be uprated for inflation?

John Swinney: In the command paper that was published to implement the Calman commission report—I am sorry that I do not have the precise wording in front of me, but I have provided it to the committee previously—the wording was something like, “There shall be a one-off adjustment when these taxes are devolved.” That was it. I interpreted the one-off adjustment to be a cash sum that would be debited, but the UK Government then opened up the argument about indexation.

Malcolm Chisholm: Do you not think that indexation to the GDP deflator is not too much of a departure from what was originally proposed? It does seem quite reasonable.

John Swinney: It was an attempt by me to reach agreement on a reasonable basis for proceeding on the block grant adjustment. I thought that I was perfectly entitled—and Parliament could have required me—to hold out for what was in the words of the command paper, because that was the basis on which the legislative consent motion on the Calman commission proposals was agreed to by Parliament.

Malcolm Chisholm: We obviously need indexation for the income tax powers and for the Scottish rate of income tax. I think that they are to be indexed to the income tax base for the rest of the UK. Is that your favoured option for Smith? There has been some discussion about indexing it to the revenues rather than the base. Do you have a view on that?

John Swinney: During consideration of the Calman commission proposals, we successfully argued that we should move to what was essentially the Holtham mechanism, and we secured agreement on that. We think that that is the most robust mechanism for doing that.

Malcolm Chisholm: That is the base, and you want to do that for Smith as well.

Another issue that has come up in evidence concerns how population changes should be taken into account. Should that be done on a per head basis, or should we just allow for the fact that we want to get the benefits of growing our population if we can do that?

John Swinney: In a sense, that gets into the no detriment 2 argument: if we are growing our population and benefits are arising from that, we should see the fruits of that. It also relates to the wider argument about fiscal responsibilities and how we should be able to exercise those to ensure that we retain the benefits of growth in the population of Scotland.

Malcolm Chisholm: The corollary of that is that you would not seek to be protected from the possibility that the rest of the UK's population will expand more quickly than Scotland's.

John Swinney: That is another of the wider range of risks that we take on as a consequence of gaining the responsibilities. If we take on those risks, we have to have mechanisms in place that enable us to manage and deal with them as different outcomes materialise.

Malcolm Chisholm: When you propose new taxes—the most striking one recently has been national insurance—do you work out a policy position on block grant adjustment as part of that, given that it could work positively or negatively in various ways?

John Swinney: Some of that goes back to my answer to Gavin Brown on the 2016-17 block grant adjustment. We do not have an established block grant adjustment methodology for the devolution of the new taxes. We have come to an arrangement for 2015-16, but we do not have a mechanism in place for later years. That is the core of the fiscal framework, which must wrestle with those questions.

Malcolm Chisholm: I do not know whether this is strictly relevant, but I am curious about national insurance. Is that more revenue that would be spent on anything or is it tied to the devolution of particular powers?

John Swinney: It is about providing us with the ability to influence one of the key costs of employment that employers wrestle with and to use that ability to encourage and boost employment in Scotland.

Malcolm Chisholm: So it would not be tied to the devolution of particular welfare powers.

John Swinney: No.

Malcolm Chisholm: I am sorry—that was probably not relevant, strictly speaking.

I will move on to the no-detriment principle. You said that you focused mainly on the block grant adjustment in the Smith commission. I do not suppose that you want to be coupled with George Osborne too often, but it appears that he said the same thing when he gave evidence to the Treasury Committee. He said that he was relaxed about tax competition and that the main issue was the block grant adjustment. Do you think that there is going to be much disagreement about the issue of no detriment?

John Swinney: I took some encouragement from the chancellor's comments to the Treasury Committee that he and I were perhaps looking at the same issues and dilemmas and how difficult it would be to make the relevant calculations. The IFS, quite correctly, highlights the fact that there is a lot of difficulty contained in some of the arguments.

Malcolm Chisholm: Was it clear from the Smith commission's discussions that it had a much broader view?

John Swinney: I can give you my impression. The Smith commission was looking at the block grant adjustment, but also at the fact that if we took particular policy actions and we made a success of them, we would bear the fruit of them, and if we took bad decisions, we would carry the risks of that. That is what was in the Smith commission's mind.

On the point about there being a fair application of the no-detriment principle, my judgment of that at the time was that the members of the Smith commission were looking at it from the point of view of what happens when the power gets transferred—it does not get transferred with an advantage or a disadvantage but is transferred neutrally.

Malcolm Chisholm: We are interested in transparency and how the negotiations take place. I was also interested in what you said about the legislative consent motion on the fiscal framework. Is it guaranteed that the UK Government will not seek to introduce any of the things that we have been discussing into the legislation, which will be the preserve of the UK Parliament, and that, if it does, those bits of the legislation would require a legislative consent motion? Has all that been agreed?

John Swinney: What has been agreed by the UK and Scottish Governments is that we intend to implement the Smith commission recommendation that a fiscal framework requires to be put in place. It has not been proposed that that be put in statute, and it certainly does not form part of the Scotland Bill that has been published. That is what the chancellor and I discussed in March, it has been considered in discussions between officials

while the UK Parliament was dissolved and it will be picked up now.

I have made it clear to the UK Government that the fiscal framework must be in place before we ask Parliament to consider a legislative consent motion, because the significance of the issues in the fiscal framework is such that that would affect Parliament's view on whether it would wish to give legislative consent.

11:15

Malcolm Chisholm: Do you see the joint exchequer committee having a role in the process or is it just going to be done minister to minister?

John Swinney: There could be a meaningful role for the joint exchequer committee. The dialogue that will take place on the fiscal framework will be among the players who are the members of the joint exchequer committee. Whether we call them joint exchequer committee meetings or not is perhaps as relevant as answering Mr Baker's point about the transparency of those negotiations. Largely, I expect the discussions to involve the chancellor, the chief secretary and me.

Malcolm Chisholm: Will there be any transparency around that? Will anything be published on what happens?

John Swinney: I have previously said to the committee that I want to be as open as I possibly can be, notwithstanding the requirement to conduct a negotiation with UK ministers.

Malcolm Chisholm: Again, this question is probably stretching things a bit, but I was interested in your letter on the non-profit distributing hub programme. Does the classification of that expenditure as public or private have any relevance to negotiations with the UK Government or is it affected by the same requirements from Europe?

John Swinney: Yes, it is. The UK Government has the same issues and relationship with the Office for National Statistics in coming to a view on those matters.

Malcolm Chisholm: Will it eventually have an effect on the Barnett formula if some of those things are classified as public rather than private expenditure?

John Swinney: No.

John Mason: I am last, but not least.

I thought that you were very generous to the Westminster system as a whole when you said that you did not expect it to change much, despite the fact that the whole of the UK is now facing a different budget system. Are we storing up

problems for ourselves? If we take income tax, for example, Westminster controls the whole income tax system, sets the bottom rate—the personal allowance, which is effectively a nil rate band—and yet we are expected to set our budget first and somehow hope that that nil rate band and the rest of the system will not have too much of an impact on us.

If we set our budget and the UK Government comes along and does something completely different in March that hits our budget, would we have to go back in April or May with a supplementary budget?

John Swinney: I do not want to suggest in any way that I find the situation acceptable, but I have come to the view that it is the reality of what is out there. We have a UK Government that has a different budgetary framework from that of the Scottish Parliament. The Scottish Parliament could decide to change its budgetary framework to give us more of a chance to operate on a level playing field with the UK Government. It would be up to the Parliament to determine whether that would be the case. Now that we have got wider responsibilities, we would be able to exercise them in a different way from the way in which they have been exercised historically.

There are ways in which the Parliament can decide to react, but they are not really issues for me to initiate. I am a servant of Parliament on such questions. However, it is certainly an issue that the Finance Committee could consider if it wished to do so.

John Mason: So you would not object if we were to say strongly that we felt that the UK should set the bigger framework first, which we could then build on.

John Swinney: That would be a reasonable position to take.

John Mason: We had some strong evidence on that from some witnesses. Professor Jeffery said that England needed to be disaggregated from the UK, for budget purposes, if we were to make the system as a whole work. Do you think that that would be positive?

John Swinney: A whole series of dynamics will arise out of the changes to the financial arrangements that will follow from the changes to the constitutional arrangements. That is why I do not think that the process of constitutional change has in any way reached a conclusion. More issues will be raised as a result of the application of the Calman powers and then the Smith powers that will require further consideration.

John Mason: We have talked a bit about how important it is to reach agreement with the Treasury, and you said how important that is, but

we are in a devolved situation and the power still remains with the Treasury and at Westminster because of that. However, some witnesses said that there should be an independent arbiter of disagreements and disputes. If you said that the block grant adjustment should be X and the Treasury said that it should be Y, the arbiter could decide that it was somewhere in the middle, for instance. Is that a possibility?

John Swinney: There is a case for that. I listened to the Prime Minister talk about the fact that he governs with respect for the devolved Administrations. That view must take into account the fact that his Government might not always come to the correct judgments.

With the block grant adjustment on land and buildings transactions tax, it was not a case of the Treasury saying, "Here's a number of £526 million," and me saying, "Oh, I've got another number—it's £461 million," without having any basis for coming to that number. I had an entire model based on Scottish property transactions that the Treasury did not have and that built up a reasonable estimate based on the property market in Scotland. Instead of just saying, "Well, we've got this gap," that should have been taken into account more. We had a far superior model that allowed us to make a judgment about the amount of revenue that would be generated.

John Mason: The reality is that the Treasury is big and we are little. It has all the power and, if it has a nice chancellor, he will listen to you and, if it has a nasty chancellor, he will not.

John Swinney: That does not take into account the Prime Minister's commitment to govern with respect, to which we will hold him.

John Mason: Okay. You are fairer than I am.

Perhaps I take a slightly different line from my committee colleagues, but I got the impression from the Scottish Fiscal Commission that it has been struggling a bit with the amount of resources that it has—not just financial but people resources—and that the members of the commission have all had to put a bit more time into it than they had anticipated. That is just with the two small taxes, although I suppose that they are still settling in. I have questions about the amount of resources that the commission might need in future, but does it have enough resources at the moment?

John Swinney: I have made clear to the committee and the commission that I will be sympathetic to requests for the resources that the commission requires. We have set it up to be independent of the Government. It is housed at the University of Glasgow—we are grateful to the university for hosting it. I am grateful to the commission for its contribution. If it requires more

resources, I will happily consider what resources it requires.

John Mason: I heard the arguments from some of my colleagues that it would somehow be better to have forecasts produced by not only the Government but by the commission or somebody else. However, the counterargument is that, if there are strong checks and the commission is adequately resourced, checking on what somebody else does is equally valid.

My model is Audit Scotland, which does not do anything itself but goes around Government, local government and public bodies examining thoroughly what is done and then commenting thoroughly on it. Could that model apply to the Fiscal Commission? It might not be called audit but could it undertake that process of examining the forecasts rather than producing them?

John Swinney: I went through the work that had been undertaken so that the Fiscal Commission could be confident in the model that we had put together. That has been the basis of how I have set up the system so far, notwithstanding that we are midway through our consultation and my view is not fixed. We are open, and the Fiscal Commission has the opportunity to challenge and test anything that it wants to about our arrangements. That should be to its absolute satisfaction, and it should have the resources to enable it to come to that conclusion, given that I accept that it has the right to challenge utterly my projections.

John Mason: Do you anticipate the Fiscal Commission giving a slightly more nuanced comment on your forecasts? It has said that the points that have been made so far are reasonable, and you have made the point that it could say that those points are unreasonable. However, if, for example, Audit Scotland says that it needs to look at Glasgow City Council, its report will not just say whether its practices are good or bad; it will say, "These bits are good, but they've messed up on council tax." It will then comment on that in more detail. Would that be a halfway house? In other words, rather than the Fiscal Commission doing something completely differently, could it give a more detailed comment on the forecasts?

John Swinney: I have cited one sentence of the Fiscal Commission's conclusion, but it reported more broadly on other points. The issue that you raise is a matter for the Fiscal Commission. It is an independent body. I do not direct it, so it would be inappropriate for me to say what I thought it should be doing. It is entirely up to it to determine—

John Mason: It is open to it to give a more detailed view.

John Swinney: Definitely.

John Mason: That is great.

VAT has been mentioned. There are different arguments about how it might be assigned. It seems important that we take account of value added in Scotland. Let us say that I have a biscuit factory in my constituency and that all the biscuits that are made there go south. If, in deciding on the VAT, we look only at the consumers who eat the biscuits, we would not get a share of the factory's input, despite the fact that it adds huge value. It would be more logical if we got a share of the VAT at every step and not just at the final step.

John Swinney: I acknowledge that the question about how VAT assignation takes place is a substantial issue for debate. Indeed, it is a material part of the conversations that we must have with the UK Government. I am not familiar with how the committee intends to conclude its inquiry or whether it will do so shortly but, if it reports, it would certainly be helpful to have input on the issues that it believes should be implicit in the fiscal framework and where particular conclusions should be arrived at.

John Mason: The other area that I will touch on is borrowing. You have been reasonable in saying that, because our borrowing could impact on the UK, there should be some agreement and rules about how that operates. Another issue that has been raised with us is that local government has a lot of freedom to borrow and is subject to the prudential framework. How does local government fit into the picture? If we were to have an agreement with Westminster and our borrowing could impact on it, the same would apply to us—that is, local government's borrowing could impact on our borrowing. The issue has just crossed my mind. Do we take account of that enough? When you look at your borrowing figures, do you include local government borrowing, too?

John Swinney: Local government is well familiar with and operates under the prudential code. Each local authority must be confident in the sustainability of the borrowing that it incurs. The local authorities are entirely responsible for that commitment. In coming to that judgment, they have to be mindful of the resources that are going to be at their disposal to service such borrowing commitments. That is a product of the UK fiscal framework; nobody is immune from it, wherever they undertake their borrowing activity.

11:30

John Mason: If there was a figure or some kind of rule about how much Scotland could borrow, should we have that just for the Scottish Parliament or Government?

John Swinney: There is no relationship today between any borrowing commitments of local

government in Scotland and the borrowing arrangements that are implicit in the Calman commission proposals. We now have what is, essentially, a precedent. We are in 2015-16, we are able to exercise our borrowing responsibilities and there is no relationship between the obligations that arise out of our borrowing interests and those of local government. I do not think that there should be a relationship.

John Mason: I suppose that that is my question. I do not have a view on the issue; I am just wondering. For example, if Glasgow City Council—which is a bigger part of Scotland than Scotland is of the UK—messed things up regarding debt, we would have to bail it out, would we not?

John Swinney: Under the prudential code, Glasgow City Council is entirely responsible for the sustainability of its borrowing.

John Mason: Are you comfortable that we can leave local government on one side and just concentrate on the Parliament?

John Swinney: That is clearly, and without debate, the detail of the prudential code.

John Mason: Thank you very much.

The Convener: That concludes questions from the committee. There is just one wee area that I want to ask a question or two about, which is indexation. Malcolm Chisholm and others, including me, touched on it earlier.

You mentioned that Holtham was an indexation method that you favoured. However, our briefing on the evidence that we have received states that

“This imbalance between tax and population share”,

which we touched on earlier,

“could be altered by decisions of either government leading to migration of top earners from north to south or vice versa.

It continues:

Consequently, the conclusion was that indexation to changes in the UK tax base (the ‘Holtham’ method) was not suited to Scotland.”

Why do you feel that the Holtham method is suited to Scotland? Further on, the briefing says that the Institute for Fiscal Studies considers

“that no method for calculating adjustments for subsequent years will meet the Smith principles.”

John Swinney: I would have to look at that in more detail to give you a substantive answer on it. Part of what you are raising would be a hypothetical consequence of policy decisions that a Scottish Government might take on tax levels. Rather than just treat it in that fashion, let me take that away and explore whether there is more that I

can share with the committee that would give a more definitive view on that point.

The Convener: I can give you more information on it. We are also told that the IFS's view is that

"Indexation to the percentage change in rest of UK revenues will insulate Scotland from UK shocks and will be neutral if Scotland's revenues grow at the same rate. However, Scotland may be adversely impacted by changes in the rest of the UK to the devolved tax."

Therefore, it is not just about decisions taken here; it is about decisions elsewhere, as well.

Dr Cuthbert's view is that the method that is spelled out in paragraph 2.4.14 of the command paper creates an unacceptable mechanism

"whereby decisions that were made by the rest-of-UK Government would yank the Scottish Government's chain and force it to react either by increasing tax or by cutting devolved services."—[*Official Report, Finance Committee*, 22 April 2015; c 18.]

He, too, was looking at how decisions that are taken in the UK will affect us here.

Finally, we had details from the IFS that

"it was not always clear whether the term *revenue* was being rigorously used or was loosely equated to *tax base*."

We need clarification on that, and I have one further question on it. Changes to the personal allowance would impact on the size of the tax base. How would that impact on indexation of the block grant adjustment for income tax?

John Swinney: That is a material point in the debate about whether income tax is a fully devolved tax. The Smith commission report, at paragraph 75, says that income tax will remain a shared tax. There are clearly implications of the sort that you raise, and they have to be reflected in the way in which we take our decisions. There is a no-detriment issue here. The finance minister in Scotland will have powers over the rates of taxation equal to those of their UK counterpart but, on allowances, UK ministers will have control and the Scottish ministers will have no control.

On issues such as rate changes, we take our decisions and we live with the consequences. Issues such as changes to allowances and some of the characteristics of tax over which we do not have comparable powers raise issues of detriment. I think that that is a helpful way of illustrating the issue—whether we have a comparable power may give rise to some of the issues around detriment that need to be considered.

The Convener: Does that not mean that indexation will have to be constantly revisited? You talked about land and buildings transaction tax being a one-off adjustment but, for example, Professor Ronald MacDonald suggested that that alone would mean a reform of the Barnett formula.

John Swinney: I think that the aspiration that has come through in some of the evidence that there is a mechanistic solution to all those issues is wishful thinking.

The Convener: Yes. The problem is that a lot of people have said that, for some issues, to try for a mechanistic system with fairness, transparency and no detriment is to have a circle that cannot be squared.

John Swinney: There is a necessity for dialogue to take forward some pretty difficult issues that will be contained in the fiscal framework. It is preferable to get them to the point where they require as little reinterpretation, interpretation or revision as possible in the years to come, but anyone who goes into the process thinking that, once there is a fiscal framework, there will be no requirement for revision, reinterpretation or further debate thereafter is engaged in wishful thinking.

The Convener: That is clear. Thank you once again for your evidence, cabinet secretary. Are there any further points that you want to make to the committee?

John Swinney: No.

The Convener: Thank you. I call a recess until 11:45 to enable members to have a break and to allow for a change of witnesses.

11:37

Meeting suspended.

11:45

On resuming—

Carers (Scotland) Bill: Financial Memorandum

The Convener: Our next item of business is to take evidence on the financial memorandum to the Carers (Scotland) Bill from the Minister for Sport, Health Improvement and Mental Health. Mr Hepburn is joined today by Dr Maureen Bruce of the Scottish Government. I welcome our witnesses to the meeting and invite Mr Hepburn to make an opening statement.

The Minister for Sport, Health Improvement and Mental Health (Jamie Hepburn): Thank you, convener. I am delighted to be back at the Finance Committee. I am also grateful for the opportunity to appear before you today to speak about the financial memorandum to the Carers (Scotland) Bill. As you say, I am joined by Dr Maureen Bruce.

As you know, the aim of the bill is for adult and young carers to be better supported on a more consistent basis, so that, if they wish to continue to care, they can do so in good health. I am sure that we all share that ambition for Scotland's carers. They should have a life alongside caring. We intend to achieve that by extending the rights of carers and young carers in law. We also want to accelerate the pace of change.

In order to achieve our aims, we need to resource the bill's provisions and, in particular, to ensure that local authorities are adequately resourced. I hope today to provide you with the necessary assurances that the Government's financial assessments are as good as they can be, although, as we concede in the financial memorandum, there are challenges in making the estimates.

The challenges primarily arise because the uptake of the new rights will be demand led. Predicting how quickly carers will take up their new rights and the numbers of carers involved presents a particular challenge. A reasonable starting point must be the extent to which carers presently take up their rights. It is fair to say that the existing position or baseline is very low. We believe that the introduction of new rights would not mean a sudden reversal of that but rather a build-up in uptake over several years.

Another important cost factor is the average unit cost of the new adult carer support plan, the young carer statement and support to be provided to carers. My reply to your request for further information sets out the methodology and assumptions that were used to determine the average unit costs.

In recognition of the challenges in estimating demand and unit costs, I see merit in further work to refine the assumptions set out in the financial memorandum and the underpinning detail. That is why we will set up a finance-led group with key stakeholders, including the Convention of Scottish Local Authorities and carers organisations. The group will consider cost estimates in further detail. It will also aim to establish a clear understanding of risks and how they can best be mitigated.

The group will build on the considerable level of engagement with local authorities and national health service boards that was established when they were all invited to complete a detailed questionnaire to help inform the financial memorandum. As I undertook to do in my letter to you, convener, I will keep the committee apprised of the group's work.

Another factor may have an impact on the potential cost of implementing the bill. It relates to regulations that set out the circumstances in which charges are waived for support to carers. Some local authorities say that they are having issues with the operation of the current regulations. We are working with key stakeholders, including COSLA and the national carers organisations, to find a solution. If any mechanism that we seek to introduce at stage 2 of the bill to do with the waiving of charges has cost implications, the financial memorandum will, of course, be revised to take into account any additional costs. That point was set out in the original financial memorandum, and I was able to re-emphasise it in my letter to you, convener.

I know that my officials brought in COSLA to the thinking on the cost estimates. Of course, there are challenges in building up the estimates, but I think that COSLA could have presented its own estimates to us—it was certainly given the opportunity to do so. Indeed, that opportunity remains, and perhaps it can be best taken forward through the group that I have referred to.

An important point is that the existing funding through local authorities and NHS boards will remain in place. Local authorities are using those resources now to support carers and should continue to do so. If, however, a significant difference between the estimates and the costs arises as the bill is implemented, we will need to look at the issues again in light of the overall Scottish Government financial settlement. We will also need to look at the options available to us at that time alongside other commitments, just as we would in the setting of any budget process.

That is all that I have to say at this stage, convener. I am happy to deal with any questions that the committee has.

The Convener: Thank you. As you know, I will start with some opening questions, and I will then open the session to committee colleagues. First, I thank you for the correspondence that you have engaged in with the committee.

When the bill team was asked whether the cost of replacement care would be a major cost of the bill, it responded:

"I think that it is fair to say that a further financial memorandum should be presented".—[*Official Report, Finance Committee*, 13 May 2015; c 68.]

Is there any intention to present a further financial memorandum at this stage?

Jamie Hepburn: This is a critical part of the process. In the financial memorandum that was presented, we set out the issue that had arisen, and I have set that out in my opening statement.

We are exploring the issue further, and it could be that we seek to make some changes at stage 2. We have let the Parliament and the Finance Committee know at the outset that that is a possibility. If that involved substantial change to the terms of the original financial memorandum, we would of course—as we have set out in the financial memorandum—present a supplementary financial memorandum. As a former member of this committee, I recognise that it is critical for the committee to assess the financial implications of legislative provisions rigorously.

That was a long way of saying, yes, there would be such an intention.

The Convener: Thank you for that. We are well aware that, when the Government produces a financial memorandum, it cannot always be absolutely spot-on: we consider best estimates. The concerns that have been brought to the committee's attention are that, for many stakeholders, they are not the best estimates. For example, you will be aware that Social Work Scotland commented in relation to the unit costs in the financial memorandum that

"the selection of the lowest and highest options is biased."

The organisation went on to complain about the average of £176 being a high-end estimate. Therefore, the overall costs themselves are lower than what Social Work Scotland believes to be the case in reality.

COSLA wrote:

"Given that the FM itself describes the £176 as the average unit cost, it is COSLA's view that, in presenting a range of unit costs in the FM with £176 at the top of the range, this is misleading."

Jamie Hepburn: I certainly would not accept that we were seeking to mislead anyone or that we have presented biased information. The process of gathering the information has essentially been

led by COSLA, which has been intimately involved in the gathering of the available data that we have had to work with. That was set out in the annex that came with my letter to you. We can only work with the available information that was gathered and presented to us. There is no attempt to present the costs in a biased form or to present them in any way other than the clearest possible fashion.

I think that I am right in recollecting that we conceded that there are some other average costs that we did not include in our consideration because they seemed to us to be outliers. It was not only the higher figures that we did not include when we came to our estimate; we also discounted some of the lower estimates. If we had included one group of figures rather than the other, we could have been open to accusations of bias.

I understand that there are concerns, and I suppose that that is why we have stated our willingness to establish the finance-led group. Paragraph 7 of the financial memorandum makes it clear that we are willing to have more information. We are aware that COSLA has concerns.

I note that I have met the COSLA spokesperson for health and wellbeing, and I made the offer to him and his colleagues that, if COSLA has alternative estimates and an alternative methodology, we are very willing to see them. Thus far, COSLA has not sent anything to us. I reiterated that offer in a letter to the spokesman, but we have not had anything thus far. We are doing what we can to engage with COSLA, speaking with its representatives about any concerns that they have. We have invited COSLA to take part in the finance-led group, too. We have not had a reply thus far, but I am sure we will have one soon.

The Convener: When did you contact COSLA?

Jamie Hepburn: We contacted it about the finance group last week, I think.

The Convener: It is probably a wee bit early for it to get back to you.

Jamie Hepburn: Potentially. I should add that others who have been invited have got back to us. That is not a criticism of COSLA per se; I am just making the point that the offer is there and that the organisation is yet to get back to us.

The Convener: It will probably have to consult its members.

The issue is not just the amount of money but the scale. The financial memorandum suggests a 16 per cent increase in adult carer support plans over five years, but North Ayrshire Council has said that it is estimated to be at

"53% in the first year not as stated in the bill 'when carers come forward'".

There is also an issue about people having their annual carers plan reviewed, as that would increase the uptake of these resources.

Therefore, the question is not just about the amount but the scale. It seems to me and, I believe, to other members of the committee that there is a wide divergence. The problem is not that there is a divergence—we expect that in all bills, as you will know, minister, having discussed many bills when you were a committee member—but this bill seems to contain a tremendous differential in the range of uptake that local authorities anticipate compared with the Scottish Government's estimates.

Jamie Hepburn: I think that we all accept that the provision will be demand led, and it is difficult to forecast what that demand might look like. However, I was a former member of the Finance Committee, and I know that it expects us to say more than that, so we have attempted to present our best estimate.

The forecast that we have set out is not unreasonable for a variety of reasons. My first point is that there is currently a low baseline of an estimated 12,000 adult carers who are receiving a carer's assessment, so that must be our starting position.

The removal of the regular and substantial test for someone to be eligible for the assessment process will not in itself result in a large increase in the number of carers requesting an assessment because, as we know, the majority of councils do not use that test. Indeed, we have supportive quotes from local authorities about the removal of that barrier to assessment. Aberdeenshire Council told us that it will improve equity and consistency.

Not all those who decline a carer's assessment will want to go through the new process. Some might—perhaps those who feel that the current assessment is stigmatising—but others will decline it because they are content to be involved in other procedures such as the community care assessment of the cared-for person. We want to challenge this view but some people do not perceive themselves to be carers; furthermore, some already feel supported—that is clear from the questionnaire returns. A number of those people will probably not request an assessment.

There was also a suggestion that the provision should be compared to free personal care, but that is not a fair or direct comparison. It is reasonable to expect that the take-up of free personal care is higher than the take-up of the new rights in this bill, certainly initially. That is primarily because those entitled to free personal care already receive local authority services—in many cases, in a care

home. That makes it much easier to raise awareness of the new rights, and it means that the cohort of people who are targeted by the provisions are already in contact with the state.

We have done our best to come up with what we think is a reasonable estimate. I accept that it is an estimate, but this is a demand-led process and the committee will want as much information as possible. It is right for the committee to seek that through any financial memorandum presented, and that is what we have tried to do.

The Convener: I want to move on to a couple of areas and then I will round things up before I open up the debate—I know that colleagues want to ask about some specific areas that I have been deliberately avoiding.

In their submission, the national carers organisations note that

"the costing for the duty in relation to the provision of Adult Carer Support Plans appears to be based on the model of a one-off intervention"

but that

"an outcome based support plan is a process, rather than a single event."

The national carers organisations also state:

"it is important that all staff who carry out this task have the correct skills to do so and are experienced in working directly with carers ... additional training and learning may be required and will have associated costs."

They say that because they are concerned that there might be cost reductions for ACSPs due to changes to the mix of staff grades and skills. In other words, they are afraid that the people who carry out those assessments will not be as qualified as perhaps they need to be. Can you address those two issues?

12:00

Jamie Hepburn: I will deal with the second one first.

I understand where the perception might come from. The point that we are trying to make is that, although we are implementing provisions that ensure that people have certain rights, we are not being entirely specific about how that might be delivered on the ground in each local authority area. It is for the local authority to determine how it implements the assessment process. That could involve, for example, working with third sector organisations, which we know happens in some areas in terms of carers' assessments—there are some good examples of that happening on an extremely cost-effective basis. There is a range of options for the delivery of the assessment process.

On the concerns that have been expressed by the national carers organisations about unit costs, am I right in thinking that you are talking more about the cost of support than the cost of assessment?

The Convener: Basically, the national carers organisations are saying that, although the costs have been assessed on the basis that there is a one-off intervention, we are actually talking about an outcome-based support plan. That means that the costs have been underestimated, because there are additional costs to what has been considered by the Scottish Government.

Jamie Hepburn: Again, all that we can do is work on basis of the best information that we have. The unit cost of support is based on research. Interestingly, given that the concerns are being expressed by carers organisations, that research was done by a carers organisation—once known as the Princess Royal Trust for Carers but now known as the Carers Trust. The estimates work for the provision of direct bespoke support, excluding information and advice, which is costed separately. Of course, one of the essential provisions of the bill is that there should be an information and advice service in each local authority area.

The unit cost that we have presented comes from a carers organisation. Again, we can only go on the information that we have available to us.

The Convener: I appreciate that, but we all want the legislation to be successfully implemented. I will make one final point before I open up the discussion to colleagues.

There seems to be a distinct pattern throughout the financial memorandum. In terms of the unit costs, the average that the Scottish Government has assessed seems to be lower than the stakeholders suggest that it is. Similarly, in terms of the scale—the number of people who would have to be assessed—the Scottish Government's estimate seems to be lower than the stakeholders' estimate. In terms of the model, the Scottish Government does not seem to have assessed the full cost in terms of the on-going support that is required. Finally, in terms of training and staff needs, there seems to be an underestimate based on the fact that the people expected to do the work are less qualified than those who might actually do it.

There seems to be a pattern across the board—this touches on things that John Mason and others want to talk about. Stakeholders usually look at a financial memorandum and say that they expect that things will cost a bit more or a bit less, but the problem with this financial memorandum is that, according to stakeholders, the cost underestimates seem to be pretty consistent.

When all of those underestimates are put into one package, we are talking about quite a significant sum of money. That is a major concern that I have about the legislation.

Jamie Hepburn: I can understand that concern. With good will, I would make the point that we have presented a methodology and presented where our estimates have derived from. However, in these critiques, I am not hearing people saying what they think that the costs will be and stating how they have arrived at that position. That is particularly the case in relation to COSLA's criticism of the unit cost of the assessment process.

We will be reasonable. We are more than willing to engage in continuing dialogue with the stakeholders to hear the concerns that they have. We have done that thus far, and we will continue to do so. Of course, at some stage, they will have to provide some information so that we can assess what their perspective might be and see what the best estimate might be. I have not heard any of that so far.

The Convener: Thank you for that. I will open up the session now. The first person to ask a question will be the deputy convener.

John Mason: As you probably realise, minister, we met the bill team at our previous meeting on this bill and spent a bit of time talking about replacement care, and that is the area that I am interested in. The bill team said:

"COSLA and some local authorities have told us that it is unfortunately not possible to say whether replacement care benefits the carer or the cared-for person. If it benefits the carer, the charges would be waived. If it benefits the cared-for person, normal charging would apply."—[*Official Report, Finance Committee*, 13 May 2015; c 61.]

I understand that, but I feel that an ordinary person reading or hearing it would find it frustrating and a little bit odd that we are getting bogged down in such discussions. Let us suppose that a carer goes away for a week. If it is a young person going to a camp or on some kind of holiday, that is great. While the carer is away, the person who is being cared for will probably need to go into a care home, although there might be other ways of dealing with their care needs. Can we not break through the question of who benefits? I think that it is primarily the carer who is benefiting, but maybe the cared-for person also gets a bit of benefit. Must we get bogged down in that?

Jamie Hepburn: I hope that we do not get bogged down in it, but you are certainly getting to the nub of the issue at hand. We are presently discussing that with COSLA and with the carers organisations to establish the best way forward.

There are regulations out there. What we are responding to is a concern from certain local

authorities that say that they are having difficulty in interpreting those regulations. I am pushing my officials to make sure that I am getting the best possible evidence to see what the picture is on the ground, but we will continue to have dialogue with those stakeholders, with COSLA, with local authorities and with the carers organisations. To return to the convener's opening question, that could result in us presenting fairly substantial amendments to the bill at stage 2, which could require a supplementary financial memorandum, which I know the committee would take an interest in at that stage.

John Mason: The convener has already thanked you for the correspondence, and I appreciate it as well because it has clarified one of the points that I was raising. When we talked about waiving charges, I was not sure whether that meant only the local authority's charges or whether it could include a third party's charges. Your correspondence has confirmed that it would include a third party's charges, because if a charge was waived, it would mean that the local authority would take it on and would not pass it to the service user.

Jamie Hepburn: That is correct. I hope that I have understood Mr Mason's example; you can correct me if I am wrong. It is my understanding that the only interaction with the private sector in the process would be that a private sector provider might be commissioned by a commissioning authority—a local authority, most likely—to provide some element of care. I am not even convinced that the Parliament is empowered to demand that private organisations waive their charges, so it would be the commissioning body—that is, the local authority—that would waive the charges.

John Mason: My fear was not that we would force anyone to waive the charges but that it would stop the cared-for person getting the care, and therefore stop the carer going away, so it would block the whole process. I am reassured to hear that that is an option.

It seems to me that, if the cared-for person has to go into a care home, and if their carer is a young person—presumably because there are no other family or friends available to care for them—the options will be either to bring in enough daycare to keep the person at home or to have the person go into a care home. My assumption is that those are the two main options.

Jamie Hepburn: That gets to the very nub of the legislation that we are trying to introduce. In those circumstances, we would be considering the young carer's statement, which is an assessment-driven and needs-driven process for identifying their needs, and that will be different in different circumstances. It could be the case that, in some circumstances, alternative family members are

able to provide some short-term care, although they cannot provide the long-term care that the primary carer who has gone through the assessment process can provide. There could be different options available.

John Mason: Presumably, we could at least make an estimate. We could say, for example, that 50 per cent could be cared for at home and 50 per cent would need to go into a care home, or that it would be 75 per cent and 25 per cent.

Jamie Hepburn: Potentially, I suppose. We are starting to get into the realms of second-guessing where the process of dialogue with the stakeholders might take us.

John Mason: But surely that would be more of a needs issue. We could discuss with COSLA and local government who would pay, but what if the person needs to go into a home because there are no other family members?

Jamie Hepburn: I suppose that an estimate could be made, but I should point out that the whole point of this bill process is to ensure that the system is very person centred and very much driven by individual carers' needs. It is also quite hard to make an estimate because we presumably do not have all the available data, and people who are not yet in the system are going to be involved.

John Mason: But we know, broadly speaking, what it costs to put someone in a care home.

Jamie Hepburn: But that takes us into the realm of having to look at where such care becomes replacement care and where we get into the waiving of charges. I am loth to start putting down estimates that could be of no relevance to the committee and this process.

John Mason: It strikes me that we would know, say, the £500 cost for the care home, but we would still not know how that would get split up between the Scottish Government, local government and the family. We would know the total cost, but we would have to negotiate how it was split up.

Jamie Hepburn: Potentially, but I am not quite clear where your question is taking us.

John Mason: Basically, my point is that we would know or could estimate some of the costs, but a separate question is who pays for them.

Jamie Hepburn: Okay. Your question touches on two areas. Some of this could come out in the assessment and what the person is entitled to, and we have set out the average unit cost for that where it touches on the waiving of charges. I suppose that the point that I was trying to make in seeking to be helpful to the committee was that if, at this stage, we tried to estimate the potential cost of any particular provision, it might not be all that

helpful, because we have not yet worked out what the provisions will look like. That is why I think it more appropriate to provide that information in a supplementary financial memorandum.

John Mason: Thank you.

Gavin Brown: Fairly late in the day at the previous evidence-taking session on the financial memorandum, Scottish Government officials said:

“The cost of replacement care could be in the region of £30 million across Scotland—that is at present prices.”—*[Official Report, Finance Committee, 13 May 2015; c 68.]*

Does that mean £30 million per annum?

Jamie Hepburn: I would need to clarify that absolutely, but I suspect that that would be the case.

I know that we are talking about £30 million, and I know from my experience on the committee that Mr Brown is always concerned about large sums of money for any specific provisions that we take forward, so I caveat my comments on that basis. However, I urge the committee not to get hung up on the £30 million as it relates to the area that we have just been discussing, because it encompasses a whole range of expenditure. Indeed, some of that expenditure is happening at this very moment. The £30 million is therefore a fairly broad-brush figure and is, perhaps, a starting point for us to analyse how we take forward the waiving of charges.

Gavin Brown: Okay, but my question was whether the £30 million is an annual figure.

Jamie Hepburn: I am sorry—I thought that I had answered that. Maureen Bruce will correct me if I am wrong, but my expectation is that you are correct.

Dr Maureen Bruce (Scottish Government): I am fairly certain that that is the case, but we can confirm that absolutely.

Gavin Brown: If you could, that would be great. The financial memorandum makes a range of assumptions, but you must have done some work to be confident enough to state that £30 million figure publicly. Are you able to share with us either today or, again, in writing how that £30 million is built up?

Jamie Hepburn: Of course. Having committed to come back to you in writing to clearly establish whether the £30 million is an annual figure, I will commit to providing a further breakdown of what it relates to, if the committee will find that useful.

Gavin Brown: Definitely. The reason why it is so important is that, given that the maximum annual cost of the bill as a whole is somewhere in the region of £80 million, the £30 million is potentially the biggest single slice of that.

Jamie Hepburn: Absolutely, but I suppose that the point that I am trying to make is that the figure is not likely to be £30 million, because, as I understand it, that figure covers money that is already being spent just now. It encompasses a wider range than would be covered by the waiving of charges for replacement care, if that makes sense.

Gavin Brown: It does, and I am sure that your letter will clarify the position exactly. The committee is interested in what additional expenditure there will be as a consequence of the bill. If some of that money is already being spent, that is not expenditure that is being driven by the bill. I am keen to find out what the additional expenditure is.

12:15

Jamie Hepburn: That comes back to my point that we have not quite established the provisions that we want to put in place. It is contingent on us agreeing that we will take forward specific provisions on the waiving of charges. There are regulations in place at the moment, but we are responding to concerns that have been raised by local authorities. If we put in other provisions that require additional Government expenditure, we would provide that in advance of stage 2, in the form of a supplementary financial memorandum.

However, I take on board your point and I understand the need for the committee to have as much information as possible. We will try to break down that £30 million figure for the committee and we will clarify whether our view that it will be an annual figure is absolutely correct.

Gavin Brown: I take you to the table between paragraphs 79 and 80 of the financial memorandum—it does not have a number. The issue raised by the Scottish Government and others is that there is some dubiety in certain cases as to whether the key beneficiary is the carer or the cared-for person. If the beneficiary is the carer, charges can be waived, but if it is the cared-for person, they are generally not waived. I understand that distinction. In the table, you have estimated the number of adult carers who you think are likely to receive support in each of those financial years. My question is this: if those adult carers have been formally assessed under the system set up by the bill and the decision taken by the assessors is that those adult carers are entitled to some form of help and support, will it not be the carer who is the beneficiary in almost all cases, because that is the assessment of the professionals undertaking the work?

Jamie Hepburn: Yes, but the table relates more directly to the current provisions in the bill. The issue of whether replacement care benefits the

carer or the cared-for person more is tied up with the whole issue of waiving of charges, which is not covered in the table that you refer to.

Gavin Brown: Perhaps I am missing something here, but if the adult carer has been assessed professionally as being deserving of and requiring a break or some other form of respite, surely the beneficiary is the carer. It is not as though someone has gone into care for a week and the carer has said, "Oh right, well I'm just going to take a holiday." It is a formal assessment that the carer is entitled and so the key beneficiary is the carer.

Jamie Hepburn: If the short break was determined as part of that assessment, we cannot get away from the fact that the carer would be the primary beneficiary.

Gavin Brown: Is it a safe assumption that almost all the carers in the table—153,811 in 2021-22—will be the beneficiaries?

Jamie Hepburn: Not all those people will necessarily get a short break identified as part of their carer's assessment. We are perhaps talking at cross-purposes. The issue is not so much the short break that they are entitled to but whether the replacement care that would be necessitated as a result—and this is what local authorities say they are having difficulty assessing under the current provisions—is of primary benefit to the carer or the cared-for person. That is what we are trying to bottom out. That is what we are talking to COSLA and local authorities about. We cannot escape the fact that a short break, which may necessitate the replacement care, is of benefit to the carer if that break has been identified as part of that carer's assessment.

Gavin Brown: I accept that not all the carers get a break and there are various assessments. However, based on the current position, could you not make a working assumption on what percentage of people are likely to be assessed as requiring a short break, rather than some other form of respite, and could you not then use the same assumption, to work out what percentage of carers sent on short breaks qualify for the respite care to be paid for or the charges to be waived? There must be some data that you could use to at least estimate the figure.

Jamie Hepburn: We said in the financial memorandum that there will be an extra £2.36 million for short breaks, which comes from an assessment of the additional number of carers that we believe will be entitled to short breaks through the new process. We have therefore undertaken that assessment, Mr Brown, and that information is in the financial memorandum.

Gavin Brown: You have a figure for the number of carers entitled to short breaks, based on the current figures. For every 100 carers who go on a

short break currently, you must have some idea of how many of the people for whom they care are entitled to the charges being waived and how many are not. That information must be available.

Jamie Hepburn: Yes. Ultimately—again, Maureen Bruce can correct me if I am wrong—it is local authorities that will hold that information, and part of our engagement with local authorities is to try to establish exactly what the picture is. Indeed, it is primarily for me, as the minister with responsibility for the bill, to try to establish what exactly is the nature of the problems and concerns that have been identified by the local authorities in interpreting whether replacement care is of benefit to one party or another.

Gavin Brown: Let us consider the table on page 46 of the financial memorandum, but on a slightly different issue. I have been discussing replacement care cover, but I will move on to a different issue. Some people have suggested that you have underestimated the overall number of people who are likely to be entitled to receive support. If we look at the figure in the table for adult carers for 2017-18, we see that your assumption is that 11,175 people will be entitled to support of some description, which is 2 per cent of the carer population.

Jamie Hepburn: Just to clarify, it is not so much about who is entitled to come forward to seek support.

Gavin Brown: You have said that it is those who are likely to receive support.

Jamie Hepburn: Yes.

Gavin Brown: So the figure in the table is not for people who come forward for support: it is your estimate of the number of people who will receive it.

Jamie Hepburn: Yes. It is an estimate of how many of those who come forward will be entitled to support.

Gavin Brown: No. You say in the table that the figure is 2 per cent of the carer population.

Jamie Hepburn: Yes. That is correct.

Gavin Brown: Right. You are saying that 2 per cent of the carer population will receive support in 2017-18, but in paragraph 81 of the financial memorandum you say that the surveys that you have read

"show that ... 4 per cent of carers ... said they receive short breaks or respite care".

If your previous surveys show that 4 per cent of carers get that, why are you suggesting that the figure will be 2 per cent in 2017-18, at a time when a lot of advertising on the issue will have been done? I would have thought that the percentage in

2017-18 will be higher than the current 4 per cent if you are advertising the support and telling people that they are entitled to it.

Dr Bruce: The nature of the support is important, because what is being referred to is a bespoke form of support. We estimate that, at the moment, less than 2 per cent of carers have the carer's assessment, so we are starting from a very low baseline. Even from that starting point, if 2 per cent of those who are currently assessed come forward for the new support plan or for a review for the new support plan, a range of general support is available to them, such as advice and information services. We know from pretty robust research that that is tremendously beneficial and that, from our understanding of what carers want, it is the second priority for them.

The first thing that carers want is that the services for their cared-for person are right and that the person is being properly cared for through their health and social care. When carers begin to think about their own needs, the second thing that they want is information and advice. That is why there is a commitment to continue to provide that through the NHS and through local authorities commissioning services from the voluntary sector, which has real skills in the area, with the local authority having a role in co-ordinating advice and information. That commitment is important for us. There is also the option of accessing local community services that are available to anyone in any community who needs particular support.

There are also financial estimates for the provision of bespoke support when the options that I described are exhausted. That can include things such as short breaks and advocacy that carers need and want but which cannot be provided in other ways.

Gavin Brown: You state that, in 2017-18, 11,175 carers will receive support; that is your projection. What is the raw number of carers receiving support in the current or previous financial year? If you do not have those figures to hand—

Jamie Hepburn: I do not know whether we have that information to hand—we might need to come back with it.

Gavin Brown: That would be useful; I just want to ensure that I am comparing the right things. It strikes me that, on the face of it, the numbers appear to be going down slightly, but you are spending £3 million a year on giving information and advice.

Jamie Hepburn: It is probably best if we try to clarify that in writing.

Gavin Brown: Okay. My last question is on what happens if the charges have to be waived

and local authorities have to carry the cost, as it were. You are going to bring another financial memorandum to the committee. In advance of that, do we have a broad commitment from the Scottish Government that it will underwrite the cost?

Jamie Hepburn: We need to agree, and we are in dialogue with local authorities. If anything arises from that process and we decide to take it forward, the answer will likely be yes, but we are currently engaged in trying to work out what that may be. The process involves dialogue with local authorities, and part of that is about how we pay for the provisions for whatever is put in place.

Gavin Brown: Thank you.

Richard Baker: I have one question, as Mr Brown has covered some of the areas that I was going to cover. That last point is crucial, because replacement care could end up being the biggest cost of the legislation, and it is not in the financial memorandum as it stands. I appreciate that the minister said that there will be a further financial memorandum to come. Could the issue of who would be entitled to replacement care funding be resolved in the legislation at stage 2 to provide clarity in that area?

Jamie Hepburn: Yes, I think that it could be. That is at the nub of the whole thing, and that is what we are seeking to do.

Richard Baker: So you will bring forward a financial memorandum but, in addition, you may lodge amendments to the bill to provide clarity on the legal status.

Jamie Hepburn: Sorry, I should make it clear that we will present a further financial memorandum only if we lodge amendments at stage 2. I think that we would be required to do so under the standing orders of the Parliament if we substantially altered the financial commitment that would fall on Government—or indeed on any other party—as a result of the legislation. We would produce a further financial memorandum on the basis that we were seeking to amend the bill.

Richard Baker: Just to be clear, are you seeking to amend the bill?

Jamie Hepburn: That is the working assumption, but we are engaged in dialogue on the matter just now. There are regulations at present that should cover these matters, but local authorities have made the point that they have difficulties with the provisions, and we are indicating our willingness to engage in dialogue with them.

Richard Baker: Absolutely, minister, but we want to ensure that, if Parliament is to proceed with the bill, the funding is there to make that part of the bill relevant and to enable it to work in a

meaningful way so that young carers can get the respite that they need.

Jamie Hepburn: Of course.

Richard Baker: It is important for us, whatever the circumstances, to have an indication of what the cost will be now and in the future.

Jamie Hepburn: Of course.

Malcolm Chisholm: Will the Government's amendments be intended to clarify the regulations?

My other question is about what happens if you do not reach an agreement with COSLA. Will you just have to impose something, because you accept that the bill requires that?

Jamie Hepburn: It is not so much about imposition; I am trying to make the point that regulations and guidance exist at present. We are responding to a concern that local authorities have expressed to us, and we are reasonable people so we want to engage in dialogue with them. Ultimately, if that requires us to amend the bill to clarify matters further, and if that results in additional financial commitments from the Administration, we will not only lodge the amendments but present the supplementary financial memorandum. I cannot give much detail on what the amendments will look like, because we are engaged in an open process with those who have raised the concerns. In addition, it is crucial that we talk to the carers organisations about the issue.

Malcolm Chisholm: Would it be fair to say that the Government itself has a clear view of its interpretation of the regulations? Although you are describing all this in terms of dialogue with COSLA, do you have a view on how the regulations should be interpreted?

12:30

Jamie Hepburn: That is why I am not only seeking further information from my officials but trying to get the perspective of local authorities. I am clear that there are regulations; I am less clear on their efficacy and how they are working on the ground. I want to establish the picture.

Again, I am happy to keep the committee apprised of where we are taking the work, although it might be the Health and Sport Committee that takes a greater interest in the specific policy provisions.

Malcolm Chisholm: What is the likely timescale for all that? When do we expect stage 2 of the bill?

Jamie Hepburn: Let us try to get through stage 1 first.

Malcolm Chisholm: You have the summer to do the work, basically.

Jamie Hepburn: Indeed, yes. We do not expect to conclude stage 1 until after the summer recess, so that gives us a period of time in which to continue the work. I should say that that work is of paramount importance. If we are going to take the provisions forward in the bill, we do not want to delay the process. Carers out there are keen and hungry for the bill to proceed. They have views on other changes that could be made to the bill, and we will seek to engage with carers organisations in that respect. I do not want to do anything that will delay the bill unduly.

The Convener: Given that the stage 1 debate is not going to happen until after the summer recess, is there any reason why we cannot have a supplementary financial memorandum before that?

Jamie Hepburn: Can I reflect on that, convener? I suppose that we are still in the realms of assuming that a supplementary financial memorandum will be necessary, but if—and it is still an “if”—there is a need for one, I commit to getting it to the committee as soon as possible.

The Convener: Okay—thank you. We will correspond on that issue. Do you want to raise any further points with the committee?

Jamie Hepburn: No. I will just say that I know, as a former committee member, that the committee takes its financial scrutiny responsibilities very seriously. If we can provide any additional detail, we will—as we have always done—commit to doing so, particularly with regard to Gavin Brown's areas of interest. If there are other issues, convener, please do not hesitate to contact me again.

The Convener: Thank you, minister. I thank Dr Bruce too. That concludes our public deliberations today.

12:32

Meeting continued in private until 12:36.

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