



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# MEETING OF THE PARLIAMENT

Tuesday 25 June 2013

Session 4

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## Scottish Parliament

*Tuesday 25 June 2013*

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

### Time for Reflection

**The Deputy Presiding Officer (Elaine Smith):**

Good afternoon. The first item of business this afternoon is time for reflection. Our time for reflection leader today is the Reverend Matthew Bicket, who is minister at Carnoustie Panbride church.

**The Rev Matthew Bicket (Minister, Carnoustie Panbride Church):** In 1977, I went to work with the Church of Bangladesh as an agriculturist, and for six years my home was in that amazing country. Over the years since, I have made a number of visits, taking members of my congregation to help build churches and refurbish schools.

I made a personal visit in October last year and, over three weeks, I renewed friendships and met a number of people I used to know. I visited the place where I first worked and met two young men I had not seen for 30 years. There was much laughter as we reminisced. They reminded me of my attempt at using my Bengali language “skills”, when I had prayed very fervently, “God bless the devil and protect us from children.”

But I was humbled when some of those I met told me about things that I had forgotten about, such as the letter that I had written in Bengali to the youngster whose mother had died, and who still had the letter. Others remembered the interest that I had taken in them, such as the times that I had travelled to their home villages, staying in their homes, to get a better understanding of where they came from. How grateful they were for the trouble that I had taken to stay in their homes, with no electricity and often not even basic facilities.

I had long forgotten any perceived difficulties, but they still remembered that I had come to stay with them. The young man of 39, whom I had not seen for over 30 years, remembered that I had come to his sixth birthday party and brought sweetmeats and read the bible in Bengali and prayed for him and his family. During my three weeks, I was able to visit people in their homes, sit with them and share their wonderful hospitality. There was genuine gratitude for someone taking the trouble, as they saw it, to visit them. I did not see it as any trouble at all—it is what building up relationships is all about.

What struck me forcefully was the importance of the people in the local communities and

congregations. The Church of Bangladesh has, at its core, relationships built up with people of all faiths. What the boys remembered were little things, but these little things build up relationships. In the work that we all do, whether in a parish or in a constituency, it is people who matter. Let us never forget that.

## Business Motions

14:03

### The Deputy Presiding Officer (Elaine Smith):

The next item of business this afternoon is consideration of business motion S4M-07138, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a revised business programme for today.

*Motion moved,*

That the Parliament agrees to the following revision to the programme of business for Tuesday 25 June 2013 and Thursday 27 June 2013—

Tuesday 25 June 2013

delete

2.00 pm Time for Reflection – Reverend Matthew Bicket, Minister, Carnoustie Panbride Church

*followed by* Parliamentary Bureau Motions

*followed by* Topical Questions

*followed by* Stage 3 Proceedings: Crofting (Amendment) (Scotland) Bill

*followed by* Stage 3 Proceedings: Land and Buildings Transaction Tax (Scotland) Bill

*followed by* Business Motions

*followed by* Parliamentary Bureau Motions

6.00 pm Decision Time

*followed by* Members' Business – S4M-06245 Dave Thompson: Review of Specialist Heart Failure Nurse Services

and insert

2.00 pm Time for Reflection – Reverend Matthew Bicket, Minister, Carnoustie Panbride Church

*followed by* Parliamentary Bureau Motions

*followed by* Member's Oath/Affirmation – Mark McDonald

*followed by* Topical Questions

*followed by* Stage 3 Proceedings: Crofting (Amendment) (Scotland) Bill

*followed by* Stage 3 Proceedings: Land and Buildings Transaction Tax (Scotland) Bill

*followed by* Financial Resolution: Victims and Witnesses (Scotland) Bill

*followed by* Business Motions

*followed by* Parliamentary Bureau Motions

5.40 pm Decision Time

*followed by* Members' Business – S4M-06245 Dave Thompson: Review of Specialist Heart Failure Nurse Services

Thursday 27 June 2013

delete

5.00 pm Decision Time

and insert

4.30 pm Decision Time—[*Joe FitzPatrick.*]

*Motion agreed to.*

**The Deputy Presiding Officer:** The next item of business is consideration of business motion S4M-07130, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for the stage 3 consideration of the Land and Buildings Transaction Tax (Scotland) Bill.

*Motion moved,*

That the Parliament agrees that, during stage 3 of the Land and Buildings Transaction Tax (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1, 2, 3 and 4: 20 minutes,

Groups 5 and 6: 50 minutes,

Groups 7 and 8: 1 hour and 20 minutes,

Groups 9, 10 and 11: 1 hour and 30 minutes.—[*Joe FitzPatrick.*]

*Motion agreed to.*

## Affirmation

14:05

**The Deputy Presiding Officer (Elaine Smith):** I invite Mark McDonald to make a solemn affirmation.

*The following member made a solemn affirmation and repeated it in Doric:*

Mark McDonald (Aberdeen Donside) (SNP)

## Topical Question Time

14:06

### “Scotland’s key transport infrastructure projects”

**1. Patrick Harvie (Glasgow) (Green):** To ask the Scottish Government what its position is on the affordability and public reporting concerns raised in Audit Scotland’s report, “Scotland’s key transport infrastructure projects”.(S4T-00416)

**The Minister for Transport and Veterans (Keith Brown):** We welcome the report, as we continuously look at ways of improving our processes.

On affordability, ministers have introduced a limit on how much of future budgets—that is, the total departmental expenditure limit—should be committed to capital investment now. The 5 per cent limit is an important part of the sustainable financial framework that we have put in place. Audit Scotland shows in paragraph 95 of its report that the five transport projects are affordable within that limit.

On public reporting, we have always been clear that non-profit-distributing and rail investments will be financed over the long term from future revenue. It should be noted that Audit Scotland acknowledges in exhibit 1 of the report that four out of five of the projects are still in procurement, so much of the information is commercially sensitive and cannot be disclosed on a project-by-project basis at this stage.

In its recommendations to the Scottish Government, Audit Scotland notes that the long-term revenue commitments for projects should be reported to Parliament once contracts have been signed. We will do that.

**Patrick Harvie:** As in many such reports, there is a mixed picture in the Audit Scotland report. There are things that the Government can take comfort from, but there are also significant criticisms. It has been suggested that, when Audit Scotland says that Transport Scotland is not fully demonstrating the reliability of its analysis of what projects will cost—as with the Aberdeen western peripheral route, for example—that is just longhand for the word “guessing”. The Aberdeen western peripheral route business case was signed off when everybody knew that the ultimate cost would be dramatically higher than was stated. Does the Government accept that the report contains serious criticisms and that Opposition members have felt for a long time—as did Scottish National Party members when they were in opposition—that there has been a lack of proper scrutiny of some of the most major spending

decisions that Executives or Governments have taken, and that that needs to be addressed for the long term?

**Keith Brown:** I agree with Patrick Harvie that there is much in Audit Scotland's report that commends the work that the Government has done, particularly on the project management of the Forth road crossing, which is the biggest infrastructure project that the Parliament has undertaken. The report is very complimentary about the processes that have been gone through and the fact that, to date, that project is on target in respect of time and budget—in fact, elements have come in under budget already.

As I mentioned in my substantive answer, the other four projects are currently in the procurement phase. Some of them are not even contracted out yet. It is therefore not possible to be as explicit as we would like to be on aspects that are commercially sensitive. It is also not possible to be as specific as we would like on the ultimate cost, because we will not know that until bids have been received.

Patrick Harvie highlights some of the recommendations in the report that we will want to consider, not least on public reporting, which I think he touched on. To that end, I have asked that we have a debate that goes through these projects, so that any remaining questions can be asked. We have been making sure that the scrutiny required to ensure that the projects are on time and on budget has been put in place, through the infrastructure investment board and processes in the Government.

The proof is in the pudding. The M74 and the M90 are projects that we have successfully completed on time and sometimes under budget. That is a record that we will try to continue.

**Patrick Harvie:** I do not want to get drawn into a debate about whether particular transport projects are supported or not in policy terms. The minister seems a little bit reluctant to acknowledge that there are long-standing criticisms of Transport Scotland as an agency that need to be addressed. Does he intend to, as recommended,

“review and update by December 2013 its current business case development and assurance processes”?

Will those reviewed and updated processes include a much broader analysis of the factors that should be taken into account in deciding whether a business case should be proceeded with, such as environmental and social impacts, which currently are not given the place that they should when these major infrastructure projects are debated?

**Keith Brown:** Audit Scotland's recommendations and comments on the business case for these projects were, in essence, around

process and not necessarily around scope, as Patrick Harvie has drawn it.

We want to listen to what Audit Scotland has to say, as it has a great deal of expertise in this area. With the projects that we have undertaken and completed up until now, we have shown that we have business case processes that are robust. Of course we want to listen to any further comments. Patrick Harvie says that there are “long-standing” concerns, and he has the opportunity to write to the Government on those concerns. I am happy to commit that we will provide him with a full response.

There will also be the opportunity—whether through the Public Audit Committee or the chamber, in the debate that I mentioned—for members to ask questions on this area and get detailed answers.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** Does the minister agree that there would be a lot less concern about the affordability of transport infrastructure projects if the Chancellor of the Exchequer heeded the call from the Scottish Government and a range of other bodies and economists to use this week's spending review to change course and invest in capital spend?

**Keith Brown:** Jamie Hepburn makes a very good point. Our capital budget has been cut by 25.1 per cent in real terms between 2010-11 and 2014-15. In response to that, and because we have not wanted to delay investment, we have had to look to alternative ways to finance our transport investments. We hope that the chancellor will see sense tomorrow and announce a significant increase to our capital DEL budget in 2015-16.

It is worth pointing out that we have had decades of underinvestment. Even with one hand tied behind our back, due to the cuts that I mentioned, we have taken the tough decisions to start to bring Scotland's transport infrastructure into the 21st century, even if many of these projects should have been undertaken and completed in the 20th century.

Jamie Hepburn's point about the budget cut has some resonance today, now that we have seen the note that Liam Burns left for the incoming coalition Government, in which he said, “there is no money.” That is the context in which we are taking forward this huge transport infrastructure pipeline of projects.

**Richard Baker (North East Scotland) (Lab):** Will the Scottish Government complete a new project execution plan for the Aberdeen western peripheral route by September, as Audit Scotland recommends? Will it provide reassurance that the project will proceed on time, even though Audit Scotland described the NPD funding programme intended for the route as “risky”?

**Keith Brown:** We recognise that there is always risk involved in projects. We try to make adequate provision, for example by following the procedure for adjusting for optimism bias that is recommended by the Treasury.

In the case of the Forth bridge project, it is worth noting that we have taken on the risk of inflation and so far have delivered the project ahead of schedule and ahead of budget. We take risk into account. The 30-year period includes a large number of projects and a large sum of money—£7.5 billion—and of course there is risk in that. Our job is to manage the risks.

We will look at Audit Scotland's recommendations, as well as what the Public Audit Committee has to say, before taking a view on the recommendations in due course.

### Tenant Farmers (Right to Buy)

**2. Tavish Scott (Shetland Islands) (LD):** I intimate my entry in the register of members' interests.

To ask the Scottish Government what its policy is on tenant farmers' right to buy in light of the comments by the Cabinet Secretary for Rural Affairs and the Environment at the Royal Highland show on 20 June 2013. (S4T-00407)

**The Minister for Environment and Climate Change (Paul Wheelhouse):** The cabinet secretary has confirmed that the forthcoming review of agricultural holdings legislation will provide the opportunity for people to have their say on all aspects of tenant farming, including the right to buy.

**Tavish Scott:** While I share the Government's frustration about the lack of availability of new tenanted farms in Scotland, does the minister accept that the Government's position means either working through the existing arrangements to achieve an agreed way forward with all agricultural sectors or having a statutory tenant farmers' right to buy? Does he accept that the Government's position has created the very uncertainty that it wished to avoid by ensuring that no tenant farms will become available for rent until it decides its policy? When will it clarify the policy?

**Paul Wheelhouse:** I do not agree that no opportunities for new tenancies will arise, not least because the Government is purchasing land on the national forest estate to make new opportunities available to tenant farmers. In addition, the cabinet secretary announced last Thursday at the Quality Meat Scotland event at the Royal Highland show a new tenancy opportunity at the bull studs in Knocknagael near Inverness.

The public sector can do much to improve the availability of tenancies. I recognise that there are concerns about the potential implications in terms of people being deterred from bringing forward new tenancies. However, it would be unrealistic to expect a review of agricultural holdings not to consider right-to-buy issues when we know that that is the elephant in the room. That has been the case for at least 10 years. To enable the industry to move forward, it is important that all key stakeholders have their opportunity to enter into full and frank dialogue. The review of agricultural holdings legislation will give stakeholders that opportunity.

**Tavish Scott:** I thank the minister for that straight reply in accepting that there is an uncertainty that I suspect we all wish to avoid. Does he recognise that many people at a recent NFU Scotland conference on the tenanted farm sector argued that the best way to increase the availability of farms is to encourage retiring owner-occupier farmers to rent out farms long term? Does he agree that that is what the Government should be trying to achieve? Does he recognise that the Scottish Tenant Farmers Association said last Thursday that the cabinet secretary's statement could "blow the STFA apart"? None of us believes that that is sensible, so does he accept that the Government must repair those relationships that are essential for constructive reform?

**Paul Wheelhouse:** I recognise that the issue is a heated one. To enable the industry to move forward, we need to lay the issue to bed once and for all. I know that some tenant farmers are in favour of that; clearly, some are against. I understand the reasons for that, so we will give everyone the chance to let us know their views. The member's idea was interesting. That is exactly why we must have the exercise, to see whether there are alternatives that will deliver on the policy objectives. To deny the opportunity to have that debate would be a mistake.

**The Deputy Presiding Officer (Elaine Smith):** A number of members want to ask a supplementary question, but I am afraid that there will not be enough time for everyone to do so. However, if we have quick questions and answers, I might get in a couple of members.

**Rob Gibson (Caithness, Sutherland and Ross) (SNP):** Tenant farmers and the STFA agree that tenant farmers have suffered increased uncertainty over their rent reviews since the Moonzie and Salvesen judgments. Will the minister comment on that? Those judgments have contributed to the demands for a fresh discussion on the right to buy.

**Paul Wheelhouse:** The recent judgments have created uncertainty and the Government wants to

take forward proposals, particularly in relation to the *Salvesen v Riddell* case, which has posed immediate challenges for us. Fortunately, we have a window of opportunity—it was helpful that the judgment allowed us that extra time—in which to deliver a solution. The member rightly highlights that, if the system was working perfectly, we would not be in the position that we are in, with this issue constantly emerging. As I said, it is the elephant in the room and we must address it at some point.

**Alex Fergusson (Galloway and West Dumfries) (Con):** The minister mentioned the need for new ideas. Does he recognise that the tenant farming forum, NFU Scotland, the rent review group, the STFA and a myriad of other stakeholders have been working tirelessly to achieve exactly that and to introduce a vibrant sustainable tenanted sector? We all want to achieve that, but the cabinet secretary's announcement has made that considerably less achievable. Does he agree that that announcement has undermined the work of those organisations?

**Paul Wheelhouse:** I do not think that the announcement undermines that work. The issue that we must address is that the system is not working well, as Rob Gibson and other members said. Despite the desire of Scottish Land & Estates, ministers, NFUS and the STFA, the number of tenancies is not increasing. The review will offer the opportunity to look at potential solutions. It would be a mistake to deny people the opportunity to discuss right to buy. Submissions have already been made to the land reform review group, and that evidence can be taken forward into the forthcoming agricultural holdings legislation review.

**Claire Baker (Mid Scotland and Fife) (Lab):** The cabinet secretary's announcement reignited the debate on the right to buy. What steps will the Scottish Government take to secure the rights of existing tenants, including tenants who are on limited partnership leases or who are going through rent reviews, to ensure that they will not be adversely affected while the debate takes place?

**Paul Wheelhouse:** I assure the member that the cabinet secretary is keen to take forward preparations for the review as soon as possible. A timetable for the review will be announced during the summer. I hope that that will give people certainty about the timescales that we are dealing with as we address outstanding issues. If the member wants to address her question to the cabinet secretary, I am sure that he will be happy to meet her to discuss forthcoming proposals.

## Crofting (Amendment) (Scotland) Bill: Stage 3

**The Deputy Presiding Officer (Elaine Smith):** The next item of business is a debate on motion S4M-07106, in the name of Paul Wheelhouse, on the Crofting (Amendment) (Scotland) Bill.

14:21

**The Minister for Environment and Climate Change (Paul Wheelhouse):** It gives me great pleasure to open the stage 3 debate on the Crofting (Amendment) (Scotland) Bill, especially because it is clear to me that there is strong support for the bill across the Parliament and that owner-occupier crofters should soon be able to apply to the Crofting Commission to decroft their land.

There has been debate about the drafting of the bill, but the support that has been received from almost all quarters to enable the Scottish Government to put in place measures to resolve the issue has made the hard work and effort extremely worth while. The bipartisan approach that colleagues from all parties have taken sets a good example of how the Parliament can operate. Given the known complexities of crofting law, which I have recognised, who would have thought that a satisfactory conclusion was possible before the summer recess? Yet here we are, facing that very prospect.

At its most fundamental level, the bill does what it says on the tin: it will allow owner-occupier crofters to apply to decroft their land and it will grant the Crofting Commission the power to issue decrofting directions. It will also give retrospective effect to the legislation, to ensure that owner-occupier crofter decrofting decisions that the commission has taken previously are competent. The bill will also provide a right of appeal for people who might have been dissuaded from appealing a decision after the commission announced in February that it could no longer accept such applications.

When the issue was brought to my attention, my initial reaction was to consider why the legislation was framed in such a way. I considered whether there was an alternative administrative solution, as some stakeholders suggested. However, rather than dwell on the past or give further consideration to workaround solutions that might fail, I quickly concluded that a robust fix was required. I decided that it would be far better to focus on a legislative fix, which would leave no doubt that the legislation delivers the initial policy intent.

Given the range of legal opinion, it was clear that the existing legislation did not deliver the

policy intent. There was evidence that people were being adversely affected. A solution therefore had to be put in place quickly, which is why I asked Parliament to consider an expedited process for the bill. The Parliament agreed to such an approach.

The process has been successful, but it has also been challenging. The strict timetables and the need to ensure that all matters were carefully considered and that stakeholders had an opportunity to contribute were particularly important. The expedited process was justified in this case, because owner-occupier crofters were disadvantaged, but that does not mean that it should become the norm.

Some people called for emergency legislation, but I wanted to ensure that the Parliament would have the opportunity to consider the bill carefully and to apply an appropriate level of scrutiny. I am satisfied that the Parliament has gone through that necessary process, to ensure that the bill will deliver its purpose. The Rural Affairs, Climate Change and Environment Committee and a number of learned legal witnesses concluded that it will do so.

I have no doubt that the bill will deliver what is intended, and I am pleased that there is broad consensus on that. However, I recognise that there have been differing views on how the legislation should be drafted. I addressed such views, along with other issues, during stages 1 and 2.

We now have an opportunity to ensure that we help owner-occupier crofters who have been unintentionally disadvantaged as a result of a flaw in the Crofting Reform (Scotland) Act 2010. Therefore, I want to focus on the bill and its intentionally narrow scope. I also want to take the opportunity to explain briefly why the Scottish Government has not lodged any amendments.

Before stage 2, I considered carefully all the issues raised in the Rural Affairs, Climate Change and Environment Committee's stage 1 report. The Scottish Government responded in writing to that report on Tuesday 11 June and set out its position on the various issues raised.

The committee's report recommended that the Scottish Government give appropriate consideration to whether any of the issues raised required amendments to be brought forward. I gave detailed and careful consideration to the views of Sir Crispin Agnew and others on drafting, and I sought an appropriate level of assurance that the bill is fit for purpose. Following due consideration, I concluded that the bill as drafted achieves its purpose and that it provides the necessary clarity and legal certainty to solve the

problem that it set out to address. That view was supported by the committee in its stage 1 report.

The committee also recommended that the Scottish Government give careful consideration to the views expressed on a number of matters, including the definition of "decrofting direction", the application of section 25 of the Crofters (Scotland) Act 1993, and the protection of access to croft land. Again, the Scottish Government has addressed those issues in its response to the committee's report.

I welcome the committee's support for the provisions on retrospection. The bill will ensure that all 159 decrofting directions and the 44 cases held in abeyance are competent. In addition, the Crofting Commission has said that it will deal with all outstanding decrofting applications as quickly as possible, for which I am grateful.

As I have said previously, the ability to decroft should not provide an opportunity to speculate on croft land to the detriment of crofting. We all have a responsibility to ensure that crofting remains sustainable for future generations, because no Government can do that alone. We need to establish and maintain cross-party support to ensure that crofting remains sustainable and continues to deliver benefits.

The committee's stage 1 report and the Scottish Government's response also addressed issues that are not included in the bill. I am all too aware that there are other issues to be addressed, both legislative and administrative, but that will not happen overnight. We all need some time to take stock and to ensure that what we do next is right for crofting and for remote and rural Scotland. That will take some very careful consideration, and it is only right that such consideration involves the key stakeholders.

I do not think that another committee of inquiry on crofting is required, but I do think that the other issues highlighted during the course of the bill need to be addressed carefully, fairly and objectively if we are to ensure that crofting continues to provide cultural, social, economic and high-nature-value farming benefits. That is why I gave an undertaking to the Parliament during stage 1 of the bill that my officials will

"investigate, in consultation with stakeholders, what the best method might be for dealing with the outstanding issues".—[*Official Report*, 6 June 2013; c 20857.]

Stakeholders should therefore expect contact from my officials to arrange a discussion on the next steps for crofting.

I will not try to cover all the points here, but I can assure the Parliament that all issues were carefully considered. I am still a relatively new minister, with a direct portfolio interest in crofting, but I have already had the opportunity to visit the

crofting counties on a number of occasions and I have seen for myself the benefits that crofting delivers: strong communities working together to ensure that land is worked in a beneficial and sustainable way; innovative crofters contributing to the economic vitality of local economies across the crofting counties; the breathtaking landscape, environment and hospitality that we can all enjoy as a result of crofters' hard work and stewardship of Scotland's countryside; and the particular, strong contribution to the cultural diversity of this great country, whether that be in our island communities or on the mainland. Those attributes align very closely to the Scottish Government's purpose and reflect the national outcomes and priorities that we are delivering.

The bill will not solve all the challenges that crofting brings, but it does ensure that one particular decrofting issue is resolved as quickly and fairly as possible. There has been a concerted team effort in the development of the bill, and I would like to thank those who have played a part in getting us to this point.

First, I thank the members of the Rural Affairs, Climate Change and Environment Committee and their clerks, who with their characteristic good grace took on the challenge of the expedited process and ensured that appropriate consultation and scrutiny of the bill took place.

I also give my sincere thanks to all those who gave evidence and contributed to Parliament's deliberations on the bill. That includes the Crofting Commission, the Scottish Crofting Federation, NFU Scotland, Scottish Land & Estates and other organisations, legal specialists in crofting law and other individuals. I am extremely grateful to them all for their contributions.

I also thank officials, both in Parliament and in Government, who have worked tirelessly to give us a bill that meets its purpose. Finally, I thank members across the chamber for the consideration that they have given to what is a complex area of law.

We have worked together to get this far, and I hope that, once again, we can all work together to ensure that the bill is passed for royal assent and is put on the statute books as soon as possible to bring to an end the uncertainty that has caused such difficulty for individuals. I commend the bill to the Parliament.

I move,

That the Parliament agrees that the Crofting (Amendment) (Scotland) Bill be passed.

14:29

**Claudia Beamish (South Scotland) (Lab):** Scottish Labour is optimistic that, in spite of the

complexities that are involved, the bill will be passed at stage 3 with the cross-party support that has been shown in the chamber. The bill will address the problem that is faced by those who have been affected by the flaw in the 2010 act relating to owner-occupied crofters and the decrofting of land.

In the stage 1 debate, I highlighted Scottish Labour's concerns about the need for all possible amendments to be lodged at stage 2 to enable committee and parliamentary scrutiny. In an expedited process, the pressures are much greater, with little time between stages. I therefore thank all those who were involved in moving things forward quickly. As it turns out, there were no amendments at stages 2 and 3.

I also thank the minister for the clarification that he provided at stage 2. The minister's explanation in his opening remarks to the committee reassured us that the Scottish Government's legal team had considered the alternative suggested wordings. He said:

"The Scottish Government considered the detailed drafting issues that were raised; I can promise the committee that we have gone over them in some detail. However, as it is drafted, the bill achieves its purpose. A number of key witnesses to the committee ... all agreed that the bill delivers on the purpose that the Government has set out of giving owner-occupiers the ability to decroft."— [Official Report, Rural Affairs, Climate Change and Environment Committee, 12 June 2013; c 2410.]

That reassurance was given and there has not been any comeback on that.

In Scottish Labour's view, it is right to have had a truncated process to enable those in limbo due to the Crofting Commission putting 44 applications on hold to proceed and to allow those who were unable to apply to decroft to be reconsidered. If the bill is passed, it will be important that the process is speedy. I therefore seek reassurance from the minister, in his closing remarks, that that will be the case.

Other issues relating to decrofting were raised with the committee when we took evidence on the bill, including house building, diversification and renewable energy development. Foremost among other issues were the definition of what constitutes an owner-occupier crofter and the issues faced by multiple owners of distinct parts of the same croft. However, Scottish Labour is of the view that it is right to consider those and other decrofting issues after the bill has been passed, to ensure that the appropriate consultation process takes place, as the minister has highlighted. The minister has already given us the timeframe for that.

Perhaps the only thing that we all seem to be clear about is the opaqueness of crofting law. The stage 1 debate produced a number of interesting points from members, not least of which was Alex

Fergusson's metaphor of crofting legislation as the mythical Hydra—as soon as we think that one aspect of the legislation is sorted out, another two problems arise.

If Alex Fergusson wants to continue with his classical references, his answer to the problem of crofting law might be Alexander the Great's creative solution to untangling the Gordian knot. Rather than repeatedly trying to untangle the knot, the best solution might be simply to cut through it with a single stand-alone piece of legislation. That may or may not be the way forward; it is for us all to work together as best we can to find what is best for crofters in the future.

Before closing, I add some new thoughts relating to crofting. Nourish Scotland is a non-profit organisation that has been

“set up to develop and promote a fairer and more sustainable food system in Scotland”

at a time when an increasing number of our citizens are becoming dependent on food banks, as I witnessed on Saturday when I attended the official opening of the Clydesdale food bank.

Nourish argues:

“Access to suitable land is one of the most significant barriers to developing vibrant local food economies in most parts of Scotland.”

It is argued that there is a demand for small productive units and that the Crofting Commission currently holds a waiting list of 150 in existing crofting areas. Nourish therefore calls for a target of 10,000 new crofts throughout Scotland by 2020. In addition, the Scottish Crofting Federation sees

“the development of crofting as the most appropriate model of land tenure for Scotland to achieve a food system that is environmentally sustainable, socially beneficial and a source of healthy, tasty food for the long term.”

Whatever members think of that suggestion, it is certainly food for thought.

Many of the issues that have been raised during the bill's passage pose questions about the structure of land ownership and tenure in Scotland. Those debates and decisions are for another day, and Scottish Labour is committed to addressing them along with others. Today, we support the passing of the bill and wish all those crofters who are affected a speedy and satisfactory solution.

**The Deputy Presiding Officer:** I call Alex Fergusson—four minutes, please.

14:35

**Alex Fergusson (Galloway and West Dumfries) (Con):** I think that I was advised that I had five minutes, Presiding Officer. Is that not the case?

**The Deputy Presiding Officer:** You have four minutes, I am afraid.

**Alex Fergusson:** Right.

I ended my contribution to the stage 1 debate by saying that I was not particularly looking forward to stage 2. I said that because I felt pretty certain that the Government would lodge some amendments to address the concerns that had been raised by eminent specialists in crofting law in evidence to our committee.

I do not want simply to repeat the arguments that most members made during stage 1, but I think we can all agree that crofting law is a nightmare of complexity, which tends to throw up a plethora of unintended consequences whenever it is tinkered with. We all witnessed the criminal—I meant to say “eminent”; I am not sure what Freud would have to say about that—expert lawyers plainly disagreeing with one another, although it should be noted that it was agreed unanimously at the 2012 meeting of the crofting law group that the bill would need amendment.

Crispin Agnew raised a number of concerns during our evidence sessions. Rather than being about whether the bill would address the unintended consequences of Parliament's previous efforts to amend crofting law in 2010, they were about the lack of integration with the Crofters (Scotland) Act 1993. He said of the bill:

“The provisions are in a complicated set of sections that stand alone, with no attempt to integrate them with the rest of the 1993 act. Problems may arise from that ... There is no clear link-up to all the various sections. It is very difficult to achieve that in the crofting context, but that is my concern—the legislation is perhaps overcomplicated.”—*[Official Report, Rural Affairs, Climate Change and Environment Committee, 15 May 2013; c 2193.]*

Sir Crispin went on to detail a number of instances in the bill in which he felt that greater simplicity was needed to provide more clarity in an area of legislation that we all know badly needs it. In one of his final comments to the committee, he said, quite simply, that, “The bill is vague”.

Given that evidence and more, I was quite surprised that the minister did not lodge some amendments at stage 2. I asked him why he had not done so at the committee meeting on Wednesday 12 June. His reply was, essentially, that, having examined the bill in the light of the stage 1 evidence, his team was satisfied that the bill would achieve its purpose. However, no one was questioning that. The concerns that were raised were about whether the drafting of the bill was likely to give rise to further unforeseen consequences.

In his response to me, the minister went on to say:

“The Scottish Government is committed to drafting in as plain and accessible a manner as is consistent with achieving the necessary outcome.”—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 12 June 2013; c 2410.]

Given that statement, I cannot help but agree with Brian Inkster when he said that it would have been good and useful to have seen a detailed rebuttal of the concerns that were raised with the committee and an explanation of why they apparently did not need to be addressed. Sadly, that level of detail has been lost amid the urgency that is required to pass the bill.

I take the minister at his word—my knowledge of the subject is not detailed enough to do otherwise—but, as I suggested in a previous debate, the bill could come back to haunt him. I genuinely hope that I am wrong in that prediction, but I could not help but notice Brian Inkster’s statement that

“The crofting lawyers in question have actively tried to reduce that workload by seeking to assist the Scottish Government in the drafting process. However, the Scottish Government in rejecting that assistance appears content to increase the workload those lawyers will have by adding to the complexity of crofting law. So be it for now.”

I guess that it has to be a case of

“So be it for now”.

We must all sincerely hope that the bill’s pluses greatly outweigh its minuses. Most of us played a part in the creation of the problem. As I said at stage 1, it is a clear measure of the complexity of crofting law that no one—neither the Government, the Parliament nor legal experts—picked up on it at the time.

We support the Government in its efforts to secure the passage of the bill, as we think that it is right to do so. If nothing else, the retrospective aspect of the bill will ensure that the 159 crofters whose applications have been processed can sleep soundly in their beds in the knowledge that the law is once again firmly on their side. We will support the bill at decision time.

**The Deputy Presiding Officer:** We come to the open debate. I am afraid that time is very tight. Speeches should be of a maximum of four minutes.

14:39

**Rob Gibson (Caithness, Sutherland and Ross) (SNP):** I support the bill’s clarification of where owner-occupier crofters stand on decrofting and its restoration of the policy intention behind the 2010 act.

At the outset, I put on record my deprecation of anyone who infers from what has happened that the minister, the officers and the Rural Affairs and Environment Committee did a rush job in 2010.

Their intentions were indeed honourable. Naturally, this Parliament will give post-legislative scrutiny to all acts of Parliament. That work is partly achieved in the bill that we are discussing, and will be achieved in various other ways that have been mentioned already.

The crofting lawyers who discussed this matter obviously have a wealth of knowledge. However, many of them accepted that this bill covered the narrow point that needed to be dealt with, and our committee was unanimous in agreeing that that was so. That means that we can allow those nearly 200 people to move on as quickly as possible.

The Scottish Government responded to the criticisms that have been made. However, lawyers and others who have asked for the Scottish Government to reveal its legal knowledge should understand that that is not what Governments do, so they should stop asking for that kind of information. What we can do is have a debate when the Government comes forward with the means to discuss the different points that have been raised in the other part of the report on the bill that we are discussing today.

We can see that the arguments about owner-occupier crofters have taxed many of the critics. However, the situation is quite simple: someone can register as an owner-occupier crofter, which brings them under the ambit of the legislation and gives them protection if they wish to decroft. The people who argue that certain owner-occupiers who are crofters are concerned should understand that the simple answer is for those crofters to get registered. Thereafter, we can deal with the other matters as they come along.

It may be that Parliament and politicians are increasingly treated as some kind of joke. In certain discussions about a sort of crofting song contest, it was suggested that our committee should get a score of six out of 10 for trying. Frankly, that does not reflect the seriousness with which we dealt with these matters, and I would like to put on record my suggestion that those who wish to make those kinds of remarks should leave it to us to do that and, if they are lawyers, should offer us some advice rather than trying to grab headlines.

I am sorry to say that the approach I described was taken on more than one occasion. Eilidh I M Ross, of Inksters Solicitors said, in a written submission:

“it is simply not acceptable that the legislative framework which supports that system is such a shambles”.

It is not a shambles. It is not a mess. It is a matter of complexity, which we have inherited—indeed, it goes back to pre-devolution days, to the Crofters (Scotland) Act 1993 and before. Further, it is

something that will take time to sort out. When, in the previous debate on this topic, Tavish Scott asked whether we could do some consolidation, I said that it would probably take two committee meetings a week for the next five years to do that, which means that we cannot approach it that way.

This bill deals with a simple point. There are other points that have to be dealt with, and I look forward to dealing with them, if we can, in a simpler fashion in our committee. Meanwhile, I support the bill and I hope that it becomes an act.

14:43

**Jayne Baxter (Mid Scotland and Fife) (Lab):**

At stage 1, I spoke at length about some of the issues that have led us to the situation of having to amend such recent legislation, so I do not intend to revisit those points.

For the sake of the crofters who are currently attempting to decroft and who find themselves in limbo and for the sake of those who wish to begin to decroft, it is clear that we must make progress on trying to fix the existing problems. MSPs from all parties recognise the general provisions of the bill, and I therefore look forward to it being passed this afternoon. However, I am aware that the crofting law group remains concerned about the legislation, and I hope, therefore, that ministers and the Crofting Commission will be vigilant in monitoring the implementation and effectiveness of this legislation.

Although we have spent much time in our debates noting how baffling the complexity of crofting law is, what has come through clearly, even amid the confused tangle of crofting reform legislation, is the importance of crofting to communities in huge swathes of rural Scotland. From my MSP colleagues across the chamber, who assiduously represent their constituents in the crofting counties, I have learned that crofting is not just a business, a house or even a small farm but all of those things and more, and that crofts are integral to the preservation of the heritage and communities of many parts of the north and west of Scotland.

The Scottish Crofting Federation has highlighted that, for crofting to survive, we need not just security of tenure but viability for crofters and their crofts, too. A community's viability depends on many things: its economy, its transport links and its services. At its heart, though, are its people. The most successful communities have a diverse population that will flourish and can sustain it in future.

The Scottish Government's figures on population for rural areas show how fragile some communities are. While just over half—53 per cent—of the population of remote rural areas are

aged 45 and over, only 17 per cent are in the 16 to 34-year-old category. That compares with 42 per cent and 26 per cent respectively in the rest of Scotland. At either end of the scale, remote rural Scotland's demographic outlies the rest of the country.

Such figures can illustrate how crofting is not immune to the challenges faced by other sections of remote rural communities, with the loss of young people from where they grew up and the increase in the older population.

The Scottish Crofting Federation has noted how important new entrants are to crofting if it is to continue. We must therefore have a framework for crofting that is accessible and will encourage people to get involved.

I am grateful that we have reached stage 3 of this urgent legislation ahead of the summer recess, and I hope that the Crofting Commission will take appropriate action as soon as possible to help crofters who wish to decroft to get their plans back on track.

14:46

**Tavish Scott (Shetland Islands) (LD):** First, I thank the minister for the courteous way in which he has handled the bill. It helps enormously those of us who represent constituents in the crofting counties if we have a minister who is prepared to listen to the arguments. I recognise that Paul Wheelhouse has done exactly that.

I also thank Mr Gibson and his colleagues on the RACCE committee—that always seems like such a strange title so let me just call it the rural committee—for their forbearance in dealing with complex matters now and undoubtedly in future. Above all, I thank the crofters in Shetland who brought this shambles to my attention in the first place, because it affected owner-occupiers in the islands.

I am pleased that the Government has introduced the bill and I support it, as my party will tonight at decision time. However, as the minister recognised, there is an awful lot more to do. The minister mentioned the other fixes that will be necessary; as other members have said, they are considerable and varied. The minister made a point about how he and his department plan to address those issues. I suggest to him that officials could visit Shetland and other crofting counties to hear at first hand—which they will—about the practical difficulties that many crofters now face.

I welcome the fact that the minister said no to Shucksmith 2. I rather agree with his position. The issue is to get on and sort out the problems that undoubtedly exist.

I take Mr Gibson's point about Government legal advice, but I am sure that he would recognise that there is a big difference between that advice and the Crofting Commission's legal advice. I do not think that the Crofting Commission should be allowed to get away with simply hiding behind its legal advice, which is increasingly its position to those of us who are making representations to it on behalf of constituents.

I would not expect the minister to respond to the point today, but we are in the wrong place if crofters who are trying to resolve complex but in some respects straightforward issues are constantly told by the commission that they must take its legal advice—at the expense of taxpayers and crofters around the crofting counties—without the opportunity to question that legal advice. I hope that the minister might consider how best to challenge that issue, given the considerable powers that he and his colleagues have under the existing legislation that Mr Gibson mentioned.

Some in the crofting counties are very concerned that the entire edifice that is crofting law could collapse if concrete steps are not taken to put it on a much more level footing. Although that will not happen overnight, there are people I respect, who know the issue inside out, who say that the matter is at the tipping point. The minister has rightly dealt with the current problem, but there is much more to do.

I have two final points. First, as others have recognised, what we should be debating in relation to crofting is the production of quality beef and lamb around the counties, the livestock—cattle and sheep—that the crofting counties produce for breeding, the local food, and active local people in strong rural and island communities.

I suspect that what we may be debating in the coming months will be the September crofting law conference to be held in the Signet library here in Edinburgh. It now looks like too many of us will have to go along and listen to the lawyers, whom I think Mr Fergusson nearly described as criminals—I might or might not agree with that description; we will find out after the conference—debating the issues inside out.

I hope that, by the time that some of us attend the conference and listen carefully to what is said, the minister will have had a chance to talk to his officials and pull together some thoughts about the best way forward. I am sure that we can all agree on that point.

14:50

**Jean Urquhart (Highlands and Islands) (Ind):**

I commend the Scottish Government, as others have done, for the manner in which and punctuality with which it has addressed this issue.

I also thank the RACCE committee and the Scottish Parliament information centre for their helpful reports on the bill, which aid considerably in untangling some of the complexities of crofting legislation.

I am aware of the calls to include further changes to crofting law in the bill, which I believe would have only complicated the emergency procedure and perhaps diluted the reasons for its use. It was therefore prudent to leave those other considerations until after the recess and to focus exclusively on decrofting rights for owner-occupier crofters.

As I understand it, there are a number of issues surrounding the exact rights for owner-occupier crofters versus owner-occupiers. The minister indicated during the stage 1 debate that he would seek to clarify exactly how many owner-occupiers who are not owner-occupier crofters have been caught up in decrofting problems. Although technically outwith the scope of the bill, that is an indication of the many holes in the fabric of crofting legislation that require resolution sooner rather than later. I trust that the Government will continue to do what it can to clarify and simplify crofting law in the near future. I am sure that the minister has noted Brian Inkster's comments regarding the length and complexity of even this amendment bill and his opinion that there is not only an opportunity but a necessity for the Scottish Government to simplify crofting law.

Obviously, decrofting is the pressing issue and to tack other issues in crofting law on to this amendment bill would have slowed down the process considerably. I am aware that the crofting law group, which Tavish Scott mentioned, is meeting on 27 September for its annual conference, where it will discuss crofting law reform. I am really keen to see the Government continue to consult the group and those in the crofting community on the possibility of introducing further legislation after the recess to consolidate and simplify existing legislation.

Given the nuances and peculiarities of crofting, the various legal interpretations offered during the committee's evidence gathering and the expedited nature of that evidence gathering, I commend the Scottish Government for its responsible and expedient approach. It truly reflects well on the Parliament when it can identify and correct a problem, no matter the origin of the mistake.

For the benefit of the crofters of Scotland, we must now pass this amendment bill. After the recess, we can focus on the other areas of crofting legislation that desperately need to be changed. I support the bill.

14:53

**Nigel Don (Angus North and Mearns) (SNP):** I begin, as my colleague Graeme Dey has done previously, by picking up on what Derek Flynn, from the Scottish Crofting Federation, told the committee. Derek Flynn started by saying:

“The point is that owner-occupiers are not entitled to occupy their crofts”.—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 15 May 2013; c 2191-2.]

I deliberately foreshorten his quotation, partly because of time and partly because it demonstrates to anyone who has come to the debate rather late and is reading the *Official Report* just how complicated the whole subject is. How can Derek Flynn’s statement conceivably be right? I think that I now understand why it is true, but I am not sure that I would want to explain it to anybody else.

As I sat on the committee, Sir Crispin Agnew came along and immediately criticised this, that and the other. We received comments from Brian Inkster, which have been referred to already, including some received this weekend. What is abundantly clear to us—I happily put this on the record—is that even the experts cannot agree. I do not hold that against them; it simply tells me that this is an enormously complex area of law. We need to recognise that.

Am I sure that we are doing absolutely the right thing this afternoon? No, I am not. However, I am sure that I have confidence that the Government is doing its level best to get the right answer. On that basis, I will be very happy to support the bill this afternoon.

I want to reflect briefly on the timetable to which we have been working. We know that this is not a normal legislative timetable; the procedure has been expedited. The alternative would have been an emergency procedure. Many of us went through that procedure in the previous session. On that occasion, there was no time to lose. We had received a Supreme Court decision about criminal procedure and, quite frankly, we had to fix things more or less overnight if we were to be sure that our policemen could continue to arrest people and lock them up. With the benefit of seeing the evidence that has come before us over the past few weeks, it is now entirely clear to me that that would have been the wrong procedure. I confirm on the basis of the evidence that we have had that this expedited procedure seems to have been the right way to proceed. I say well done to those who made that decision.

I offer our genuine thanks to all those experts who wrote to us and came and spoke to us, no doubt at fairly short notice and at some inconvenience. We really could not have done

without that evidence, and it was very much appreciated—even if we did not understand everything that they said.

Is this the end of the road in the debate about crofting law? Plainly not—I am only repeating what others have already said. I am very grateful that the minister has just said that we will have time to take stock—I am sure that that is the right answer.

I am also grateful to Tavish Scott for his comments about what we should be talking about, which is the agriculture, the people and the communities. That is what the debate should really be about; it is what land law should always be about. The fact that we have to worry about the minutiae of how bits of legislation fit together merely confirms the complex position into which we have got ourselves—it is one from which it would be nice to extricate ourselves.

I have only one other thought at this stage of proceedings, which is to note that we have retrospective application of the bill. That is something that we should always be very careful about. Generally, we should know what the law is going to be in advance, and we should not fiddle with it afterwards. We know fine well why we are doing so on this occasion. I repeat my hope that we have got it right, and that the bill provides some certainty for those who have been inconvenienced over the past months. Let us hope that that is what the bill will achieve.

14:56

**Jamie McGrigor (Highlands and Islands) (Con):** I am pleased to close the debate for the Scottish Conservatives, and I hope that the bill will bring closure to this subject—although I somehow doubt it. I thank the members and clerking team of the Rural Affairs, Climate Change and Environment Committee for their work on the bill against a very tight timetable.

As we have said consistently since this unfortunate issue arose, we will support the passing of the bill at stage 3 today, as it is appropriate that action is taken swiftly to remedy the legal limbo in which owner-occupier crofters who wish to decroft have found themselves, through no fault of their own. I am pleased that the Crofting Commission has indicated that it will process the outstanding applications to decroft as quickly as possible and that it will be able to prioritise cases if particular deadlines face the individual crofters concerned.

Although we accept that the bill provides the necessary clarity to remedy the specific issue regarding owner-occupier crofters, a big theme of the stage 1 debate and the committee’s report—and indeed of today’s debate—has been the concerns about a significant number of other

apparent issues and anomalies arising from the 2010 act. Some of those concerns were voiced by members of the cross-party group on crofting, which I convened last Wednesday evening in the Parliament. They include concerns about the decrofting of a croft where there are multiple owners, the position of owner-occupiers who are not owner-occupier crofters and whether the first purchase of a tenanted croft triggers registration.

Brian Inkster told our cross-party group that members of the crofting law group will be gathering and discussing the issues in the months ahead, in advance of the group's annual conference in September. I welcome that, and I encourage the minister and his officials to engage constructively with the crofting law group, which has a significant amount of legal expertise, as the Government moves forward and seeks to address the issues.

I wish to raise a specific concern in relation to the 2010 act that was highlighted at our cross-party group meeting. It relates to crofters who register their crofts having to place an advert to that effect in a local newspaper, which can cost up to £100. Derek Flynn, chairman of the SCF, told the committee:

"If every crofter who has a croft—there are 18,000 crofts—has to pay £100 to explain that he has his croft in the register, crofting is paying £1.8 million to advertise the fact that the crofts are being put on the register. For what purpose?"—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 15 May 2013; c 2201.]

That is a lot of money. Will the minister comment on that and say whether he might consider that issue?

Concern was also expressed about which body in Scotland will actively support the development of new crofts. Crofting development, as opposed to crofting community development, is not within Highlands and Islands Enterprise's remit, for example. We were told that by Neil Ross of HIE at the cross-party group on Wednesday. There must be clarification about which body promotes crofting, and especially new crofts.

We support the bill, but we want ministers to look carefully at and respond to the many issues that have arisen during its consideration. Crofters deserve clarity from their legislators, and we want to have a legal underpinning for the sector that is robust and understandable so that we can focus properly on the policies that we can adopt to sustain the crofting sector and encourage it to develop in the years ahead.

15:00

**Claire Baker (Mid Scotland and Fife) (Lab):** The Crofting (Amendment) (Scotland) Bill has been quickly delivered through Parliament, and I

am pleased that we are concluding the process before recess. We all understand the unintended consequences that transpired from the 2010 act, and we know why the bill is necessary.

Of course, the minister cannot guarantee that there will be no further challenges, but the Parliament must be as confident as it can be not only that the problem of owner-occupier decrofting has been resolved, but that, as we move forward, we can be confident in our crofting legislation in general.

While we spend time bemoaning its complexity, we should not forget that crofting legislation can impact significantly on people's livelihoods and resources. As Peter Peacock stated during the passage of the Crofting Reform (Scotland) Bill:

"With the passage of every successive bill on crofting, it is almost inevitable that regulation becomes more complex."—[*Official Report*, 1 July 2010; c 28191.]

The complexity not only of this amending bill but of crofting law in general is known to many—if not all—members in the chamber today. Many stakeholders have used the bill process as an opportunity to express their frustration with crofting law in general and to discuss issues that are wider than those that the bill covers.

Although the bill deals with an issue that is time sensitive, I welcome the minister's comments on where the Scottish Government will go next on crofting. Tavish Scott summarised some of the key issues that need to be addressed, and it is important that the discussion on crofting continues after today.

We must carefully consider the evidence that was raised in committee by experts and stakeholders during scrutiny of the bill. We have been made aware of one unintended consequence of the Crofting Reform (Scotland) Act 2010, but we should not be complacent in believing that further challenges in the field of crofting legislation will not come to light.

For example, the definition of the term "decrofting direction" and the issue of protection of access to crofting land have not been fully addressed, nor have the complexities that arise if one of a group of multiple owners decides to decroft. The Scottish Government's head of crofting services indicated that the multiple ownership issue may affect up to 700 people, so it is clearly not an insignificant problem, and I hope that the minister can address it.

There are some 18,000 crofts throughout Scotland that house more than 33,000 people. Nearly 70 per cent of our national natural reserves and 60 per cent of our sites of special scientific interest lie within the crofting counties. Crofters bring many benefits to our country, but they face many challenges too. Those challenges are

economic in nature, and as a Parliament we should do all that we can within our powers to help crofters.

Jayne Baxter spoke earlier about the importance of rural communities. As I mentioned in the stage 1 debate, there is potential, with the active discussion of common agricultural policy reform and agricultural support, to provide greater support to crofting communities through the changes that will be made to the Scotland rural development programme. As we move from historic payments to area-based payments within the CAP, we must ensure that those opportunities are sought and found.

We have heard today from members on all sides of the chamber just how vital crofting is to some of our remotest communities, and we are aware of the benefits that it can bring. Those communities work the land and ensure its sustainability for future generations. For that to continue, crofting must be viable, and we must answer the big questions, which are not about how laws should be drafted or redrafted, but about how we support crofts and rural areas.

Earlier this month, a global meeting took place in Indonesia of *la via campesina*, which is a movement of more than 180 peasant organisations that together boast 200 million members in more than 80 countries. The Scottish Crofting Federation is a member, as is the newly formed land workers alliance in England.

Crofting has been around for generations, but that new movement values what small-scale farming can achieve and contribute. Although it is a global movement, it presents a vision for western farming and an alternative vision of what United Kingdom agriculture could look like in future: a vision that values farming's huge social and cultural dimension.

Large-scale farming certainly produces food, but so does small-scale farming, often with less environmental impact and greater community investment. In Scotland, we must look at targeting resources, in particular towards our less favoured areas. We must also consider the use of agricultural support, rural development mechanisms and greater support for housing in order to support and grow communities. We need more joined-up rural development in crofting, tenant farming, land reform and farming in general. We need greater decentralisation of jobs in the economy.

Crofting faces many challenges in this country but it has faced many challenges throughout its history. When we look at international examples, we can see that it has support and a future.

**The Deputy Presiding Officer:** Before I call the minister, I remind members that the use of

electronic devices in the chamber is restricted to the delivery of speeches. I also ask members to conduct conversations outwith the chamber.

15:05

**Paul Wheelhouse:** I am grateful to members for their speeches and their constructive approach this afternoon, and I will respond to some of their comments shortly.

First, I reiterate my thanks to everyone who has been involved in the Crofting (Amendment) (Scotland) Bill. It is clear that there is agreement across the chamber on a range of issues relating to the bill. Given what happened during stage 3 of the Crofting Reform (Scotland) Bill, I am particularly pleased that Parliament has not been suspended during any part of today's proceedings—at least, not so far.

Joking apart, we all recognise that crofting is swamped in complex and, it could be said—I have said it myself—impenetrable legislation. To complicate that legislation further must be a last resort for any Government. That is why the Scottish Government introduced a bill with standalone provisions to allow owner-occupier crofters to identify easily what decrofting provisions in the 1993 act relate specifically to them. It is the most straightforward and efficient way of dealing with the issue while delivering the policy intent that provisions should be similar for owner-occupier crofters and tenant crofters; the provisions are not exactly the same because of tenancy issues.

Many owner-occupier crofters are awaiting the solution offered by the bill, including those who have previously received a decrofting direction and who want to relax in the knowledge that the land remains decrofted; those who have applied to decroft land and are stuck in limbo until their application can be processed by the Crofting Commission; those who want to apply to decroft land for specific purposes but know that their application cannot be processed; and, not least, the Crofting Commission itself, which simply wants to get on with the job of regulating crofting but needs the tools to do so.

At decision time today, we will have the opportunity to pass a bill that addresses those issues and treats owner-occupier crofters in a way that is similar to the way in which tenant crofters are treated in relation to decrofting. I am pleased that that appears to be the approach that all parties are taking today. That was the intention of the Crofting Reform (Scotland) Act 2010, and we should put right the situation today.

As I indicated when I opened the debate, the ability to decroft should not be to the detriment of crofting. I will therefore ask the Crofting

Commission to pick up on a point that was raised about keeping under review the effects of decrofting by tenant crofters and owner-occupier crofters. If there is any foundation to concerns about speculation, we can consider our options to tackle them.

Members raised a number of issues today and I will address them as best as I can. Once again, Jayne Baxter made a thoughtful speech—I am sorry that she is not in the chamber—in which she raised the continuing concerns of the crofting law group about a number of issues. [*Interruption.*] There she is—I must have missed her. Those points were also picked up by Jamie McGrigor and Tavish Scott and perhaps others—I apologise if I do not mention them. I recognise the concerns that have been expressed during the passage of the bill and I look forward to working with the crofting law group and other stakeholders to address any issues that have been raised. I certainly look forward to hearing the messages that will come out of the conference in September.

Alex Fergusson raised the issue of a rebuttal of the concerns that have been raised about the drafting approach possibly having unintended consequences. I put on the record my thanks to Mr Fergusson for trying to look out for my interests—I appreciate that. To reassure Mr Fergusson, I note that the Scottish Government has carefully considered whether the approach that has been taken in the bill will have unintended consequences. The Scottish Government considers that the bill has helped to highlight issues that needed to be dealt with, such as the decrofting of croft houses, which might have been overlooked had we continued to take the approach outlined in the 2010 act. As I have tried to explain, the bill has been drafted in such a way because we want to match as best as we possibly can the provisions for tenant crofters and owner-occupier crofters. I appreciate that, to some, the legislation looks unnecessarily unwieldy and complicated, but in drafting it as we have done, we have guaranteed that the provisions for owner-occupier crofters are closely matched to those for tenant crofters and pick up on Parliament's intent in 2010 to deliver similar treatment under the law to tenant crofters and owner-occupier crofters. Although I appreciate that the purists wanted to simplify the legislation further, we are satisfied that it will deliver as well as it can similar provisions for owner-occupier crofters and tenant crofters.

Alex Fergusson also raised the lack of interaction with the 1993 act, which probably arises from the same issue. In reality, the bill inserts new provisions into the 1993 act and, in relation to section 25 of the 1993 act, it amends existing provisions to make the section relevant to the situation of owner-occupier crofters.

Jayne Baxter also said that ministers need to be vigilant in monitoring. I am not sure whether she picked up what I said earlier, but we have asked the Crofting Commission to monitor the effects of the legislation, and I look forward to hearing feedback from it.

Tavish Scott made a very good point that the debate should really be about the quality of the beef, lamb and other things that crofters produce. I certainly agree that the quality of beef and lamb from the crofting counties is second to none and should be celebrated.

Nigel Don raised the issue of retrospection. I hope that, in limiting the provisions to those 159 owner-occupier crofters who have already been issued with a decrofting direction and those whose applications are being held in abeyance—who might have missed an opportunity for appeal—we have kept the bill as tightly defined as possible to minimise any unintended consequences.

Jamie McGrigor picked up on the cost of advertising. I am certainly happy to look at the cost to crofters, which has been raised recently, to see whether there is any way in which we can overcome the issue. I certainly give him my assurance that we will take that forward.

Claire Baker raised some interesting and important points about the general thrust in terms of small farming units being particularly sustainable, given their low carbon footprint and so forth. We look forward to taking forward any ideas that may come out of the international movement that she mentioned.

As I said, the bill demonstrates the Scottish Parliament's ability to address issues quickly and effectively. It represents the culmination of cross-party support for a necessary change to legislation. I again thank members across the chamber for that support and for taking such a constructive approach.

We must vote the bill through now, and then we must carefully consider how to progress the other matters that have been raised by members and stakeholders. That will require commitment from a lot of people, but I am confident about what we can achieve, because we have demonstrated through the bill that we can work together when it matters most. I am sure that the bipartisan approach that has been taken has been warmly welcomed by crofters themselves.

I hope that at decision time, members will ensure that the bill is passed for royal assent to allow owner-occupier crofters once and for all to apply to decroft their land, as was intended. I again thank all the members for taking the time to consider the proposals that I have put to them.

## Land and Buildings Transaction Tax (Scotland) Bill: Stage 3

15:12

### The Deputy Presiding Officer (John Scott):

The next item of business is stage 3 proceedings on the Land and Buildings Transaction Tax (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings.

The division bell will sound and proceedings will be suspended for five minutes for the first division. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate.

### Section 2—Overview

**The Deputy Presiding Officer:** Group 1 is on returns relating to land transactions. Amendment 1, in the name of John Swinney, is grouped with amendments 13, 23 and 27.

**The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney):** Amendment 13 changes section 27, which allows for tax reliefs to be claimed. The amendment is consequential to the introduction at stage 2 of provisions on the taxation of leases.

It is possible that, when a transaction that involves a lease first takes place, there is no requirement to notify the tax authority and therefore no land transaction return is made. Later, however, if the rent is increased or if the period of the lease is extended, the lease may become notifiable and taxable. Amendment 13 will allow the tenant to claim a relief at that point on a return other than a land transaction return.

Amendments 1, 23 and 27 are minor amendments that broaden out references to land transaction returns in sections 2, 48 and 56 so that the sections relate to other returns as well.

I move amendment 1.

*Amendment 1 agreed to.*

15:15

**The Deputy Presiding Officer:** Group 2 is on minor changes that are consequential on stage 2 and other technical amendments. Amendment 2, in the name of the cabinet secretary, is grouped with amendments 7, 14, 15, 31, 36, 40 to 46 and 67.

**John Swinney:** The group of amendments covers three areas: some amendments are consequential amendments that flow from the addition of schedule 18A, “Leases”, at stage 2;

some amendments correct typographical errors in the bill; and others make minor drafting improvements. The amendments in the group make no other changes of substance.

I move amendment 2.

*Amendment 2 agreed to.*

### Section 5—Exempt interest

**The Deputy Presiding Officer:** Group 3 is on chargeable interest. Amendment 3, in the name of the cabinet secretary, is grouped with amendments 4 and 5.

**John Swinney:** Amendments 3 to 5 will amend section 5, “Exempt interest”. They are minor consequential drafting amendments that result from changes made to section 4 during stage 2. The phrase “an interest or right”, which occurs three times in section 5—at subsections (2), (4)(a) and (4)(b)—refers to what section 4 used to say, which was:

“an interest, right or power in or over land”.

Now that section 4 uses the phrase

“a real right or other interest in or over land”,

section 5 should be amended accordingly.

I move amendment 3.

**Gavin Brown (Lothian) (Con):** Amendments 3 to 5 flow from a change at stage 2 to the definition of chargeable interest. The definition was changed from

“an interest, right or power in or over land”

to

“a real right or other interest in or over land”.

There is no doubt in my mind that all three amendments are an improvement, as was the amendment at stage 2.

However, there is still some doubt about the use of the expression

“other interest in or over land”.

One of the sources that the cabinet secretary quoted at stage 2 is adamant that the definition still lacks clarity. In the absence of a better definition, we will support amendments 3 to 5, but will the cabinet secretary assure Parliament that the door on this is not entirely closed if further information comes to light from the experts whom he has previously quoted?

**John Swinney:** As part of formulating the bill, the Government sourced well informed advice to enable us to provide the clearest possible legislation. I am satisfied that the provisions that we strengthened at stage 2, which are reflected in the amendments in the group, will put us in a

position to have the best amount of clarity that we can have in what is a complex area of activity.

If, with the passage of time and the utilisation of the bill, we see deficiencies in the application and interpretation of the wording, the Government will reflect on the points that Gavin Brown has made. However, I am satisfied that the provisions before Parliament today are appropriate and worthy of Parliament's support.

*Amendment 3 agreed to.*

*Amendments 4 and 5 moved—[John Swinney]—and agreed to.*

### **Section 6—Acquisition and disposal of chargeable interest**

**The Deputy Presiding Officer:** Group 4 is on leases. Amendment 6, in the name of the cabinet secretary, is grouped with amendments 8, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 25, 29, 32, 35, 37, 38, 39, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 68.

**John Swinney:** I apologise for the long speeches that you have to make in chairing the proceedings, Presiding Officer.

The amendments in group 4, which the Presiding Officer read out, are all to do with the tax treatment of leases. Members will be relieved to hear that I do not intend to speak to every amendment in the group; instead, I will highlight some of the more important provisions that are covered.

Schedule 18A runs to more than 15 pages. As members will recall, it was introduced by amendment at stage 2. The length of the schedule demonstrates the complexities and technicalities that arise in seeking to apply taxation fairly and reasonably to the range of commercial situations that arise perfectly legitimately under property law.

In the Finance Committee's stage 2 session on 5 June, I indicated that my officials and the non-residential leases working group would have a further meeting on 11 June, which might necessitate further refining amendments to the leases schedule. A number of the amendments that are before members are the direct result of the constructive dialogue that took place in that meeting.

For example, amendment 55 will delete paragraph 13 of schedule 18A, which provides that any payment that is made before a lease is granted is to be treated not as rent but as a premium and taxed accordingly. Deleting that paragraph will remove an unnecessary presumption and mean that a payment that is made before the grant of a lease may be treated as rent if it is in fact rent, or as a premium, depending on the nature of the payment.

Other amendments that flowed from the discussions between my officials and the working group include amendment 6, which will ensure that the variation of a lease is not treated as the deemed grant of a new lease, except when paragraph 31 of schedule 18A applies; and amendment 65, which will remove paragraph 26 of schedule 18A. That paragraph would have covered something that does not happen in commercial practice.

I also indicated in the Finance Committee meeting that I would lodge further technical amendments to the bill at stage 3. Those are mainly amendments to earlier parts of the bill that were considered in the committee's stage 2 session on 29 May.

Many of the amendments in the group were lodged to meet the commitment that I gave. For example, amendment 21 is a consequential amendment to section 40 that flows from the addition of schedule 18A at stage 2. That amendment will mean that, when a tax return is made under paragraphs 10, 11, 21, 23 or 32 of schedule 18A, the tax due or additional tax due must be paid at the same time as the return is made.

Amendments 10 and 20 are other amendments that fall into the technical category. Amendment 10 will insert a reference to paragraph 3 of schedule 18A into section 24 to alert someone who reads section 24 to the fact that the tax rates and tax bands for rent will be set not under that section but under schedule 18A. Amendment 20 will amend section 39 so that it will refer to the various paragraphs in schedule 18A under which returns are made and in relation to which there is a power to specify a different period for making a return.

Perhaps the key amendment of the 40 amendments is amendment 25, which will add a power to amend schedule 18A by regulations. Amendment 29 will ensure that any regulations that are made will be subject to the affirmative procedure.

In light of the complexity of schedule 18A, I consider it prudent for ministers to take a power that will enable them to amend it by secondary legislation. That will provide flexibility for the Scottish ministers to respond quickly and effectively to changing commercial situations.

I can provide further detail in response to issues raised by members.

I move amendment 6.

*Amendment 6 agreed to.*

*Amendment 7 moved—[John Swinney]—and agreed to.*

### Section 10—Substantial performance without completion

*Amendment 8 moved—[John Swinney]—and agreed to.*

### Section 24—Tax rates and tax bands

**The Deputy Presiding Officer:** Group 5 is on the procedure for orders that set rates and bands. Amendment 9, in the name of Gavin Brown, is the only amendment in the group.

**Gavin Brown:** The key question to be answered is: does the Scottish Government believe in evidence-based policy? It is our job to remove from the business community as many layers of uncertainty as we can. Amendment 9 would do that by ensuring that at least 12 months' notice is given of the rates and thresholds of the tax on non-residential properties.

The Government's original plan was to publish those rates and thresholds in September 2014 for application in April 2015, but then the Finance Committee took evidence and the business community, across the board, was crystal clear and robust in its view that it needed notice of the rates and thresholds earlier than that. Some businesses said 12 months, some said 18 months and some said now, but they were resolute that the notice had to be sooner than the Government proposed.

We heard evidence from the Scottish Building Federation, the Scottish Property Federation, Homes for Scotland, the Confederation of British Industry Scotland, the Institute of Chartered Accountants of Scotland and many others, all of whom took the same view. The cabinet secretary then announced that he was considering publishing later, because in his view the evidence was mixed. In my view, the evidence was unanimous and the only person who argued that publication ought to be later was the cabinet secretary.

When investors prepare their project assessments, a question mark hangs over LBTT. They cannot put a rate to it, which leaves uncertainty. If an investor is attempting to invest in north-west England, they have a clear number that they can put against stamp duty. If that same investor wishes to invest in Scotland post-April 2015, the figure has to remain blank. As we all know, investors do not like question marks.

I note that the Scottish Government's response to the committee's stage 1 report said:

"The Scottish Government will consider the evidence provided to the Committee regarding the timing of the publication of the proposed LBTT rates and bands for both residential and commercial property transactions."

I ask the Government to consider that evidence and accept amendment 9, to give at least some certainty and remove one layer of uncertainty from the business community.

I move amendment 9.

**Ken Macintosh (Eastwood) (Lab):** I support Gavin Brown's amendment 9. I accept that the cabinet secretary has spoken against such a proposal in the past, and there is a genuine concern about gaming the system and advance knowledge meaning that property deals are brought forward to reduce tax liability. However, the prospect of such activity taking place on any substantive scale must be balanced against the desire of most respectable Scottish businesses to have certainty and confidence in the system.

It is notable that nearly all those who gave evidence were united on that point: Brodies, CBI Scotland, the Chartered Institute of Taxation, the Convention of Scottish Local Authorities, ICAS and the Scottish Property Federation all expressed concern that the rates will not be known.

The fact that the cabinet secretary's decision seems to pivot on a political date—the date of the referendum, which is September 2014—adds to the worry that he is making a political decision rather than a business-oriented one and that the decision is not driven by the needs of the public finances. It sounds as if, by not announcing a decision until September 2014, he is picking a day to bury bad news, rather than providing stability and certainty for the Scottish property market. I support amendment 9.

**Willie Rennie (Mid Scotland and Fife) (LD):** I, too, support Gavin Brown's eminently sensible amendment 9. We are not suggesting that in every single year a year's notice should be given for any changes. We are suggesting that that should happen in the first year, to provide greater certainty for the sector.

As we know, the construction sector has gone through significant difficulties in recent years, and we should try to reduce as far as possible the uncertainty that might be caused by the situation. Gavin Brown's suggestion is eminently sensible.

As the finance secretary said this morning, there is a difference of only five months between what he suggests and what Gavin Brown suggests. That gap is not unbridgeable. I suggest that the finance secretary listens to the evidence that has been set out and that he agrees with Gavin Brown.

15:30

**Patrick Harvie (Glasgow) (Green):** I had not intended to speak to the group, but I am a little disappointed at the level of support across the chamber for amendment 9. I challenge the use of

the phrase “evidence-based policy”. That phrase is generally used in relation to policy that should be informed by objective data and scientific evidence; we do not use it for the assertion of want.

The evidence that Gavin Brown referred to was simply an expression of the wishes and self-interest of the witnesses who gave evidence. Tax bands and rates are matters on which we have not objective data but the assertion of the business community’s self-interest. It is worth making the distinction between the two.

**John Swinney:** The issue has certainly attracted commentary. Gavin Brown has set out the opinions of business organisations and companies in the private sector. He is perfectly entitled to do that; their views are stated on the record.

Ken Macintosh’s contribution reinforced Mr Brown’s points and suggested a political motivation on my part for the timing that I originally suggested as being appropriate for the setting of tax rates and bands. None of the contributors made a passing reference to the fact that my motivation—which shows that Mr Macintosh was completely misguided in what he said—in identifying the setting of the tax rates in September 2014 concerns the relationship between the setting of tax rates and the implications for the Scottish Government’s budget. I would not have thought that I had to make that connection in Parliament, given that Parliament requires me to present a budget in September each year.

In the years ahead, Parliament will have to become accustomed to an increasing relationship between the decisions that we take on tax and the decisions that we make on public expenditure. The link between setting our tax rates and bands and the budget that I propose to Parliament is inextricable. I cannot go around setting tax rates at a different stage in the financial year from the setting of the budget, because I could end up setting tax rates in a particular context, such as the one that Mr Brown suggests, and find myself dealing with a different financial circumstance as it emerges during the Parliament’s consideration of the budget process.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I thank the cabinet secretary for his interesting explanation, but how does that fit in with the commitment that the tax will be revenue neutral? I am struggling to see how that is consistent with the idea that the setting of tax rates and bands might change with the general public expenditure situation.

**John Swinney:** My point is that we should link in the Parliament clearly and simply the decisions that we make about tax rates to the setting of our

budget and the commitments that we make that follow from that. For example, the block grant adjustment will apply from April 2015, and we need to know the context and the circumstances in which we take such decisions.

Following the Finance Committee’s call for evidence, it received representations indicating that, in the residential property sector, there was an argument in favour of not setting tax rates in September as I suggest, but setting them much closer to the start of the financial year to avoid any market distortions. If I listened to that evidence, I would delay the setting of tax rates and tax bands until much closer to the start of the financial year, which in my opinion would be unjustifiable and unsustainable.

It is important that we establish the connection between the setting of tax rates and tax bands and the formulation of the budget. I have listened carefully to the points of view that interested parties put forward and, on balance, I recommend that we set tax rates and bands for all transactions as part of the budget process in 2014. I encourage members not to support amendment 9 in Gavin Brown’s name.

**Gavin Brown:** I am grateful to members for their comments. I was slightly surprised by Patrick Harvie’s definition of evidence. He said that evidence cannot be classed as such unless it is scientific, objective data. What do people do at every committee of this Parliament, week in and week out? They submit written evidence and they give oral evidence. To suggest that none of that is evidence is to take a rather narrow view.

**Patrick Harvie:** Will the member give way on that point?

**Gavin Brown:** No, I will not.

On the substantive point, the cabinet secretary gave a fairly weak reason for not bringing forward the setting of the rates. He said that the rates cannot be set at any time of the year other than September 2014, when he produces the draft budget. In amendment 9, I propose that the rates should be set “at least 12 months” before the tax is charged. The cabinet secretary could in September 2013—or earlier than that—make the order that set out the thresholds and rates that he has in mind.

The cabinet secretary said clearly that he would consider the evidence and listen to representations from industry. Every single representative said that rates for commercial property—which is what amendment 9 is about—should be set earlier.

**John Mason (Glasgow Shettleston) (SNP):** Does the member accept that all the evidence that the Finance Committee took came from business

representatives and that we did not hear from normal residents and constituents of the country? We must act on their behalf, not just on behalf of business.

**Gavin Brown:** The idea is that committees—and John Mason is deputy convener of the Finance Committee—decide who is most likely to represent the stakeholders whom they want to consult and invite them to give written and oral evidence. Of course, there is no limit on who can provide written evidence. The idea that we should ignore the evidence that is presented and prefer what we think might be the view of people from whom we have not heard is a little surprising. Why bother having committees if we are not going to take account of the evidence that they hear?

We should use all the levers that are at our disposal to help business in this country; we should not just use the levers that suit us. I will press amendment 9.

**The Deputy Presiding Officer:** The question is, that amendment 9 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division. As this will be the first division in stage 3, I suspend the meeting for five minutes.

15:38

*Meeting suspended.*

15:43

*On resuming—*

**The Deputy Presiding Officer:** We will proceed with the division on amendment 9.

#### For

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Davidson, Ruth (Glasgow) (Con)  
 Dugdale, Kezia (Lothian) (Lab)  
 Eadie, Helen (Cowdenbeath) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alex (North East Scotland) (Con)

Kelly, James (Rutherglen) (Lab)  
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McArthur, Liam (Orkney Islands) (LD)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McDougall, Margaret (West Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahan, Michael (Uddingston and Bellshill) (Lab)  
 McMahan, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Pentland, John (Motherwell and Wishaw) (Lab)  
 Rennie, Willie (Mid Scotland and Fife) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, Tavish (Shetland Islands) (LD)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)

#### Against

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Burgess, Margaret (Cunninghame South) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Campbell, Roderick (North East Fife) (SNP)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Constance, Angela (Almond Valley) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Dey, Graeme (Angus South) (SNP)  
 Don, Nigel (Angus North and Mearns) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lyle, Richard (Central Scotland) (SNP)  
 MacAskill, Kenny (Edinburgh Eastern) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Mackay, Derek (Renfrewshire North and West) (SNP)  
 MacKenzie, Mike (Highlands and Islands) (SNP)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)

McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMillan, Stuart (West Scotland) (SNP)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Sturgeon, Nicola (Glasgow Southside) (SNP)  
 Swinney, John (Perthshire North) (SNP)  
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Urquhart, Jean (Highlands and Islands) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 50, Against 66, Abstentions 0.

*Amendment 9 disagreed to.*

*Amendment 10 moved—[John Swinney]—and agreed to.*

#### **Section 25—Amount of tax chargeable**

*Amendment 11 moved—[John Swinney]—and agreed to.*

#### **Section 26—Amount of tax chargeable: linked transactions**

*Amendment 12 moved—[John Swinney]—and agreed to.*

#### **Section 27—Reliefs**

*Amendment 13 moved—[John Swinney]—and agreed to.*

#### **After section 27**

15:45

**The Deputy Presiding Officer:** We move to group 6, on energy performance variation. Amendment 69, in the name of Patrick Harvie, is grouped with amendments 73 and 74.

**Patrick Harvie:** Taken together, the amendments rehearse a debate that Malcolm Chisholm pursued at stage 2 with the proposal to have variations in the level of tax related to energy efficiency as an incentive for property owners to invest in the energy performance of their property, not in order that they will pay a lower level of tax but in order that they can secure a better price for

their property because the buyer will pay a lower level of tax.

I have changed the amendments, to some extent, to take account of some of the arguments that were made at stage 2, including by the cabinet secretary. It is worth returning to the general arguments. Even if the Government remains unpersuaded by the amendments, I hope that it will use the opportunity of this discussion to indicate how else it might seek to secure the same objectives.

The basic case in favour of improving the energy performance of our building stock and reducing overall energy waste and energy demand has been well made over many years. In housing, we have taken action in the social rented sector on building standards, and we have put in place some support schemes to allow home owners to access advice and support through particular measures. We are debating an additional tool—an additional mechanism—to provide an incentive for some properties to be brought up to standard.

**John Mason:** I agree with what the member is trying to do, but does he feel that it is the most effective way of doing it? There would be a cost. Would it not be better to use the money either to reduce council tax or to give a direct grant for energy efficiency?

**Patrick Harvie:** That is one of my favourite Sir Humphrey objections—“Ah, but is this the best way, minister?” I am sure that Mr Mason made objections at stage 2 to which he would like to return. For example, he argued that the provision would cover only a small proportion of properties. The measures that we take to improve building standards also apply to only a small proportion of properties in any one year, yet we think that building standards are an important measure—one of the many tools in the box—in improving standards.

Also at stage 2, Mr Mason made the argument that the owners of £1 million mansions might benefit. I do not find that a convincing objection either. Those are often the properties that cost the most to bring up to standard in terms of energy performance. So, to secure a better price on an expensive property such as that, an owner would have to pay more. There is also the question of the context of the bill as a whole, which is that the Government intends to introduce a more progressive form of taxation than the current one, so the owners of such properties would already be paying more under the Government’s proposals. What I propose is a small variation to give them an incentive to consider energy performance.

**Mike MacKenzie (Highlands and Islands) (SNP):** Will the member take an intervention?

**Patrick Harvie:** Are we tight for time, Presiding Officer?

**The Deputy Presiding Officer:** You have time to take an intervention.

**Mike MacKenzie:** Does the member not accept that almost the opposite argument to the one that he is making could apply? What he is suggesting could result in a situation in which very poor people become trapped in poor and poorly insulated houses.

**Patrick Harvie:** I do not accept that argument at all. As the Government is at pains to stress—and it is something that I welcome—low-value properties will be exempt from the tax altogether. The tax simply will not come into play for those properties, and the people in them are often those who will get the most support from the various Government schemes that provide energy efficiency advice and support. For them, an incentive such as the one that I propose is less relevant.

The Government has argued for simplicity as opposed to complexity, which is one of the reasons why I have changed aspects of the amendment that was debated at stage 2. The amendment no longer contains a requirement on Government to introduce such variations; it simply enables Government to introduce variations. There is no 12-month time limit to ensure that the Government has to get it done before it gets it right; it will have the time to develop a system of variation that fits into the wider context of how it wants the taxation to work.

I turn to the objection that the cabinet secretary raised at stage 2 in relation to tenement dwellers and the need to secure the agreement of neighbours if improvements across a whole building are required to achieve the intended objective. As a tenement dweller, I take that very seriously. That is why I introduced in amendment 74 an additional line that will enable the Government to apply the measure differently to different building categories. I hope that that will give the Government the flexibility that it will need to ensure that the appropriate effect is had on all building categories.

I hope that there is a degree of support for the measure. If the real objection is that it is the wrong way to achieve the right aim, I would like to hear from the cabinet secretary a clear commitment on the measures that he intends to take to drive up energy performance in the private sector as a whole and an indication of when he will introduce requirements at the point of sale or let of privately owned properties. It is not enough simply to offer a few subsidised measures on a means-tested basis, as presently happens. The Government will not meet the CO<sub>2</sub> emissions reduction targets for the housing sector unless we are proactive in

pushing up energy efficiency right across the housing stock.

I move amendment 69.

**Malcolm Chisholm:** I thank Patrick Harvie for lodging his amendments. I think that he has listened very carefully to the debate that took place in committee and has realised that the Government strongly objected to his proposal. That is why he has modified his proposal by changing “must” to “may”, which is a highly significant change, because it means that amendment 74 is a permissive amendment and one to which no time limit is attached. Therefore, in a sense, the Government can be unconvinced at this stage but still think that the provision is worth putting in the bill, because—who knows?—in a few years’ time, other factors and considerations might be at play. Amendment 74 means that it would be possible to introduce such regulations at that point.

John Mason asked whether Patrick Harvie’s method was the best way of doing things. I think that that is the wrong way of thinking about this crucial matter. There is not one way of dealing with the problem of energy inefficiency in homes; there are many ways, and Patrick Harvie’s proposed measure could be part of the suite of measures to address it. We should remember that the two biggest challenges for us when it comes to climate change are transport, which we are not discussing today, and existing homes, which we are discussing. Basically, the measure in question is an attempt to help to deal with the energy inefficiency of existing homes.

John Mason also said that there would be a cost. In fact, there would not be. The amendment is designed in such a way as to be revenue neutral. At this stage, I do not think that I would be allowed to make a speech that was long enough to explain how it would operate, although John Mason might well be going to ask me that very question.

**John Mason:** Does the member accept that although, overall, the measure would be revenue neutral, if a bit more tax is to be raised from one person and spent on someone else, there would be a cost?

**Malcolm Chisholm:** It is clear that some people in energy-inefficient homes would be affected but, as Patrick Harvie said, people in homes of modest value would not be affected, because of the commitments that the cabinet secretary has given on the starting point for the tax.

Another argument that was used in committee that may well be used again is that energy efficiency is not uppermost in people’s minds when they buy a house. That is an argument in favour of amendment 74, because it will put the

issue in people's minds when they buy a house. That is what we need. We should all think about energy efficiency when we buy houses and, indeed, when we heat them, which seems to be every day of the year—at least, that is how it seems at present.

It seems to me that the measure would be to the advantage of sellers and buyers. Some people ask how it would be to the advantage of sellers. They would be in a better position to sell their house, they would have the advantage of being able to sell it more quickly and they might be likely to get slightly more money for it than they would otherwise get. From the buyer's point of view, the advantage is obvious, in that they would pay less of the new tax.

I know that the Government is very sceptical about the proposal. I was very sceptical when it was first put to me, but the more I have thought about it, the more I have become convinced that it is one—and only one—of several measures that are needed to deal with the urgent issue of the energy inefficiency of all homes, but particularly of existing homes.

**John Mason:** As I said in my intervention, I have a lot of sympathy for the aim of Patrick Harvie's amendments and what he is trying to do. Although Malcolm Chisholm said that he drifted from being sceptical to being positive, I think that I went the other way after the committee had listened to the evidence, which, I have to say, was not very convincing at all. At first, several of us thought that something like this might be feasible. However, when we considered the suggestion in detail, it became apparent that it was a very blunt instrument.

As I have tried to point out already, there is a cost to the proposal, even if, overall, it is revenue neutral. If we are going to raise a bit more tax, the question is, what is the best that we can do with those resources? I am far from being convinced that the best thing to do is to create incentives through LBTT, when, perhaps, we could do better by using a grant to directly help people to improve their homes, or a council tax reduction, which would give them an incentive immediately, or at least the following year.

The kind of adjustment that we are talking about helps people only if the house is sold or purchased. If a house is not sold or purchased, there is no incentive whatever. Malcolm Chisholm suggests that the proposal is a way of raising awareness. I think that there are other and perhaps better ways of raising awareness.

The strongest reason against the proposal, for me, is that a lot of my constituents are buying houses for less than £100,000. That means that they will pay no LBTT, so there will be no

incentive. The amendment would affect better-off people in the bigger houses, and would do nothing for the less well-off people in the smaller houses. For me, that is a convincing argument that this is not the way in which to use the limited resources that we have.

**Willie Rennie:** John Mason's last point was interesting, because he is implying that we are really only interested in carbon emissions in relation to the smaller, less expensive houses. I think that the opposite is the case. We should be looking to tackle climate change wherever the emissions come from. That, to me, is the most important aspect of what we are trying to do. Some of the biggest houses emit some of the greatest amounts of carbon. Therefore, I support Patrick Harvie's amendment. I think that it gives us an opportunity to change the way in which we view buildings. When people buy and sell properties, they should think not only of the value of the property but also of its long-term, sustainable future and how much it will cost to run it, part of which should involve a consideration of tax. That would be a valuable way in which to proceed, and the fact that the proposal does not deal with every house in the country does not mean that it is not worth proceeding with. It seems to be an eminently sensible way of focusing people's minds and getting them to think about the energy efficiency of their properties, just in case they want to sell at some point in the future.

Further, including this proposal in the bill does not prevent other measures from coming forward in other bills. A variety of different measures can be introduced by the Government.

I support the amendment in Patrick Harvie's name, and urge the Government to support it too.

**Ken Macintosh:** I, too, want to speak in support of Patrick Harvie's amendment, which is similar to one that Malcolm Chisholm lodged at stage 2.

The key motivation behind the proposal is the desire to encourage the uptake of energy efficiency measures and to help Scotland—and, for that matter, the Scottish Government—to meet its carbon reduction targets.

Many of the arguments at stage 2 were evenly balanced. On the Government's part, there is a desire not to introduce new tax relief, but to remove tax relief from the stamp duty system and to not replace it in the LBTT system. Broadly, we support that approach. However, the Government did not think that that should be applied absolutely across the board. In its consultation on the bill, the Government said:

"The replacement of SDLT with a Land and Buildings Purchase Tax also offers the opportunity to support key Scottish Government priorities through incentivisation."

Clearly, meeting our carbon emission targets is a priority.

The Government's Climate Change (Scotland) Act 2009 requires local authorities to establish a scheme for reducing the amounts that persons are liable to pay in respect of council tax where improvements are made to the energy efficiency of chargeable dwellings. In other words, the Government acknowledges that there is a way for taxation to be used to establish better energy efficiency. Why not do so in the case of LBTT?

I encourage the Government to support Patrick Harvie's amendment.

**The Deputy Presiding Officer:** As we are nearing the agreed time limit, I am prepared to exercise my power under rule 9.8.4A(c) to allow the debate on the group to continue beyond the time limit, to avoid the debate being unreasonably curtailed.

16:00

**John Swinney:** I thank Mr Harvie for lodging the amendments. He and I have form in parliamentary debates on energy efficiency and home insulation issues. Hopefully, we can make progress today where we might not have managed it in the past.

Amendments 69, 73 and 74 are intended to introduce a regulation-making power to the bill that allows for the amount of LBTT to be paid for a residential property transaction to vary, depending on the energy efficiency rating for the house. Although the amendments do not provide for it, presumably there would have to be some sort of benchmark against which the energy rating of each house would be assessed in order to calculate the tax due. That benchmark might, for example, be the average energy rating for all housing in Scotland. That proposal has been advanced by the existing homes alliance and my officials have met the proposers to consider the issues.

The Government is entirely supportive of steps to improve the energy efficiency of Scotland's housing stock and has taken a number of steps to make such improvements. While it is important to examine all legislative instruments to determine whether any measures can be taken forward, it is vital also to assess the impact that any proposed measures might have.

In the bill, there is a balance to be struck between the need for a simple, certain and efficient tax system and the likely energy efficiency improvements that would flow from the change proposed to the calculation of tax liability on the sale of residential property. Far from providing more simplicity and certainty, the amendments

would add complexity and uncertainty to the tax. No house buyer would know at the outset how much tax would be payable on a house of a particular value. Additional information would be required in order to calculate the liability, and that information might change over time.

Following the submission of a tax return, the energy rating for every house sale would have to be verified by revenue Scotland to ensure that the tax was calculated accurately. That requirement would add considerably to revenue Scotland's administrative burden. Aside from the administrative complexity, the proposal would have no effect whatever on housing in the nil rate band of the tax.

In 2011, there were 1.9 million privately owned dwellings in Scotland, and 70,000 sales, representing 3.7 per cent of the market. The land and buildings transaction tax consultation paper set out two scenarios to illustrate how a progressive tax might operate in the residential property market. In scenario 1, 70 per cent of the housing market would be excluded from the tax. That means that, in any given year, the tax would apply to only 1.1 per cent of the existing stock, or 21,000 properties.

Mr Rennie encouraged us to support amendment 69 on the basis that it does not deal with every single house. There is a long way to go from 1.1 per cent of existing stock to 100 per cent. Even if the figures were doubled to reflect a more active property market, the land and buildings transaction tax does not appear to represent an effective mechanism to influence the energy efficiency of the entire housing stock.

The proposal would also have a number of disproportionate effects on the housing market. First, as has been commented upon already, under the proposal the least energy-efficient properties would, arguably, be less attractive to buyers as they would incur more tax. Owners of flats would find it very difficult to secure the agreement of other owners to undertake any form of repairs or improvements. In my view, it would be unfair to penalise the owners and buyers of flats who would like to increase their energy performance certificate rating but find that they cannot do so because of a lack of agreement. Flats comprise around four in 10 of Scotland's housing stock and 74 per cent of the housing stock in the city of Glasgow.

Secondly, the scheme is intended to apply—

**Patrick Harvie:** Does the cabinet secretary accept that I have taken account of that concern in the changes to the amendment? Surely it is not beyond the wit of him or his colleagues in the civil service to come up with variations on the measure

that would take account of those different building categories.

**John Swinney:** I appreciate that point, but it perhaps reinforces the point that I have just made to Parliament about complexity, because we would then have to design a variety of different reliefs and exemptions to deal with different housing structures, all of which would have to be verified by revenue Scotland to guarantee that the appropriate tax had been paid.

The scheme is intended to apply to every subsequent transaction involving the same house, so tax benefit would therefore continue to accrue on houses in which home owners had undertaken no investment in energy efficiency measures. However, another owner might have implemented a number of improvements, costing say £5,000, to achieve a standard assessment procedure—or SAP—rating of say 60, but more tax would still be due on that property than if the scheme did not exist. Achieving a rating of 60 can be very challenging for properties, often in our island and Highland communities, that are using certain types of fuel such as liquefied petroleum gas.

Finally, and fundamentally, it is not clear that the proposal that underpins these amendments would have a direct positive impact on the energy efficiency of Scotland's housing stock. It is the seller of the house who undertakes energy efficiency measures, but the buyer of the house who incurs the tax on the transaction. Because of that disconnect, the proposal would provide no direct incentive for additional energy efficiency measures to be introduced to Scotland's housing stock by the people who actually occupy the properties.

I want to make two further points in relation to these amendments.

**The Deputy Presiding Officer:** Please make them briefly, if you would.

**John Swinney:** I will, Presiding Officer.

Malcolm Chisholm said that the amendment says "may" rather than "must". Section 27(3) of the bill provides that

"The Scottish Ministers may, by order, modify this Act so as to ... add a relief".

If the Government wants to add a relief, it will have that power already—providing that the Parliament agrees to pass the bill.

Ken Macintosh kind of implied that he was criticising the Government for even asking in the consultation paper whether there were energy efficiency measures that we could take. We asked that question to try to design measures that were able to have an impact. We have not been able to find them here. That will not stop us looking for

other measures in terms of our capital programme to put energy efficiency measures into Scottish houses; since 2008, 540,000 Scottish houses have received over 620,000 free or subsidised cavity wall or loft insulation measures. We will continue with that. We will also continue to encourage local authorities to take up council tax discount schemes, which strike me as a more effective approach, which was provided for in the Climate Change (Scotland) Act 2009.

Although my arguments have run contrary to the proposals put forward by Patrick Harvie, the Government is committed to working to improve the energy efficiency of Scotland's housing stock and we will find other ways of ensuring that effective measures can be taken in that respect.

**The Deputy Presiding Officer:** Many thanks. As we are now pressed for time, I call Patrick Harvie to wind up briefly and to indicate whether he will press or withdraw amendment 69.

**Patrick Harvie:** I have to admit that I am disappointed that the cabinet secretary did not specify what measures he will bring forward, given that he thinks that the ones that I am suggesting are the wrong ones.

It seems to me that dramatic improvements in the energy performance of our housing stock can be achieved by paying for them directly by subsidising measures, by providing incentives, such as the one that I am suggesting, or by providing compulsion. I have worked long and hard persuading the Government to do more on subsidising measures and it has come some way over that time. We need to start putting in place real incentives. It might be necessary in the longer term to look at compulsion, but if we want to avoid that, we need to get all the incentives in place that we can.

The cabinet secretary is still concerned that what I propose will benefit buyers, not sellers and that sellers will have to invest and buyers will gain the benefit. I think that that point was answered best by Malcolm Chisholm, who was the first member to recognise that this is a bit of a trigger idea. Let us remember that buyers and sellers are the same people. If someone buys a property, they are likely to sell it on at some point. It is about encouraging people to think about that transaction in thinking about how they can address energy performance.

I would like to respond to all the members who have spoken, but I am aware that the Presiding Officer asked me to be brief. I simply put on record my gratitude to the members who spoke in support of my amendments. The cabinet secretary's disagreement with them is on the basis that they would not deal with every single home and that we have a long way to go before we can deal with

every single home. That is absolutely the correct argument, but the answer has to be, "If this isn't the best way, what is?" In pressing amendment 69 to the vote, but anticipating that it will fall, I urge the cabinet secretary to return to the chamber after the summer recess with clear proposals on how else the important objective of ensuring energy efficiency will be secured.

**The Deputy Presiding Officer:** The question is, that amendment 69 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### For

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Dugdale, Kezia (Lothian) (Lab)  
 Eadie, Helen (Cowdenbeath) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alison (Lothian) (Green)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Marra, Jenny (North East Scotland) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McArthur, Liam (Orkney Islands) (LD)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McDougall, Margaret (West Scotland) (Lab)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahan, Michael (Uddingston and Bellshill) (Lab)  
 McMahan, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Pentland, John (Motherwell and Wishaw) (Lab)  
 Rennie, Willie (Mid Scotland and Fife) (LD)  
 Scott, Tavish (Shetland Islands) (LD)  
 Smith, Drew (Glasgow) (Lab)

#### Against

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Brown, Gavin (Lothian) (Con)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Burgess, Margaret (Cunninghame South) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)

Campbell, Roderick (North East Fife) (SNP)  
 Carlaw, Jackson (West Scotland) (Con)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Constance, Angela (Almond Valley) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Davidson, Ruth (Glasgow) (Con)  
 Dey, Graeme (Angus South) (SNP)  
 Don, Nigel (Angus North and Mearns) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Finnie, John (Highlands and Islands) (Ind)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Goldie, Annabel (West Scotland) (Con)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)  
 Lyle, Richard (Central Scotland) (SNP)  
 MacAskill, Kenny (Edinburgh Eastern) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Mackay, Derek (Renfrewshire North and West) (SNP)  
 MacKenzie, Mike (Highlands and Islands) (SNP)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMillan, Stuart (West Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Sturgeon, Nicola (Glasgow Southside) (SNP)  
 Swinney, John (Perthshire North) (SNP)  
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Urquhart, Jean (Highlands and Islands) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 40, Against 77, Abstentions 0.

*Amendment 69 disagreed to.*

**The Deputy Presiding Officer:** Group 7 is on relief for transactions involving transfer of rights. Amendment 70, in the name of Gavin Brown, is grouped with amendment 72.

**Gavin Brown:** The objective is to make the business environment as competitive as possible. Amendments 70 and 72 specifically relate to sub-sale relief and forward funding. In my view, that is a potentially important relief. We should reject the aspects that are abused in relation to stamp duty, but we should retain the aspects that help our economy, especially at a time when bank lending is being reduced and forward funding is becoming more important—at least for now—within our economy.

Amendment 70 would introduce a mandatory measure in the sense that it would force the Government to consult and to bring in a relief. It would, however, give the Government a fairly wide degree of flexibility on precisely what ought to be encapsulated to produce a targeted approach to sub-sale relief.

Amendment 72 simply follows on from amendment 70 and would mean that any regulations that were made would have to be subject to affirmative procedure.

In evidence to the Finance Committee, it was suggested that it would be possible to reduce tax avoidance through making people claim formally for the relief, through allowing it only when no other reliefs were being claimed at the same time, and by having a focused and targeted range of options, particularly in relation to house building, part exchange, certain rural and farming transactions and forward funding as a whole.

The Scottish Government's response to the committee's report said:

"the Government wants to ensure that forward funding arrangements are not subject to double taxation under LBTT, and will work with key stakeholders to achieve this objective."

Amendments 70 and 72 would make that objective more likely.

I move amendment 70.

**Ken Macintosh:** Although we have some sympathy for Gavin Brown's amendments, I will move against him on this issue. We know that SDLT is susceptible to a number of avoidance measures, and the evidence suggests that the existing sub-sale relief, which involves transfer of property to a third party, is a significant avenue for tax avoidance. Two of the chief aims of the bill are to simplify SDLT and to reduce the high incidence

of tax avoidance. I appreciate that it is not the intention behind Gavin Brown's amendment 70, but it seems that it would be contrary to the spirit of the bill to support amendments that could lead to tax-avoidance measures being watered down.

That said, we are sympathetic to the arguments that have been put forward by the Scottish Property Federation, which has suggested that an unintended consequence of the withdrawal of sub-sale relief would be to inhibit forward-funding arrangements, which are important in the context of financing major commercial developments. It is important, in seeking to protect LBTT against tax avoidance, that we do not inadvertently introduce a competitive disadvantage that could drive commercial developments to other parts of the UK. The SPF has suggested that the Government commit to identifying a relief using section 27 of the bill; I would welcome the cabinet secretary's comments on that.

16:15

**John Swinney:** I agree with an awful lot of what Gavin Brown and Ken Macintosh have said. The issue is a difficult one with which the Finance Committee has wrestled. Mr Brown made the fair point that nobody wants to make Scotland less competitive for such transactions, and Mr Macintosh made the fair point that we do not want to open Scotland up for tax avoidance. I sympathise with both those positions.

However, I cannot support Mr Brown's amendments. The fundamental weakness at their heart is the absence of a definition of "transfer of rights". That term could apply to any property transaction, so if we were to accept Mr Brown's amendments we could open up a wide possibility for additional reliefs. I do not think, having listened to Mr Brown, that that is his intention, but it would be a consequence of the amendments in the group.

As I have stated to the Finance Committee and in the chamber at stage 1, I have no intention of replicating in devolved taxes the particular provisions that have given rise to tax-avoidance activity. That is why I chose not to replicate the sub-sale rules in the UK legislation when the bill was introduced. The Finance Committee and key stakeholders have supported that stance. However, concerns have been raised—with which that committee is familiar—that the absence of a form of sub-sale relief could have a negative impact on transactions that depend on forward-funding arrangements.

I do not at this stage want to introduce measures that might, without proper due consideration, simply create opportunities for tax-

avoidance activity. I have no wish for history to repeat itself in the formulation of such measures.

When the Finance Bill 2003—which became the Finance Act 2003—was introduced at Westminster, it contained no equivalent of what became section 45 of the act, which sets out the so-called transfer of rights rules. Section 45 was inserted following lobbying by the development sector during the bill's passage. I believe that that was done with the best of intentions, but I draw the parallel to highlight the fact that making a hasty amendment to legislation could lead to a provision that has a far wider scope than Parliament intended. Scottish ministers have no intention of making the same mistake.

However, I acknowledge two things. First, the revamped transfer of rights rules are currently making their way through Westminster in the Finance Bill 2013, and we will monitor their progress with interest. Secondly, the valuable meetings that stakeholders have had with me and with officials have highlighted the importance of being able to apply a form of sub-sale relief in development transactions. Those discussions have also highlighted the complexity of such transactions, and the consequent need to take care to ensure that we do not inadvertently create opportunities for avoiding LBTT, as has been the case with stamp duty land tax.

I am therefore prepared to consider further whether measures can be drafted to address the issues that the industry has raised with me without jeopardising the integrity of the bill. I am prepared to consider a measure by which relief should be available only when development is contemplated and takes place within a given period. I will not agree to relief being available to parties who acquire land speculatively and do not bring that land into use.

I would require that any relief ought to be subject to pre-clearance, which would involve the taxpayer alerting the tax authorities in advance to a claim for relief on their part of a transaction, and the tax authority—in this case revenue Scotland—indicating whether such a claim would be accepted or rejected on the basis of the information that has been provided.

I envisage that a form of clawback of any relief that was granted by the tax authority will be applied. The principle of granting relief and then withdrawing it if circumstances change is already established in the bill in the case of group relief. That clawback would involve the tax authority being able to call for payment of LBTT that had been relieved if the conditions of the relief were not met. The provision would most likely be used if development did not take place within a certain timeframe.

There are other considerations. For instance, we need to settle the basis for the LBTT charge where there are several options, and we need to adopt an approach that is fair to the taxpayer but which also reflects the right amount of tax. We will also want to ensure that the correct LBTT charge is levied where part of the plot is sold on to another developer at an enhanced value. Those issues require further work, including with stakeholders.

Commercial arrangements are complex and many contracts are confidential, so many of the questions are not easy to answer. A further key consideration is what anti-avoidance provision the legislation should make. To assist me in answering the questions and resolving issues, I will convene a working group. I have written today to invite a number of interested parties to join that group to explore those issues. One outcome of the group's work might be that I decide to use the power that will be afforded by section 27(3) of the bill, to which Mr Macintosh referred, to provide a new relief that would apply to sub-sale transactions. I have made clear, however, the conditions that I believe should apply to any such relief. Any such order would, of course, be subject to parliamentary scrutiny.

I want to be very clear with Parliament and the industry that if the outcome of the working group's work does not convince me that a relief can be given without significant risk of tax-avoidance activity, the Government will not bring an order to Parliament. I reiterate that I have no intention of devolved taxes becoming vehicles for avoidance.

In all those circumstances, and given the Finance Committee's strong support for not giving scope for tax-avoiding behaviour, I invite Mr Brown to acknowledge the commitment that the Government has demonstrated in considering the issue, and not to press amendment 70 in advance of further detailed work being undertaken as quickly as we can do it.

**Gavin Brown:** I start by saying that Mr Swinney has engaged on the issue during the passage of the bill and I welcome many of his remarks, particularly on the convening of a working group of expert stakeholders.

I still think that we are probably still slightly apart in terms of what I want and what the cabinet secretary wants. His premise rests on section 27 using the word "may" while my amendment rests more on use of the word "must", in that the amendment says that the Government must bring an order to Parliament.

I do not think that amendment 70 is quite as wide as the cabinet secretary has suggested. It would allow the Government to decide on the appropriate stakeholders to consult, although that

group is almost obvious from the work that has been done already. It would also allow the Government to decide on the rights that appear to be appropriate, but it would have to make an order.

**John Swinney:** I hear the distinction that Mr Brown makes between his position and mine and the use of “must” as opposed to “may”. The position that I have adopted is safer for Parliament because it protects the bill’s integrity, which is what I have to consider. I do not want Parliament to oblige the Government to introduce legislation, because we might find that it is impossible to provide a sufficiently robust proposition to prevent any tax avoidance. The whole Parliament wishes not to repeat the mistakes that were made with the stamp duty land tax legislation.

**Gavin Brown:** I welcome the cabinet secretary’s intervention, but things have moved on substantially since the stamp duty land tax legislation was brought into force. Indeed, as he said, changes have been afoot for some time at UK level to substantially minimise tax avoidance.

We are still some distance apart. There is a balance to be struck between being competitive and minimising aggressive avoidance of tax. I find it difficult to foresee circumstances in which the cabinet secretary could convene a working group that could propose no form of tax relief whatever. From examining what has happened south of the border and listening to the evidence that has been given at the Finance Committee, I am sure that the legislation will be far tighter up here. I cannot foresee any circumstances in which nothing can be proposed.

The Scottish Government has tipped the balance slightly away from our being competitive, although I do not think that we are miles apart, Presiding Officer, but on that basis, I will press amendment 70.

**The Deputy Presiding Officer:** The question is, that amendment 70 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### For

Bibby, Neil (West Scotland) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Davidson, Ruth (Glasgow) (Con)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Johnstone, Alex (North East Scotland) (Con)  
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)

Scanlon, Mary (Highlands and Islands) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)

#### Against

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Boyack, Sarah (Lothian) (Lab)  
 Brodie, Chic (South Scotland) (SNP)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Burgess, Margaret (Cunninghame South) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Campbell, Roderick (North East Fife) (SNP)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Constance, Angela (Almond Valley) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Dey, Graeme (Angus South) (SNP)  
 Don, Nigel (Angus North and Mearns) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Dugdale, Kezia (Lothian) (Lab)  
 Eadie, Helen (Cowdenbeath) (Lab)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Fee, Mary (West Scotland) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Finnie, John (Highlands and Islands) (Ind)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hume, Jim (South Scotland) (LD)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kelly, James (Rutherglen) (Lab)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lyle, Richard (Central Scotland) (SNP)  
 MacAskill, Kenny (Edinburgh Eastern) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Mackay, Derek (Renfrewshire North and West) (SNP)  
 MacKenzie, Mike (Highlands and Islands) (SNP)  
 Malik, Hanzala (Glasgow) (Lab)  
 Marra, Jenny (North East Scotland) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)

McArthur, Liam (Orkney Islands) (LD)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McDougall, Margaret (West Scotland) (Lab)  
 McInnes, Alison (North East Scotland) (LD)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMahan, Michael (Uddingston and Bellshill) (Lab)  
 McMahan, Siobhan (Central Scotland) (Lab)  
 McMillan, Stuart (West Scotland) (SNP)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Pearson, Graeme (South Scotland) (Lab)  
 Pentland, John (Motherwell and Wishaw) (Lab)  
 Rennie, Willie (Mid Scotland and Fife) (LD)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (SNP)  
 Scott, Tavish (Shetland Islands) (LD)  
 Smith, Drew (Glasgow) (Lab)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Sturgeon, Nicola (Glasgow Southside) (SNP)  
 Swinney, John (Perthshire North) (SNP)  
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Urquhart, Jean (Highlands and Islands) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 14, Against 102, Abstentions 0.

*Amendment 70 disagreed to.*

### **Section 30—Notifiable transactions**

*Amendments 14 to 16 moved—[John Swinney]—and agreed to.*

### **Section 31—Return where contingency ceases or consideration ascertained**

*Amendment 17 moved—[John Swinney]—and agreed to.*

### **Section 32—Contingency ceases or consideration ascertained: less tax payable**

*Amendment 18 moved—[John Swinney]—and agreed to.*

### **Section 36—Declaration**

*Amendment 19 moved—[John Swinney]—and agreed to.*

### **Section 39—Power to amend period in which returns must be made**

*Amendment 20 moved—[John Swinney]—and agreed to.*

### **Section 40—Payment of tax**

*Amendment 21 moved—[John Swinney]—and agreed to.*

### **Section 41—Application to defer payment in case of contingent or uncertain consideration**

*Amendment 22 moved—[John Swinney]—and agreed to.*

### **Section 48—Joint buyers**

*Amendment 23 moved—[John Swinney]—and agreed to.*

### **Section 49—Partnerships**

**The Deputy Presiding Officer:** Group 8 is on partnerships. Amendment 71, in the name of Gavin Brown, is the only amendment in the group.

**Gavin Brown:** The partnership provisions have received a fair bit of criticism from stakeholders throughout the passage of the bill. The bill is trying to create a tax that is based on Scots law—its principles and practice—and in many areas, it has achieved that remarkably well. However, the partnership provisions, which are a considerable part of the bill, broadly mirror the much criticised stamp duty land tax provisions, give or take a few amendments.

At stage 2, I tried to have schedule 17 deleted in its entirety; that attempt was defeated. The cabinet secretary's primary argument at stage 2 was that he was concerned about there being a vacuum. Amendment 71 has tried to take on board the main concerns that were raised by the Government. It means that the Government must review schedule 17 before the tax is first charged and that it must consult. However, it would not force the Government to use the regulatory power; it simply says that when the Government does not use that power under section 49, it has to explain why. It is an attempt to take on board criticisms and complaints and to take things forward in a different direction.

I move amendment 71.

**Ken Macintosh:** I support amendment 71, which is in Gavin Brown's name. Clearly, much concern was expressed in evidence to the committee about the effectiveness of schedule 17, which has been pretty well copied in its entirety from the stamp duty land tax legislation. Amendment 71, as I understand it from Mr Brown, simply asks for a review. It will be two years before the legislation is implemented, which I would have thought is plenty of time for the minister to carry out a review. On balance, given the timeframe, it

seems reasonable to accept Mr Brown's amendment.

**John Swinney:** As I acknowledged previously to the Finance Committee, the partnership provisions in the bill are complex, but having been part of the SDLT legislation, they will deliver two policy objectives that I believe are fair and which I wish to retain. The first is that partnerships will get partial relief from LBTT when they acquire a chargeable interest in property from a partner, to reflect the partner's retained interest in the property. The same principle will apply when a chargeable interest is taken out of a partnership. At this stage, I have no intention of interfering with that well-established relief.

The second objective is to minimise the risk that transactions involving partnerships become a means of avoiding LBTT. Schedule 17 contains a number of provisions to tackle avoidance. On 5 June, I gave an assurance to the Finance Committee in response to amendments on the provision that were lodged at stage 2 by Mr Brown. I undertook that officials would discuss with stakeholders the issues that they felt should be addressed. In making that commitment, I was conscious that it may be possible to address many of the issues by having clear guidance to accompany the legislation. If legislative change proves to be necessary to address the issues, we have already included at stage 2 a regulation-making power that will enable us to amend schedule 17.

As I stated to the Finance Committee on 5 June, I do not want to anticipate the outcome of the discussions on the partnership provisions. I will keep the committee abreast of progress in those discussions and, if recommendations to amend schedule 17 emerge, I will return to Parliament in due course with legislative proposals for its approval.

From his amendment 71, I infer that Gavin Brown wishes to use the bill to oblige me and my officials to work with stakeholders on the partnership provisions without defining the objectives. In the light of my earlier commitment—which I have repeated today—that officials will work with stakeholders to understand their concerns about the provisions, and to seek to meet those concerns through either better guidance, legislative change or both, and in the light of my commitment to update the Finance Committee on any progress, I invite Mr Brown to seek to withdraw amendment 71.

16:30

**The Deputy Presiding Officer:** I invite Gavin Brown to wind up the debate and to press or withdraw amendment 71.

**Gavin Brown:** The provisions are complex. Many professionals say that they simply do not understand properly how the provisions operate, so there is a need for root-and-branch reform. Many of the provisions are also rooted in English law, as opposed to Scots law.

I had thought that the cabinet secretary would go slightly further today. The idea of consulting or speaking with stakeholders is well and good, but the Government will not be obliged to do anything. I have a genuine fear that, because the issue is complex and may be seen as unexciting, the matter might drift slightly, such that we end up in April 2015 with exactly the same—or broadly the same—schedule 17 as we have currently.

Having listened carefully to the evidence that has been given by stakeholders and people who engage with such issues daily and weekly, I think that the issue is too important to leave to chance. I believe that we need a provision that would force the Government to follow the matter through. On that basis, I will press amendment 71.

**The Deputy Presiding Officer:** The question is, that amendment 71 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Davidson, Ruth (Glasgow) (Con)  
 Dugdale, Kezia (Lothian) (Lab)  
 Eadie, Helen (Cowdenbeath) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)  
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Malik, Hanzala (Glasgow) (Lab)  
 Marra, Jenny (North East Scotland) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McArthur, Liam (Orkney Islands) (LD)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McDougall, Margaret (West Scotland) (Lab)

McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahon, Michael (Uddingston and Bellshill) (Lab)  
 McMahon, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Pentland, John (Motherwell and Wishaw) (Lab)  
 Rennie, Willie (Mid Scotland and Fife) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, Tavish (Shetland Islands) (LD)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)

#### Against

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Campbell, Roderick (North East Fife) (SNP)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Constance, Angela (Almond Valley) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Dey, Graeme (Angus South) (SNP)  
 Don, Nigel (Angus North and Mearns) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lyle, Richard (Central Scotland) (SNP)  
 MacAskill, Kenny (Edinburgh Eastern) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Mackay, Derek (Renfrewshire North and West) (SNP)  
 MacKenzie, Mike (Highlands and Islands) (SNP)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMillan, Stuart (West Scotland) (SNP)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robertson, Dennis (Aberdeenshire West) (SNP)

Robison, Shona (Dundee City East) (SNP)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Sturgeon, Nicola (Glasgow Southside) (SNP)  
 Swinney, John (Perthshire North) (SNP)  
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Urquhart, Jean (Highlands and Islands) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 51, Against 65, Abstentions 0.

*Amendment 71 disagreed to.*

#### Section 50—Trusts

**The Deputy Presiding Officer:** Group 9 is on trusts. Amendment 24, in the name of the cabinet secretary, is grouped with amendment 28.

**John Swinney:** Amendment 24 will add a power to amend schedule 18, entitled “Trusts”, by regulations.

Amendment 28 will ensure that any regulations that are made will be subject to affirmative procedure. Given that we amended the bill at stage 2 to modify schedule 17, and given that partnerships and trusts are intrinsically linked, we consider it necessary to have the flexibility to amend schedule 18, too.

I move amendment 24.

*Amendment 24 agreed to.*

#### Section 55—Application of this Act to leases

*Amendment 25 moved—[John Swinney]—and agreed to.*

#### Section 51A—Application of this Act to licences

**The Deputy Presiding Officer:** Group 10 is on licences. Amendment 26, in the name of Gavin Brown, is grouped with amendments 30 and 33.

**Gavin Brown:** I start by acknowledging the work that has been carried out by the Scottish Government bill team and John Swinney, who have listened to much of what has been said. We have therefore ended up with a very different position at stage 3 from what we had when the bill was introduced.

Amendment 26 would force a consultation before any new types of licence are brought into the scope of the tax. Stakeholders have raised a particular concern about hotel operator licences. Does the cabinet secretary have anything to say about that?

Amendment 30 would mean that changes would have to be subject to affirmative procedure, and amendment 33 would remove them from a slightly lighter procedure.

As I said, the Government has listened, but there is one issue on which I will contend slightly. In response to what I said in the stage 1 debate, the cabinet secretary said:

"I confirm that there will be an indication of the licences that are included in the scope. The bill will specify which licences will be covered rather than seek to establish a comprehensive list of all the circumstances that are not covered. I hope that that helps members."—[*Official Report*, 25 April 2013; c 19063.]

We know that none is covered at the moment, but we do not have a clear enough indication from the Government of what the cabinet secretary is thinking about covering.

I move amendment 26.

**Ken Macintosh:** I indicate our support for Gavin Brown's amendments 26, 30 and 33.

Currently, property under licence will be exempt from LBTT. My understanding of amendment 26 is that it relates to prescribing certain types of property made under licence that would be treated as land transactions and would therefore be liable for the tax, and I understand that the cabinet secretary suggested earlier that he would consult stakeholders on those matters before introducing regulations. My understanding is that the amendment simply calls for consultation and suggests that subordinate legislation on licences would be subject to affirmative procedure. That strikes me as something that members would support.

**John Swinney:** I will speak to amendment 26 before I turn my attention to amendments 30 and 33.

As Mr Brown has explained, amendment 26 would place a duty on the Scottish ministers to consult interested parties before prescribing which licences to occupy non-residential property are to be subject to land and buildings transaction tax. I have already given a commitment at stage 2 to consult on such proposals. In response to a question from Mr Brown in the Finance Committee meeting on 29 May, I explained that

"during the passage of the bill we will not define the type of licence that will be considered for LBTT; we will do that separately, through secondary legislation".

I went on to say:

"The proposed approach is clearer and will be more administratively efficient. Of course, there will be consultation around and consideration of the secondary legislation that emerges on the issue."—[*Official Report, Finance Committee*, 29 May 2013; c 2699-2700.]

I am happy to repeat that assurance today. In that light, I ask Mr Brown to seek to withdraw amendment 26.

Mr Brown asked me specifically about hotel operator licences. I think that I made it clear in what I said on the record at stage 2—although I will have to confirm this—that hotel operator licences would not be part of the scope of consideration. I will check whether that is correct.

The purpose of amendments 30 and 33 is to ensure that all regulations that are made under section 51A(1) of the bill are subject to affirmative procedure. Those amendments are entirely in order, and I encourage members to support them, but I invite Mr Brown to seek to withdraw amendment 26.

**Gavin Brown:** Because the Government said at stage 1 that it would say what is included, I am minded to press amendment 26 purely so that it forces the Government to consult. On that basis, I press amendment 26.

**The Deputy Presiding Officer:** The question is, that amendment 26 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Baxter, Jayne (Mid Scotland and Fife) (Lab)  
 Beamish, Claudia (South Scotland) (Lab)  
 Bibby, Neil (West Scotland) (Lab)  
 Boyack, Sarah (Lothian) (Lab)  
 Brown, Gavin (Lothian) (Con)  
 Carlaw, Jackson (West Scotland) (Con)  
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)  
 Davidson, Ruth (Glasgow) (Con)  
 Dugdale, Kezia (Lothian) (Lab)  
 Eadie, Helen (Cowdenbeath) (Lab)  
 Fee, Mary (West Scotland) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)  
 Fergusson, Alex (Galloway and West Dumfries) (Con)  
 Findlay, Neil (Lothian) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Annabel (West Scotland) (Con)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Griffin, Mark (Central Scotland) (Lab)  
 Henry, Hugh (Renfrewshire South) (Lab)  
 Hume, Jim (South Scotland) (LD)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kelly, James (Rutherglen) (Lab)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Marra, Jenny (North East Scotland) (Lab)  
 Martin, Paul (Glasgow Provan) (Lab)  
 McArthur, Liam (Orkney Islands) (LD)  
 McCulloch, Margaret (Central Scotland) (Lab)  
 McDougall, Margaret (West Scotland) (Lab)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahan, Michael (Uddingston and Bellshill) (Lab)

McMahon, Siobhan (Central Scotland) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McTaggart, Anne (Glasgow) (Lab)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Murray, Elaine (Dumfriesshire) (Lab)  
 Pearson, Graeme (South Scotland) (Lab)  
 Pentland, John (Motherwell and Wishaw) (Lab)  
 Rennie, Willie (Mid Scotland and Fife) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, Tavish (Shetland Islands) (LD)  
 Smith, Drew (Glasgow) (Lab)  
 Smith, Liz (Mid Scotland and Fife) (Con)

#### Against

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Central Scotland) (SNP)  
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
 Allard, Christian (North East Scotland) (SNP)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
 Biagi, Marco (Edinburgh Central) (SNP)  
 Brodie, Chic (South Scotland) (SNP)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Burgess, Margaret (Cunninghame South) (SNP)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Campbell, Roderick (North East Fife) (SNP)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Constance, Angela (Almond Valley) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Dey, Graeme (Angus South) (SNP)  
 Don, Nigel (Angus North and Mearns) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Eadie, Jim (Edinburgh Southern) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Finnie, John (Highlands and Islands) (Ind)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Johnstone, Alison (Lothian) (Green)  
 Keir, Colin (Edinburgh Western) (SNP)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lyle, Richard (Central Scotland) (SNP)  
 MacAskill, Kenny (Edinburgh Eastern) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Mackay, Derek (Renfrewshire North and West) (SNP)  
 MacKenzie, Mike (Highlands and Islands) (SNP)  
 Malik, Hanzala (Glasgow) (Lab)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (SNP)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McLeod, Aileen (South Scotland) (SNP)  
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
 McMillan, Stuart (West Scotland) (SNP)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Paterson, Gil (Clydebank and Milngavie) (SNP)  
 Robertson, Dennis (Aberdeenshire West) (SNP)  
 Robison, Shona (Dundee City East) (SNP)

Russell, Michael (Argyll and Bute) (SNP)  
 Salmond, Alex (Aberdeenshire East) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Sturgeon, Nicola (Glasgow Southside) (SNP)  
 Swinney, John (Perthshire North) (SNP)  
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)  
 Torrance, David (Kirkcaldy) (SNP)  
 Urquhart, Jean (Highlands and Islands) (Ind)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Wilson, John (Central Scotland) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 49, Against 67, Abstentions 0.

*Amendment 26 disagreed to.*

#### Section 56—Linked transactions

*Amendment 27 moved—[John Swinney]—and agreed to.*

#### Section 67—Subordinate legislation

*Amendment 72 not moved.*

*Amendments 28 and 29 moved—[John Swinney]—and agreed to.*

*Amendment 30 moved—[Gavin Brown]—and agreed to.*

*Amendment 31 moved—[John Swinney]—and agreed to.*

*Amendment 73 not moved.*

*Amendment 32 moved—[John Swinney]—and agreed to.*

*Amendment 33 moved—[Gavin Brown]—and agreed to.*

#### Section 69—Commencement

**The Deputy Presiding Officer:** Group 11 is on Crown application. Amendment 34, in the name of the cabinet secretary, is the only amendment in the group.

**John Swinney:** Amendment 34 is a minor amendment that will ensure that section 68, which relates to the application of the bill to the Crown, will come into force on the day that the bill receives royal assent. The amendment adds a reference to section 68 into section 69(1).

I move amendment 34.

*Amendment 34 agreed to.*

#### Schedule 1—Exempt transactions

*Amendment 35 moved—[John Swinney]—and agreed to.*

#### Schedule 2—Chargeable consideration

*Amendment 36 moved—[John Swinney]—and agreed to.*

#### **Schedule 5—Multiple dwellings relief**

*Amendments 37 to 40 moved—[John Swinney]—and agreed to.*

#### **Schedule 8—Relief for alternative finance investment bonds**

*Amendments 41 and 42 moved—[John Swinney]—and agreed to.*

#### **Schedule 13—Charities relief**

*Amendment 43 moved—[John Swinney]—and agreed to.*

#### **After Schedule 16**

*Amendment 74 not moved.*

#### **Schedule 17—Partnerships**

*Amendments 45 and 46 moved—[John Swinney]—and agreed to.*

#### **Schedule 18A—Leases**

*Amendments 47 to 66 moved—[John Swinney]—and agreed to.*

#### **Schedule 19—Index of defined expressions**

*Amendments 67 and 68 moved—[John Swinney]—and agreed to.*

**John Swinney:** On a point of order, Presiding Officer. I am not sure whether you called amendment 44. Has it been called?

**The Deputy Presiding Officer:** Thank you for your point of order. My script is not all that it might be, but if we are all agreed, we could say that we called amendment 44. [*Laughter.*] We should have dealt with it, so thank you for drawing it to our attention. Do we agree that amendment 44 has been moved and agreed to?

**Members indicated agreement.**

**The Deputy Presiding Officer:** That ends consideration of amendments. My thanks for your forbearance.

## **Land and Buildings Transaction Tax (Scotland) Bill**

**The Deputy Presiding Officer (Elaine Smith):** The next item of business is a debate on motion S4M-07107, in the name of John Swinney, on the Land and Buildings Transaction Tax (Scotland) Bill.

16:46

**The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney):** Today's stage 3 debate on land and buildings transaction tax is something of a landmark for this Parliament: it is the first tax bill in Scotland for 300 years—308 years to be exact.

The chamber may be interested to know that the last tax bill passed by a Scottish Parliament was in 1705. In "the Act in favors of the toun of Glasgow for two pennies on the pint",

"their Majesties King William and Queen Mary did thereby grant and dispone to said toun of Glasgow and community thereof the imposition of two pennys Scots upon the pint of all ale and beer to be vended and sold within the said toun and liberties thereof".

It is interesting that the last tax act was about setting alcohol taxation in Scotland—not much has changed after 308 years.

To bring the debate up to date, an article in the *New Statesman* of 25 June starts with the words:

"Good news if you're Scottish: your government is fixing one of the most ridiculously broken parts of the British tax system!"

Alex Hearn, the gentleman who wrote the article, makes the point that the Scottish Parliament's reforms represent a significant transformation in how taxation of property is being handled in Scotland as a consequence of this Parliament acquiring those responsibilities and having the opportunity to legislate for change.

The Land and Buildings Transaction Tax (Scotland) Bill is coming to a conclusion this afternoon. The second tax bill in 308 years, the Landfill Tax (Scotland) Bill, is following hard on its heels, and preparations continue for the introduction of the tax management bill in the autumn. I also report to Parliament that both revenue Scotland and Registers of Scotland are making good progress, working together on the implementation of the legislation.

Those two taxes, devolved under the provisions of the Scotland Act 2012, are a modest start, but they are only a first step in strengthening the tax powers of this Parliament and enabling it to take the decisions on taxes and revenues that match Scotland's interests and create opportunities for Scotland to flourish economically and socially.

As I first articulated in this chamber just more than a year ago, the Government's proposals for taxation are firmly founded on Scottish principles that have stood the test of time. In 1776, Adam Smith set out four maxims on taxes in his "Inquiry into the Nature and Causes of the Wealth of Nations": the burden proportionate to the ability to pay, certainty, convenience and efficiency of collection.

Those maxims may have been too late for the beer tax of 1705, but they point towards a system that will meet the needs of a modern, 21st century Scotland, grounded on solid foundations. To those four principles, this Government will seek to ensure that the devolved taxes will contribute to our core purpose of delivering sustainable economic growth for and meeting the distinctive needs of Scotland.

Land and buildings transaction tax represents a significant improvement on the tax that it replaces—the United Kingdom's stamp duty land tax. We will do away with the nonsense of the slab structure of SDLT in which three times as much tax is paid when a house value nudges above the £250,000 threshold. That has caused market distortions and leads to the false recording of house prices in an effort to avoid paying tax at the higher rate.

Land and buildings transaction tax will solve the problem at a stroke in Scotland, by substituting a progressive structure in which only the amount above the threshold will incur tax at the higher rate. The Council of Mortgage Lenders and others have been calling for such a change since stamp duty land tax was introduced in 2003. It was clear during the earlier stages of the bill that there is cross-party support for the approach. The Government and indeed the Parliament have shown the vision to get on and do the right thing.

There are a number of other areas in which the bill improves on the equivalent legislation for stamp duty land tax. To encourage prompt payment of tax, a tax return and payment arrangements that are satisfactory to the tax authority will have to be made before Registers of Scotland can accept an application to register a land transaction. Revenue Scotland and Registers of Scotland have started planning for an information technology solution that will allow for the submission of a tax return and payment, with a paper alternative for people who cannot use the online system.

We rationalised the number of tax reliefs that will be available, to simplify the tax and the statute book. Under SDLT, some tax reliefs apply only in England and Wales and others are not being claimed; those reliefs have not been replicated in the bill. Wherever possible, we adopted Scottish

legal terminology, to make the legislation more comprehensible to the Scottish reader.

For a number of years, the sub-sale rules for stamp duty land tax have been the subject of aggressive tax-avoidance activity. People have found a number of different ways of taking advantage of the rules, in an effort to avoid paying any stamp duty land tax. Such activity is not welcome in Scotland. I am keen to encourage a culture of responsible tax paying. Those who doubt that can expect to see timely and effective action from revenue Scotland to protect the tax base.

In my closing remarks in the stage 1 debate, I committed to exploring options to ensure that the property development industry in Scotland is treated fairly in the absence of sub-sale rules. Since then I have met representatives from the industry, who provided a range of insights and suggestions. I hope that the conclusion at which the Parliament arrived after considering amendments today gives the industry satisfaction that the Government is engaging seriously on the matter and—this is crucial—reassures the Parliament that the Government is resolute in its determination that the integrity of the bill should not be undermined by avoidance activity.

We also considered partnerships and trusts and came to conclusions about how to advance issues in that regard.

During the bill's development, a great deal of work was done to develop legislative provisions in relation to the taxation of non-residential leases. I single out work in that area as an example of good practice. We had the benefit of being able to discuss complex issues with members of the non-residential leases working group, which included representatives from the Scottish stamp tax practitioners group, the Institute of Chartered Accountants of Scotland, the Law Society of Scotland, the Chartered Institute of Taxation and the Scottish Property Federation. I thank the members of the group for the way in which they enabled consideration of and agreement on a comprehensive approach, which covers a range of issues. Their giving their time and expertise greatly strengthened parliamentary scrutiny of the matters.

The establishment of the non-residential leases working group is a good example of how the legislative process in Scotland can be made accessible to stakeholders. Close working with stakeholders has been a feature of the bill and is something that I am keen to continue as we take forward the examination of tax issues. Such an approach is the hallmark of the tax consultation forum, which is already giving the Government substantial advice on the formulation of the tax

management bill, which will shortly be introduced in Parliament.

I thank the Finance Committee for its detailed scrutiny of the bill at stages 1 and 2. The bill covers a number of policy areas, and the committee heard evidence from a broad range of stakeholders. We can take pride in the fact that today we are giving evidence of the Parliament's ability to shape legislation that addresses diverse and significant issues. The bill is an example of what the Parliament can achieve if we work collaboratively. I hope that at decision time this evening it will attract support from across the political spectrum.

I move,

That the Parliament agrees that the Land and Buildings Transaction Tax (Scotland) Bill be passed.

**The Deputy Presiding Officer:** We are extremely tight for time. I now call Ken Macintosh—you have a maximum of seven minutes.

16:54

**Ken Macintosh (Eastwood) (Lab):** Thank you, Presiding Officer.

There has been very little fuss about the bill, which has broad political agreement across the chamber and broad support among home owners and businesses. However, it is worth noting for the record that, even if it is not the most earth-changing legislation, it is introducing Scotland's first new tax in more than 300 years. The bill is another example of devolution working well, with the Scottish Parliament taking control of this property transaction tax and designing a system to suit Scotland's needs while retaining all the advantages of working within the political, social and economic union that is the UK.

Although we have agreed today on the principles of the new land and buildings transaction tax, there is still a great deal of detail to be worked out. For example, there is the practical issue of how the collection agency, Registers of Scotland, will interact with the new supervisory body, revenue Scotland; there is the rather important matter of negotiation and agreement on how much the block grant will be reduced by when the new tax is introduced; and of course there is the question that I suspect most home buyers and businesses will most want to hear answered, which is how much they will pay and what the rates at which LBTT is introduced will be.

On the first of those points, alongside the devolution of LBTT, perhaps the most practical, immediate and positive benefit will be the move from an inefficient, unfair tiered or slab structure of

stamp duty to the progressive, rising scale of LBTT. Stamp duty has long been broadly redistributive; in other words, a high rate of tax has generally applied to more expensive properties, with no stamp duty on properties below a value of £125,000. However, applying higher percentage rates to all the properties above a certain threshold has created highly marginal rates of tax at those new banding levels and has led to distortions in the housing market and in the application of the tax. The new system will smooth out those inequities and ensure an efficient market that will be fairer to buyers and sellers alike.

When the bill is implemented, the block grant will of course be adjusted to remove a sum equivalent to the money that we currently receive from stamp duty levied across the UK. It is worth noting, at the very least, that the UK and Scottish Governments have already offered us widely varying estimates of how much the grant should be reduced by. That is perhaps not surprising, given the collapse of the property market and the consequent drop in the number of sales on which stamp duty has been levied over the past few years, but it is important that an agreement is reached that is fair not just for Scotland but for the rest of the UK, too. The Cabinet Secretary for Finance, Employment and Sustainable Growth has placed great stock in the past on providing stability in the public finances, so for that reason alone I urge him to work towards reaching agreement on the block grant reduction sooner rather than later.

I am certainly not asking members to rethink their support for the bill, but I suspect that there might be a marginal downside to devolving LBTT. I have not made the exact calculation but, given that stamp duty is a broadly redistributive tax and, I believe, the proportion of expensive properties is far higher in London and the south-east of the UK than in Scotland, Scotland will currently be among those parts of the UK that marginally gain from the redistributive effect of the stamp duty tax.

I mention that point as it is also worth noting that, when LBTT is introduced in Scotland, many of the properties at the higher end of the scale will be in Aberdeen, Aberdeenshire, Edinburgh and Glasgow. At the very least, the new system will create a tension between our support for localism and local control and our belief in a nationally applied, progressive and redistributive system of taxation.

One of the most important issues that are still to be resolved is the timescale for the publication of the new tax rates. I will not repeat all the arguments that we have just heard debated at stage 3 and which were debated at stage 2 in committee, but I hope that the cabinet secretary

will bear it in mind that business in particular is clamouring for greater certainty.

The cabinet secretary has stated that his broad approach is to try to maintain revenue neutrality, but even within that policy intention there is scope for winners and losers. I believe that, when the bill was first outlined, the cabinet secretary suggested that 95 per cent of people would be better off under LBTT. If that is the case, clearly the 5 per cent who would be worse off might be disproportionately affected.

There is a particular worry in the commercial property sector that high-value commercial property might bear some of that disproportionate impact. Businesses are used to testing our words as politicians against our actions as parliamentarians or Government ministers. I urge the Government and the particular minister involved to publish his proposals as soon as possible in order to introduce some certainty.

The fact that the cabinet secretary has repeated his intention not to publish the information before September 2014—in other words, it will not be published before the referendum—has not helped assuage the anxiety. His intention suggests that it is less of a priority and it begs the question: if there is nothing to be worried about and everyone will be broadly unaffected or even slightly better off, why the delay in making the announcement?

**John Mason (Glasgow Shettleston) (SNP):** Does the member accept that Chancellors of the Exchequer at Westminster tend to make tax announcements quite late in the day?

**Ken Macintosh:** I do—but I am not sure that that is a killer point or that it answers the point about the certainty that we are looking for. We do not have certainty at the moment, and the cabinet secretary has it within his power to offer that to businesses and home owners.

I turn to the administration of the new tax. The bill states that Registers of Scotland will have a role in the collection of revenues alongside revenue Scotland. Having two organisations involved in one tax creates room for complexity and confusion, and I urge the cabinet secretary to clarify their roles as soon as possible.

As the cabinet secretary knows, we have given our strong support to the introduction of a robust general anti-avoidance measure. However, one of the exceptions that we made was on energy efficiency, and I urge the cabinet secretary to return to that.

There are a number of issues still to be resolved, and much detail remains to be published. However, the Parliament is of one mind that today marks a major step forward in improving the tax system in Scotland. The bill reflects a

number of principles on which we can agree and an approach that is both progressive and redistributive, which we believe can help to shape a modern, prosperous and socially just Scotland of which we can all be proud.

17:01

**Gavin Brown (Lothian) (Con):** We welcome the devolution of the tax along with the Land and Buildings Transaction Tax (Scotland) Bill, which we will support at decision time at 5.40. When the cabinet secretary talked about its being the first new tax for well over 300 years, I was reminded of one practitioner in tax, who shall remain nameless, saying that new taxes are a bit like buses and that, by the end of 2013, we will have another one with which to contend in the shape of the Scottish landfill tax.

We welcome many elements of the bill. One of the Scottish Government's strongest decisions is to remove the existing slab structure that is found in SDLT. Without any shadow of a doubt, that structure has previously led to market distortions, and the one simple move of removing it will make a big difference to the marketplace. I have yet to find anybody from any profession who has a bad word to say about that decision.

Over the course of the bill's passage, the Scottish Government has made strong progress in certain areas, as has been indicated in the stage 3 voting on amendments, and it ought to be credited for the work that it has done. The cabinet secretary talked about the working group on non-residential leases that he set up, and I join him in commending the work of that group, whose members sat down, rolled up their sleeves and pulled together some provisions that are complex but far superior to those that they replace. Indeed, as I said earlier, I commend the decision that the cabinet secretary took in relation to licences, which were initially to be a part of the tax but are now not to be, apart from those that may be granted at a later date.

We have had discussions about issues on which we disagree, too. As the cabinet secretary will know, I find myself holding a different position from him in two areas. The first relates to the timings of the rates. I will not rehearse all the arguments; I will simply respond to John Mason's intervention on Ken Macintosh. He is right to say that the Chancellor of the Exchequer has raised stamp duty. Budget day in March 2012 was an example of that. However, the concern that businesses are raising with me at the moment is that this is an entirely new tax and a new framework with new thresholds—we do not know exactly how many—and new rates at every level apart from the nil rate. There is greater uncertainty over an entirely

new tax than there is over an existing tax, even when there are changes late in the day.

We also disagree on sub-sale relief. I will not rehearse all the arguments. Suffice it to say that I feel that the Scottish Government has slightly overstated the case in relation to tax avoidance. It has not quite taken into account enough areas of competition. The cabinet secretary has outlined what he intends to do, but we are in a slightly different place. Most of the group on non-residential leases that he mentioned—including ICAS, the Law Society, the Chartered Institute of Taxation, the Scottish Property Federation and others—take a view that is broadly closer to what I have suggested than to the Scottish Government's approach of trying to exclude everything and looking at bringing in only one or two aspects.

The fact that there is still work to be done is acknowledged in the specific regulatory powers that the bill provides. Mr Swinney quoted the *New Statesman* article that said that the Scottish Government was

“fixing one of the most ridiculously broken parts of the British tax system”,

but there are some parts of the bill that people would deem to be broken—not just the provisions on partnerships but those on trusts, which need to be looked at. I am glad that the regulatory power on that was brought in at stage 3.

As I said at the outset, we will support the bill at decision time, but there are a couple of areas on which we still disagree with the Government, and I press it, even at this late stage, to look at where it can make progress on them.

**The Deputy Presiding Officer:** We come to the open debate. I can give members only three minutes and, even at that, I might have to drop speakers.

17:05

**Kenneth Gibson (Cunninghame North) (SNP):** As convener of the Finance Committee, which was the lead committee for consideration of the bill, I am pleased to take part in the debate, which is on a subject that has featured heavily in our work this year.

The complexity of establishing a fair and workable taxation system is apparent. It has not been easy to iron out inequity and to learn from the mistakes of old, repeatedly altered legislation while trying to simplify the system within the Scottish Parliament's powers. I thank the committee clerks, committee colleagues and all those who contributed to the evidence-gathering sessions for their input as the bill progressed, which was invaluable and helped to offer a fuller

picture of how the new tax could, should and will operate.

The bill is the first of three related tax-raising bills to come before the Finance Committee and the Parliament following the passage of the Scotland Act 2012. It is clearly in everyone's interest to ensure that new taxes are progressive and are relatively simple and effective.

LBTT will replace stamp duty land tax, which the Institute for Fiscal Studies described as “wholly ill-conceived”. Perhaps the most notable of SDLT's faults is the fact that it is charged on the basis of a slab system, which creates significant distortions. For example, as the Ernst & Young report “Grasping the thistle”—which is not to be confused with Mike Russell's book of the same title—pointed out, a non-residential property that is acquired for £249,000 attracts stamp duty of 1 per cent, or £2,490, whereas one that is bought for £251,000 incurs a charge of 3 per cent, or £7,530. LBTT will offer a more progressive tax that avoids the sudden increases in liabilities that are a feature of the slab system.

Furthermore, as an article in *The Sunday Times* on 28 April pointed out, stamp duty is open to a series of tax avoidance schemes that Her Majesty's Revenue and Customs is trying desperately to close. Although the finer details of stamp duty mitigation schemes are kept secret by some legal firms, it is known that, through a complex system that involves setting up third-party companies, sub-sale relief can be exploited on behalf of a buyer. I am pleased that the bill addresses that issue. I am aware that many property developers use sub-sale relief for wholly commercial purposes, but the bill will properly legislate to cover such specific commercial transactions.

It is clear that tax avoidance is an important issue that has received much attention in recent months, so I am pleased that the bill takes steps to close tax loopholes. As the Scottish Government does not intend to increase the overall revenue take, everyone should pay less.

Of course, the Scottish Government intends to tighten things up even further by introducing a general anti-avoidance rule through the proposed tax management bill later in the parliamentary session. That move will enjoy public support but, according to the Ernst & Young survey that I cited earlier, it also has the support of 78 per cent of businesses that operate in Scotland across an array of sectors. As an aside, I believe that that shows that the Government can act in the public interest by collecting taxes that are duly owed by businesses without scaring them away or damaging the economy, which is a scenario that some are all too keen to depict. I suggest that the UK Government might wish to reflect on that.

The introduction of LBTT is the first step towards a Scottish approach to a fairer taxation system, and it is important that it is achieved with as much consensus as possible. I am encouraged that that has been the case, in committee and in the chamber, with a majority of amendments being agreed to without division. I am confident that, following the bill's passage and when the improvements and benefits of it are realised, it will become apparent that all—and not some—tax powers should be devolved to the Parliament.

17:09

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I very much welcome the bill, which will soon become the first tax act in Scotland since the tax on alcohol in Glasgow act of 1705—I thank the cabinet secretary for that interesting information.

The cabinet secretary said that he hoped that the bill would be the first step in strengthening the Parliament's tax powers. I certainly agree with that—I would like a few more taxes to be devolved to the Parliament. In committee, he said that he wanted all taxes to be devolved to the Parliament. I pointed out to him that that was devo max, but he assured me that he still supported independence.

Unless or until we raise all the revenue that we spend, the key issue of the block grant adjustment will remain. It is not in the bill but, clearly, it will be one of the major issues in the next year or two. We wish the cabinet secretary all the best in his negotiations with the UK Government. I am sure that we would all urge him to strike the best possible deal.

There are many things in the bill that I welcome, including the process. There was a good process in the committee and with the stakeholders, so I welcome the changes that have been made in relation to charities, for example, and the additions, such as the provisions on non-residential leases. I also welcome the general emphasis on tackling tax avoidance. Part of that involves dealing with reliefs that encourage it, such as sub-sale relief. I also welcome the bill's progressive nature.

The first controversy that came up today concerned when the rates will be announced. In a sense, that is still a live issue, since nothing in the bill says when that should be done. The distinction between the setting of residential rates and the setting of non-residential, commercial, rates is important. Gavin Brown in particular emphasised the range of bodies that think that commercial rates should be set earlier, and I was persuaded by that argument.

I was not persuaded by the cabinet secretary's argument against that, which was that the rates

must be set in September because of the budget bill. There is a commitment to revenue neutrality, so I do not see why the decision on the rates should depend on the overall levels of public expenditure at the time.

Obviously, I was disappointed in relation to energy efficiency, but there is no time to say anything else about that. I was also disappointed by the partnership sections, which were lifted straight from what is generally agreed to be a bad part of Westminster legislation. However, the cabinet secretary has agreed to consider that before 2015, and I am sure that that will be done.

Kenneth Gibson mentioned "Grasping the thistle", which is quite an interesting document. A lot of the discussion on the bill has been about business, but that publication says that there is a lack of awareness in the business community and calls for a concerted programme of communication to boost awareness of the switch. I am sure that it is not just the business community that needs that, so communication will be important over the next couple of years.

The other big issue is the practical issues that have to be sorted out. I am glad that Registers of Scotland and revenue Scotland are making good progress but, clearly, there are issues that concerned the committee, such as who will give advice on the tax. The committee will keep a watching eye on progress on that as well.

17:12

**John Mason (Glasgow Shettleston) (SNP):** It has been fascinating to follow the progress of the bill, which introduces the first new tax in this Scottish Parliament. That is both exciting and symbolic. As we start the process of replacing UK taxes with more appropriate Scottish taxes, it does no harm to repeat the four principles of Scottish taxation, which the cabinet secretary has laid down, having drawn them from Adam Smith: they are the burden being proportionate to the ability to pay; certainty; convenience; and efficiency of collection.

It is also worth saying again that tax is a good thing. We live in a world where many complain of paying too much tax and where there is an idea that, for some days in the year, everyone is working for the Government. However, that is clearly not true. We pay tax for the good of our fellow citizens. The Parliament has a duty to argue for taxation and to say why it is both necessary and good.

Gavin Brown, who is not here at the moment, made a point about witnesses coming to the committee. Of course, people come to committee with special interests, but we have a responsibility to all the citizens of this country. They are not

always at our committee meetings, and we must take their views into account.

I welcome the principle of simplicity in the bill and the fact that the cabinet secretary has resisted the requests for a range of reliefs. On the surface, some of those might have seemed attractive, but they could open the door to those who seek to artificially avoid paying the tax.

We have debated the issue of encouraging environmentally friendly housing. We all want to encourage that, but I continue to believe that the money would be best used to finance grants or reductions in council tax, rather than a tax reduction.

The question of when rates should be announced has been discussed. We have not spent a great deal of time on the block grant adjustment. That is an issue for all the new taxes—LBTT, the Scottish rate of income tax and landfill tax. It certainly should be simpler to work out the formula for LBTT than for the Scottish rate of income tax, for example. However, we cannot have the same system for all three taxes. The Finance Committee will want to keep a close eye on the discussions between the two Governments.

Something exciting is happening here today. For the first time, the Parliament is introducing a new tax. I accept that it is a small tax that replaces a similar existing one, but there is something symbolic about that. Until now, only the block grant has been available to us and we have had choices about how to spend it. Now, for the first time, we will be able to raise some of our own revenues.

The ability to raise tax was a key issue on the road towards independence for the United States. At that time, London made serious mistakes in how it handled things. Westminster has over the years made serious mistakes in its quest to hang on to Scotland, too. First, it made the mistake of giving us our own Parliament, which has only helped to boost Scotland's sense of identity and our ability to do things ourselves. Now, it is giving us the power to raise some of our own taxes. Again, that could be a serious misjudgment on its part. The more powers we have and the better we use them, the more likely it is that we will go the whole hog and opt for complete freedom. Especially for that reason, I very much welcome the passage of the bill.

17:15

**Willie Rennie (Mid Scotland and Fife) (LD):** It is interesting that the independence revolution starts with LBTT. That is obviously the most revolutionary development that has happened in the Parliament and I look forward to joining John Mason on that fantastic, exciting journey.

Many members have mentioned that the bill is historic—it is a landmark. The bill has been greeted with great enthusiasm. However, we should not forget that it is part of the powers in the Scotland Act 2012, which many ministers described as a poison pill and which they threatened to veto. Many red lines were drawn and then painted over with Tipp-Ex.

Now we have the bill. I welcome it, because I am in favour of more powers for the Parliament. However, we should not forget that those who are enthusiastic about the bill today threatened its introduction. We should not forget that those who are in favour of more powers sometimes adopt strange positions.

For such a historic bill, we have adopted quite a timid approach to its implementation. We could have implemented something quite interesting to incentivise people in relation to the environment. We could have made significant steps today. However, that approach was turned down, which is a shame. I hope that the Government reflects on that and introduces measures in other areas to address the climate change targets that we have missed on two successive occasions.

I do not want to be completely negative this afternoon. I welcome the replacement of the slab structure with something that is more in line with the income tax proposals. That is a sensible, progressive way to proceed. However, I am disappointed that the finance secretary did not listen to Gavin Brown's wise words and introduce much more notice for business and others of how the tax will be structured. There is still an opportunity for him to indicate that he will do that. I hope that he does, but I might be disappointed, too.

17:18

**Jean Urquhart (Highlands and Islands) (Ind):** Having heard the evidence sessions in the Finance Committee, I am convinced of the merits of the land and buildings transaction tax. The slab system of rate setting in the stamp duty land tax is outdated and inefficient. I commend the Scottish Government for striving to meet the four principles of tax legislation that it has committed itself to and particularly for the LBTT's shift to a proportional and efficient progressive rate of tax. The evidence makes it all too apparent that land prices have been distorted by the slab system, as it discourages the sale of residential property at prices immediately above the thresholds. The move to a progressive tax is a welcome shift in the current housing climate.

On Willie Rennie's comments, the Scottish people would welcome the rejection of Gavin Brown's amendments because, largely, tax

dodging is abhorrent to everybody in this country. We struggle to provide good public services on endlessly reduced taxes, yet it has been recommended that in some of the areas in which tax has been dodged most, we should not implement the regulations.

This is the first tax to be introduced after the 2012 act; it is a moment of history. If I have any personal comment to make about that, it is that the bill is almost premature. After a resounding yes result next autumn, we will be in charge of all taxes. However we deal with tax in this country, we will not have to accept a block grant adjustment accordingly, which in effect could leave us no better off.

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

**Jean Urquhart:** As I did at stage 1, I note that this is the first of three bills to emanate from the 2012 act that will begin to increase the Parliament's powers. It is important that we get it right so as to make another statement about Scotland's competence with regard to tax. I look forward to the day when the Parliament has the full, normal powers of a nation to bring about the substantive changes in our economy and society that we desperately need. I support the bill.

17:21

**Gavin Brown:** John Mason said that this was an exciting piece of tax. I have to say that, in a way, he is right: elements of it are quite exciting and interesting. The idea that we will be responsible for setting the rates of and collecting LBTT, instead of just expenditure, is a new development for the Parliament. It will force all of us as legislators, and the Finance Committee in particular, to step up to the plate a little.

We will also have to begin to understand concepts such as behavioural economics and what happens when we change the rate of a tax up or down—will we get anywhere near what we think we will collect and will we get anywhere close to what we fear we might have lost? That is an exciting development for the Parliament, and I look forward to the rates being set and the discussions going on until April 2015 and thereafter.

Obviously, I take a slightly different view from Mr Mason of where this will lead. He thought that this was the beginning of the independence march. My view is slightly different, but I agree that the concept is exciting.

As I said in my opening speech, there is still work to be done. Sometimes it can sound a bit trite to say that, so I will get one example on the record to show what I am talking about. Schedule 18,

which we looked at briefly, relates to trusts. Some of the provisions on stamp duty land tax have simply been copied over to that. Part 2 of schedule 18 basically defines some of what beneficiaries are entitled to in terms of their interest under the law of England. It states:

“Paragraphs 3 and 4 apply where property is held in trust ... on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property.”

I cite that minor example to illustrate the point that, although much in the bill is good, certain aspects have simply been cut and pasted. It is critical that, in advance of April 2015, work is done via the various working groups and parties that the cabinet secretary has talked about.

I make another plea for the cabinet secretary to say a little more about the setting of rates in his closing speech, although I suspect that he might not. The reason why I say that is that, if I heard Mr Gibson correctly—he will correct me if I did not—he said that everyone should pay less. I want to probe that a little and ask the cabinet secretary simply, “Is Mr Gibson right?”

**Kenneth Gibson:** All else being equal, if everyone pays their fair share and avoidance is eliminated, people will pay less than would otherwise be the case. That is what I should have said.

**Gavin Brown:** Perhaps the cabinet secretary will confirm in his closing speech whether everybody will pay less in terms of the rates that we will face, compared with stamp duty land tax. I would be very interested to hear about that.

There is much to commend in the bill but, as I have said, there is still work to be done, particularly on rates but also in relation to sub-sale relief. Jean Urquhart was particularly harsh on sub-sale relief. It has been an avenue for avoidance, but I do not think that we should suggest that everybody who has used sub-sale relief has done so purely as a method of avoidance. Forward funding proposals are popular now because many of the banks are not lending to commercial property in the way that they used to. Forward funding has grown because of that. I ask that we do not cut those avenues off and that we are not too hasty in hitting the economy with that.

17:25

**Rhoda Grant (Highlands and Islands) (Lab):** The Labour Party supports the principles of the land and buildings transaction tax. This has indeed been an interesting debate. The bill is an example of devolution working well and affording the Scottish Government the opportunity to design a tax that suits its needs and redresses some of the flaws of the current UK system. The tax will be

responsive to Scottish markets, especially our housing markets, and will free us from the other market distortions that happen when tax is levied more widely. The bill is a good example of decisions being taken as close as possible to those who are affected by them, illustrating one of devolution's real benefits.

I take slight issue with people who have said that we have not had tax-raising powers before. We have. Indeed, the Parliament was set up with tax-raising powers, although we have never used them. It is a point of fact—we did have tax-raising powers. Other members have said that the land and buildings transaction tax is the first tax that we have devised. That is possibly correct, although we did devise the social responsibility levy, and I very much hope that the new tax that we are now providing for will raise more revenue than that other one did—it will probably never raise any revenue again.

I turn to energy efficiency, which provides one of the main bones of contention in the debate. No cognisance was taken of Malcolm Chisholm's stage 2 amendments, nor of Patrick Harvie's stage 3 amendments to charge differently for energy efficiency. That would have provided the Government with a tool to encourage energy efficiency measures. We know that the climate change targets have been missed, and such measures would have provided another tool in the box to deal with meeting those targets. I feel sure that we will come back to the issue in the future, and the eventual act will perhaps be amended to make that happen.

I turn briefly to sub-sale relief and welcome the cabinet secretary's points on the subject. I very much welcome the setting-up of a working group on the matter and the provisos that the cabinet secretary has put in place to ensure that speculative land purchasers cannot apply for sub-sale relief. I also welcome the fact that there will be clawback if people apply for it, are granted it and then do not fulfil the terms of the agreement. We very much agree that if the balance between relief and avoidance is not met, we will perhaps not pursue the issue further. However, I welcome the fact that the cabinet secretary is examining the matter in greater detail. I re-emphasise the importance of ensuring that tax avoidance is not part of the new tax.

Tax avoidance has been a big issue with stamp duty. We welcome the general anti-avoidance rule that will be part of the forthcoming tax management bill, ensuring that people cannot abuse tax arrangements in Scotland. We look forward to working with the Government to ensure that those provisions are as stringent and rigorous as possible.

I turn now to a point that has not been raised so far in the debate: that of revenue Scotland and Registers of Scotland working together. I welcome what the cabinet secretary said in his opening speech about good progress being made on that front. I urge the cabinet secretary not to take his eye off the ball with regard to the IT system. We need a good IT system to deliver the tax. It must be fit for purpose, and we know that the Registers of Scotland has had problems with computer systems—its systems have not proved to be very efficient, and we very much hope that the new system that is being devised is fit for purpose and can deliver the system that we require.

Malcolm Chisholm spoke about the block grant. That issue has not been discussed very much in the debate, but it is hugely important. We know that we will face a one-off reduction in the block grant, and how that happens will impact on our future revenue. We need a fair settlement. It will be for the Scottish Government to deal in its budget with the peaks and troughs that arise from devising the tax and what it brings in, but we need to be sure that the one-off cut to the block grant is fair and that we do not lose out.

Like other members, I welcome the changes in the taxation system, which move us towards a much more progressive system. Many members have spoken today about the distortions that were caused by the old slab system that was part of stamp duty land tax. There were high thresholds, and people tended to keep their prices below the threshold to encourage sales and purchase. The new system will be much fairer and more progressive, and will start from a higher amount to reflect our market conditions.

The bill is devolution in practice, and it gives the Scottish Government the levers that it needs to promote economic development as well as revenue-raising powers. It is always a challenge to reach the right balance between two aspects of our economy—raising the revenue that is needed to provide our public services and encouraging economic development—but we very much welcome the bill.

17:31

**John Swinney:** I am delighted that we have been joined in the chamber for the debate's conclusion by my colleague and friend Michael Russell, the Cabinet Secretary for Education and Lifelong Learning. He must have heard the phrase "grasping the thistle" mentioned while he sat in his office. However, I must disabuse him of any notion that it was a plug by Kenny Gibson for the illustrious publication that Mr Russell perhaps thought was being discussed. Mr Gibson in fact referred to the thoughtful and comprehensive report from Ernst & Young on the issues around

tax policy in Scotland, which is a welcome contribution to the debate.

The contributions of colleagues to the final stage of proceedings have also been welcome. I say to Malcolm Chisholm that, earlier this afternoon, before I came down to the chamber, I was viewing in the Government archives the 1705 act to which I referred. The act itself is somewhat more elegantly presented than the purple sheets that are before me today. Nonetheless, it is a very significant moment when the Parliament here in Scotland is, for the first time, able to exercise responsibility for the formulation of tax legislation that will be effective in this country.

John Mason made a powerful argument for the purpose of taxation. He highlighted that it is our duty in Parliament to scrutinise the application of that taxation and, sometimes, to take a robust view of some of the information that is presented to us, taking into account as well our wider responsibility—as Mr Mason expressed it—to the citizens who may not be at the parliamentary committees that are hearing the evidence and having the discussions.

Mr Mason's points about the purpose of taxation and its importance in funding public services lie at the heart of the Government's aspirations in formulating the legislation. They also lie at the heart of the composition of the tax consultation forum that I have now established. The forum brings together not an exclusive group of tax experts—although there are plenty of tax experts in the room; it includes representatives of youth organisations, older people's organisations, the people who represent individuals on low pay and so on. That will ensure that we have a challenging debate about the approach that we should take to taxation as we acquire these wider responsibilities.

One of the characteristics that I have been anxious to ensure is reflected in the first bill to legislate on tax in this country that has been introduced in 308 years is the taking of the firmest, hardest line on tax avoidance, to tackle it from the very beginning. In that respect, Jean Urquhart is absolutely correct: we should not in any way give a signal in the bill that we are interested in anything other than good, strong tax compliance.

I welcome what Rhoda Grant said in response to my comments about sub-sale relief. Whether we like it or not, sub-sale relief has been used as a tax-avoidance mechanism, and the comments that I have put on the record are designed to make it absolutely clear that, although we are prepared to consider the issues, if there is any possibility that we will open up an avenue to tax avoidance, the Government will not go down that route. Our approach of ensuring the robustness of the legislation is crystal clear.

Mr Rennie said that he did not want to sound all negative, although he did a pretty good job of pulling off such an act in the process. If Mr Rennie was so desperately troubled by the absence of a measure to assist in meeting the environmental challenge, there have been limitless opportunities for an amendment to be lodged, considered and scrutinised. I am not aware of a single Liberal Democrat amendment that would have assisted us in resolving the issues.

**Willie Rennie:** The cabinet secretary might find this difficult to believe, but partnership is not a bad idea. He finds it increasingly difficult, as we saw today in his rejection of Gavin Brown's sensible suggestions. I work together with those of like mind; the cabinet secretary just seems to reject them.

**John Swinney:** That was a very elaborate Liberal Democrat way of saying, "I haven't lifted a finger in this debate."

I also point out to Mr Rennie that he marshalled arguments about comments that we made about the Scotland Act 2012 provisions. I remind Mr Rennie that the Scotland Act 2012 provisions differ substantially from the Calman commission's proposition and that advanced initially by the UK Government. We thought that the change to the mechanism for adjusting the block grant in relation to income tax-varying powers had a deflationary bias. The UK Government deserted that position and the Holtham methodology was applied. Some of our criticism was well founded in protecting the legitimate interests of the people of Scotland.

**Willie Rennie:** Will the minister give way?

**John Swinney:** We are to get another intervention from Mr Rennie, so I suppose that we had better be gracious and generous and give him a platform, because he has not been involved in the debate for some considerable time.

**Willie Rennie:** Does the minister deny that he described the Scotland Act 2012 provisions as a "poison pill" and dangerous and that he was prepared to veto the bill? He had six red lines; however, those red lines completely disappeared. Will he not admit that?

**John Swinney:** I do not think that this Parliament is a great place for unionists to talk about red lines. There were all these red lines in the sand, but they have all gone away again.

As for Mr Brown, he said that Mr Mason made an undue link between Parliament getting these tax powers and getting further powers. I gently remind Mr Brown that his party was against the establishment of this institution. It said that it would go thus far and no further, then thus far and no further, then thus far and no further—[*Interruption.*]

**The Deputy Presiding Officer:** Order. Cabinet secretary, you are in the final minute of your speech.

**John Swinney:** Then it gave us the Calman commission, which was apparently designed to put our gas at a peep. After the election, when we won a majority, it came around—although it drew a line in the sand, we were to have more powers. I do not think that the Conservatives are in a strong position to lecture us on how transferring one power or responsibility to the Scottish Parliament does not lead to further constitutional change—*[Interruption.]*

**The Deputy Presiding Officer:** Order, please, so that we can hear the end of the cabinet secretary's speech.

**John Swinney:** This is a significant day. It is the first time in 308 years that the Scottish Parliament has had the opportunity to formulate legislation on tax and to implement taxation in our country. We believe that that is an indication of the strengthening of Scottish democracy, which will be complete when this Parliament has all the financial and economic powers that come with being an independent country.

## **Victims and Witnesses (Scotland) Bill: Financial Resolution**

17:39

**The Deputy Presiding Officer (Elaine Smith):** The next item of business is consideration of motion S4M-06730, in the name of John Swinney, on the financial resolution in respect of the Victims and Witnesses (Scotland) Bill.

*Motion moved,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Victims and Witnesses (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b) of Rule 9.12 of the Parliament's Standing Orders arising in consequence of the Act.—*[John Swinney.]*

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

## Decision Time

17:40

**The Deputy Presiding Officer (Elaine Smith):** There are three questions to be put as a result of today's business. The first question is, that motion S4M-07106, in the name of Paul Wheelhouse, on the Crofting (Amendment) (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament agrees that the Crofting (Amendment) (Scotland) Bill be passed.

**The Deputy Presiding Officer:** The next question is, that motion S4M-07107, in the name of John Swinney, on the Land and Buildings Transaction Tax (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament agrees that the Land and Buildings Transaction Tax (Scotland) Bill be passed.

**The Deputy Presiding Officer:** The next question is, that motion S4M-06730, in the name of John Swinney, on the financial resolution in respect of the Victims and Witnesses (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Victims and Witnesses (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b) of Rule 9.12 of the Parliament's Standing Orders arising in consequence of the Act.

## Specialist Heart Failure Nurse Services

**The Deputy Presiding Officer (Elaine Smith):**

The final item of business is a members' business debate on motion S4M-06245, in the name of Dave Thompson, on review of specialist heart failure nurse services. The debate will be concluded without any question being put.

*Motion debated,*

That the Parliament welcomes the publication of the *Review of Specialist Heart Failure Nurse Services* by the Scottish Heart Failure Nurse Forum supported by Chest Heart & Stroke Scotland and the British Heart Foundation Scotland; understands that heart failure is a life-limiting condition for which there is no cure, that, unlike other cardiac conditions, its prevalence is rising and that it is estimated to affect up to 100,000 people in Scotland; considers that specialist heart failure nursing services reduce unnecessary hospitalisation for people with heart failure by around 35%, resulting in savings of around £1,826 per patient to the NHS; understands that NHS Highland meets the minimum Scottish Intercollegiate Guidelines Network (SIGN) guidelines ratio of 1:100,000 specialist nurses per head of population and provides specialist support to nearly 300 patients per year, but, given that NHS Highland covers 41% of NHS Scotland's geographical area, travel times inevitably reduce the capacity of the service; considers that these pressures mean that there is limited capacity to deliver education and share skills and expertise with community staff to ensure that heart failure patients receive the support that they need; is concerned that, despite the strength of the evidence base, only four out of 14 NHS boards meet the minimum ratio of specialist heart failure nurses to population level laid out in SIGN guidelines from 2007, that the overall number of whole-time-equivalent posts in Scotland has fallen since 2008 despite the rising prevalence and that one board has no specialist heart failure nursing service in place at all, and notes calls for all NHS boards to ensure that, as a minimum, they meet the SIGN guidelines on whole-time-equivalent posts for what it sees as these crucial services.

17:42

**Dave Thompson (Skye, Lochaber and Badenoch) (SNP):** The motion was stimulated by a discussion at the cross-party group on heart disease and stroke, of which I am a vice-convenor, in March. At that meeting, we heard first hand from specialist nurses—as well as from the patients and families that they work with—about how invaluable the services are. I will come back later to examples that we heard about at that meeting, but it is important first to define heart failure in order to set our discussion in context.

Heart failure is a complex condition for which there is no cure for the majority of people. Heart failure occurs when the heart, which is a muscle, is damaged by a cardiac event—most commonly following a heart attack, or from long-term high blood pressure, or valvular disease, which I suffer from myself.

It is really important to make the distinction between heart failure and heart attack, because there is a common misconception that they are the same conditions—they are not. Heart failure can be the result of a heart attack, but heart failure is a long-term condition, whereas a heart attack is an emergency or acute event and happens when a blockage occurs in one of the arteries to the heart, which restricts the flow of blood.

Due in part to the very welcome improvements in the rate of premature mortality through heart disease, the prevalence of heart failure is rising. It is the only cardiovascular condition that is on the rise, in part because acute events such as heart attacks, which would have been fatal a few years ago, are now survivable. As a consequence, however, many people with damaged hearts end up living with heart failure. Additionally, because heart failure is more prevalent in older people, our ageing population also further increases its prevalence. Improved heart attack survival is, of course, tremendous progress, but it presents the national health service with different challenges, including how to help people to cope when living with heart failure.

Specialist heart failure nursing services are one of the most important ways that the NHS can treat heart failure patients. At the meeting in March of the heart disease and stroke cross-party group, we heard from Mr Thomas Stark, who is a heart failure patient. Thomas described his family's and his experience of a heart failure diagnosis and his treatment and rehabilitation at Astley Ainslie hospital. Thomas, who felt that he had been well supported throughout his time at Astley Ainslie, described the value of group discussions and of listening to the experiences of others. He also shared a moving letter that his wife had written to the NHS to express their thanks. Thomas summed up the input of the specialist nurse in this way:

"I'll no beat about the bush, but the nurse was our lifeline."

We also heard from Mrs Lorraine Jones—a carer for a heart failure patient. Lorraine and her sister were both full-time carers for their mum since her diagnosis of end-stage heart failure. Lorraine described the journey that she and her family had been on as they had, after losing their father, then to deal with the impact of their mother's illness, which was particularly challenging because she would not accept the diagnosis. Lorraine talked about all aspects of the support that was provided by the nurse. The support was practical, with arrangements for the end of life, and emotional, in that it supported everyone involved in coming to terms with what was happening. Lorraine summed up the support by saying,

"You can't repay what she's done for me and my family."

Since 2002, the British Heart Foundation has supported heart failure specialist nurses around the United Kingdom to ease the burden and improve the quality of life for people with the disease. The British Heart Foundation has funded or pump primed many of those roles in numerous NHS board areas in the expectation that boards would mainstream the funding when the British Heart Foundation funding ended. An evaluation of the impact of the services, which was published in 2008, found dramatic reductions in hospital readmissions for patients who were cared for at home by specialist heart failure nursing services. The report concluded that every patient who is cared for by a specialist heart failure nurse equates to a saving of £1,826 per patient, including the costs of the specialist post. It seems to me essential, therefore, that NHS boards make specialist heart failure nursing services a top priority.

The Scottish heart failure nurse forum, which is the independent representative body for such nurses in Scotland and which is supported by BHF Scotland and Chest Heart & Stroke Scotland, produced the report that stimulated this evening's debate. That report compares the provision of specialist heart failure nursing services in Scotland in 2012 to provision when it published its previous report in 2008. Unfortunately, the national situation is not a good one. Despite the fact that the prevalence of heart failure is increasing, nationally the overall provision of specialist heart failure nursing posts has fallen, from 51 whole-time equivalent posts in 2008 to 47 in 2012. Only four NHS boards meet the minimum ratio that is set down in the 2007 Scottish intercollegiate guidelines network recommendation of one nurse per 100,000 of population. One NHS board—NHS Orkney—has no specialist heart failure nursing service at all. That is simply not good enough.

We all know that NHS boards are operating in an increasingly challenging environment, but it is crucial that they up their game by improving provision of such nurses. Otherwise, as well as costing themselves more money in the medium to long term through increased hospitalisation costs, they will badly let down heart failure patients, who desperately need the kind of care that only specialist nurses can provide.

When the Parliament's Public Audit Committee considered the issues last year during its inquiry into cardiology services, it concluded that clarification was needed from the Scottish Government on future plans for specialist heart failure nursing services. In response, Derek Feeley wrote to the committee and stated:

"On 1 November 2012 the National Advisory Committee on Heart Disease agreed to support the establishment of a heart failure short life working group. This group will be well placed to advise NHSScotland on how heart failure nurses

role can be further strengthened. The group, which will include heart failure nurse representation, is expected to have its first meeting in spring 2013.”

That will be a welcome development if—it is a big “if”—the group’s recommendations are taken forward by ministers and NHS chief executives and are regarded as a priority. Perhaps in concluding the debate, the minister can inform us whether the group has met yet, when it will meet if it has not met, and what more he thinks the Government can do to get NHS boards to provide the services at a sufficient and sustainable level.

17:50

**Jackie Baillie (Dumbarton) (Lab):** I pay tribute to Dave Thompson for securing this debate and I commend the British Heart Foundation, the Scottish heart failure nurse forum and Chest Heart & Stroke Scotland for their briefing in advance of our debate and their report, which highlights the challenges that remain in securing the provision of heart failure nurses across every health board in Scotland.

We know that heart failure is a life-limiting condition and that, unlike the prevalence of many other cardiac conditions, its prevalence is rising. It affects about 100,000 people across Scotland.

I do not think that anyone inside or, indeed, outside the chamber would disagree about the value that is added by heart failure nurses to the experiences of patients and their families. As we have already heard from Dave Thompson, their contribution can also be measured in purely financial terms. They save an estimated £1,826 per patient, due to a 35 per cent reduction in hospital admissions.

The importance of the role of heart failure nurses was identified in Audit Scotland’s report on cardiology services and the subsequent report from the Parliament’s Public Audit Committee. They made a number of recommendations, particularly about heart failure services for people from deprived and ethnic minority communities, but they also recognised that the NHS needs to improve services generally for people with heart failure.

Way back in February 2007, SIGN guidelines were put in place under the Administration of the time, but the ambition was shared across the chamber. Those SIGN guidelines set out a ratio of 1:100,000 specialist nurses to population. That was the right thing to do then and it is the right thing to do now, but it is disappointing that, some six years on, only four health boards are meeting the standard and that, across Scotland, the number of heart failure nurses dropped from 51 whole-time equivalents in 2008 to 47 in 2012.

I am very pleased that NHS Greater Glasgow and Clyde, which covers my constituency, has achieved the ratio that is set out in the guideline. It is not used to my heaping praise on it, so it should enjoy it while I do so. However, I would always encourage it to do more. The review helpfully identifies the challenges that it needs to address, such as the lack of a class for patients with heart failure and the increasing demand that will continue to add pressure to services. I encourage it to look again at how to improve access to services in some of our most disadvantaged areas.

**Dave Thompson:** It has just occurred to me that it was remiss of me not to mention that NHS Highland in my area is one of the four health boards that are meeting the target.

**The Deputy Presiding Officer (John Scott):** Better late than never.

**Jackie Baillie:** That is truly wonderful. We are nothing if not parochial.

We have established that heart failure is rising, we agree that we need to try to ensure that services meet the growing demand, we acknowledge that specialist heart failure nurses make a real difference to patients and their families and ultimately to the efficiency of the NHS, and we have guidelines in place, but there is still a postcode lottery. The level of service and, indeed, whether people even get a service depends on where they live. That really is not good enough.

We have had report after report that says the same thing, but progress has been slow. The challenge is for all of us actively to encourage our local health boards, but the challenge is also for the Scottish Government to ensure that the health boards meet the minimum standards that we have set for them. If the minister does that, he will enjoy support from across the chamber.

17:54

**Nanette Milne (North East Scotland) (Con):** I am pleased that Dave Thompson has drawn our attention to the recent “Review of Specialist Heart Failure Nurse Services” and that he has secured the required cross-party support to allow it to be discussed here this evening.

The support of specialist nurses for patients who are living with heart failure and their families is invaluable, both in helping sufferers to self-manage their condition at home for much of the time, which avoids unnecessary hospital admissions, and in teaching carers and others how to deal with the complexities of what is a disabling and life-threatening affliction.

The motion neatly sums up the point at issue, which is that although, unlike in other cardiac conditions, the prevalence of heart failure is increasing, the number of whole-time equivalent specialist nursing posts has fallen since 2008 with, as we have heard, only four of Scotland's NHS boards meeting the minimum ratio of specialist heart failure nurses to population that is laid out in SIGN guidelines, and with one NHS board having no specialist heart failure nursing service at all.

To remedy that, the Scottish heart failure nurse forum seeks a national approach to planning, adequate resourcing and further development of the specialist nursing service, in order to enable the service to meet the ever-increasing challenge of the one cardiac condition that has rising morbidity levels.

Specialist nurses deliver their services in a variety of ways across the country, depending on the resources that are available to them and their geographical location. Patients are seen in various settings including hospital wards, outpatient clinics, satellite clinics and their own homes. Most specialist heart failure nurses also give telephone support for patients, carers and GPs so that they can access advice regarding symptom management.

Unfortunately, because there are not enough specialist nurses, particularly in more remote and rural areas, there is not the capacity to deliver the education to, or share the skills and expertise with, community staff who are necessary to ensure that heart failure patients get the support that they need.

In my region, the service within NHS Grampian has been operating in a fragmented way, with part-time provision in Aberdeen city, south-central Aberdeenshire and north Aberdeenshire, and no consistent management structure from which to develop the service. Funding there is an on-going and worrying issue. Following a service break from 2007 to 2009, the service was reinstated through British Heart Foundation funding from 2009 to 2011, but now has funding guaranteed only until next year, both in the city and Aberdeenshire. Work is on-going through the managed clinical network to secure an NHS Grampian-wide service with permanent funding, but as yet the details of that are unknown and nurses in Aberdeenshire could face redeployment from this autumn. The nurses there are enthusiastic and keen to develop the service, but they are hindered by lack of administrative support, which impacts on their front-line activity with patients, and by the uncertainty about future funding for the service.

This debate is an exact parallel of last week's debate on Parkinson's specialist nurses and illustrates once again the patchy availability of all specialist nursing provision in Scotland. The

minister in his response last week indicated the Government's engagement on the issue and its intention to seek an improvement in nursing provision across the specialities. Given the proven savings—£1,826 per patient in the case of heart failure—through reducing hospital admissions by enabling patients to self-manage their long-term conditions in the community, and given the increasing prevalence of long-term conditions and comorbidities in an ageing population, investment in specialist services looks to be a compulsive area for preventative spending, with significant rewards both economically and for patient wellbeing.

I urge the Government to do all that it can—and very soon—to facilitate a more even spread of specialist nursing services across the specialities and across the country. I congratulate Dave Thompson on securing the debate and thank him again for highlighting such an important issue for Scotland's NHS and its patients with heart failure and other long-term conditions.

17:59

**Dennis Robertson (Aberdeenshire West) (SNP):** I, too, congratulate Dave Thompson on securing a debate on this important subject and bringing it to the chamber. I also thank the organisations, particularly the British Heart Foundation.

Last week, I congratulated NHS Grampian on its work with specialist Parkinson's nurses, but the story this week is not so good for NHS Grampian. Nanette Milne referred to nursing numbers in Aberdeen. To put that figure into context, we have three specialist heart failure nurses in the Aberdeenshire Council area, two in Aberdeen City and 0.2 full-time equivalents in Moray—there is none at all in Orkney. That amounts to about six specialist nurses; in reality, there are 3.24 full-time equivalents, two short of what is needed in the Grampian area.

It is important to distinguish the difference between specialist nurses that deal with heart failure and those who deal with cardiac rehabilitation—I asked the minister about that the other week—because they are not the same. We need to identify the value of specialist nurses; their work for people with heart failure is undoubtedly immeasurable.

We have heard from Dave Thompson the testimony of people at the cross-party group on heart disease and stroke. An answer to a parliamentary question included a breakdown of the number of specialist nurses from NHS Grampian, which is why we have the numbers. The health board acknowledged that, were it to remove the heart failure nurses, it would see a rise

in acute admissions. That would cause anxiety not only to patients but to their families. I urge NHS Grampian, which is carrying out a review of all its cardiac services that will report in August 2013, to consider the importance of those nurses.

Nanette Milne said that the funding is coming to an end. It comes to an end in March 2014 but, because of the nurses' contractual agreements, they may be redeployed as early as September or October. There is undoubtedly a crisis in NHS Grampian that needs acute remedy. We need more specialist nurses. We realise that funding is difficult across all health boards. Jackie Baillie and Dave Thompson mentioned the monetary aspect, which needs to be borne in mind, but, beyond that, the issue is about the service that is provided for the patients and their families.

Nanette Milne said that treatments are not always face to face or in hospitals or their satellites, but over the phone. We can use technology, including telecare services. For example, we could sometimes use telemedicine in Orkney, as we do in other areas. We must be cleverer in remote and rural areas. I suggest to all health boards that they use the available facilities and technology to provide a heart failure service to our patients and carers.

18:03

**Liam McArthur (Orkney Islands) (LD):** I, too, congratulate Dave Thompson on his motion and on securing the debate. I also add my thanks to Chest Heart & Stroke Scotland, to the British Heart Foundation for its briefing, and to the Scottish heart failure nurse forum for circulating its review to members.

The review's findings confirm that the service delivery model varies across the country, reflecting different geographic considerations and resource availability. However, it underscores that, in too many instances, boards are failing to deliver what is expected and required of them. Unlike Jackie Baillie and Dave Thompson, I can take absolutely no satisfaction from the situation in my board area, as I note that I am the member for the only board area—Orkney—where there is no specialist heart failure nurse.

I commend Bill Braby and the local heart support group in Orkney for raising the issue with me over recent months, and for their efforts in prosecuting the case for the reinstatement of a heart failure nurse in Orkney. As others have said, Dave Thompson set out very well the explanation behind the differences between heart failure, heart attacks and other cardiac conditions, as well as the increase in the prevalence against the backdrop of a reduction in the whole-time equivalents of heart failure nurses. That is a cause

of concern for all of us, irrespective of how our boards are performing.

Specialist heart failure nurses can help patients to develop self-management strategies, as Nanette Milne said, so it is not surprising that the nurses are popular with patients and their families. Dennis Robertson talked about the importance of improved patient care. Specialist nurses also enable patients to be more independent and less isolated. In Orkney, as in many rural areas, that is exceptionally important.

Specialist nurses reduce unplanned hospital admissions and the length of hospital stays. In Orkney, where many patients must travel off island, that reduces transport costs and limits the number of arduous journeys that patients must undertake. Therefore, I was hugely concerned to hear that the post in Orkney ceased to exist after British Heart Foundation funding ended in 2010.

I acknowledge the excellent work of the cardiac specialist nurse in Orkney—Amanda Manson does phenomenally good work. I also acknowledge the work of the heart failure liaison service. As a result of the efforts of Bill Braby and his colleagues, and as a result of discussions with NHS Orkney, progress of sorts has been made in recent months. More administrative support has been put in, to allow Amanda Manson and her colleagues to focus on front-line delivery, and I understand that there is recruitment of a consulting GP with expertise in cardiology, although the post will not come into effect until October.

However, questions remain. What procedures will be able to take place in Orkney as a result of the recruitment of the cardiology specialist? What is happening in relation to replacing the retired cardiology lead in Orkney? There remains a lack of resilience in the liaison and cardiology services in relation to covering illness and holidays. All that points to the continuing need for a specialist heart failure nurse in Orkney.

Dave Thompson talked about the findings of the Public Audit Committee. I was unaware of Derek Feeley's remarks in December about the establishment of a heart failure short-life working group. Like Dave Thompson, I very much hope that the group has met—indeed, I expect that it will have done so, if the deadline was spring 2013. I encourage the minister to ensure that the group considers how the specific issues that relate to Orkney might be addressed.

I congratulate Dave Thompson on securing the debate, and I look forward to hearing what the minister has to say.

18:07

**The Minister for Public Health (Michael Matheson):** I congratulate Dave Thompson on securing time for this important debate on what remains a clinical priority for NHS Scotland.

I am sure that all members recognise that encouraging progress has been made in recent years, which is underpinned by the 60 per cent reduction in the coronary heart disease premature mortality rate between 1995 and 2010. That shows the degree of improvement in clinical care and the benefits of preventative work in improving outcomes for patients.

We recognise that new challenges are emerging—Dave Thompson set out the challenges very well. More people are living longer with long-term conditions, and more people who have suffered cardiac episodes and heart failure are living with co-morbidities. Supporting such individuals puts pressure on our NHS system. It is important that we ensure that our services can address the needs of the increasing number of patients in Scotland who might suffer from heart failure.

We recognise that heart failure nurses need to be in place to meet the need. The better heart disease and stroke care action plan and the clinical standards for heart disease identify the important role of heart failure nurses in providing safe, effective and person-centred care. The action plan demonstrates our commitment in that regard and sets out how we expect boards to take the issue forward. We expect the recognition that heart failure nurses have an important role to play to inform boards' workforce planning.

A number of members referred to the SIGN guidelines for heart failure, which were published in 2007 and which recommended that there should be a nurse-led, home-based element of post-discharge care and that patients should be considered for follow-up by a trained heart failure nurse.

The SIGN guidelines are important. They are not from, or directed by, Government, and no Government can claim some form of responsibility for them; they are commissioned and taken forward independently of Government to help inform clinical practice. However, I think that there has been some misunderstanding regarding the ratios that members have referred to, because the SIGN guidelines do not set a minimum standard for staffing provision. I can only assume that members were referring to the British Cardiac Society standards for having one heart failure nurse per 100,000 of the population.

The SIGN guidelines do not specify a specific ratio. It is important, however, that boards ensure that whatever is contained in the SIGN guidelines

is taken forward at a local level and that they have adequate staffing levels and the right skills mix in place to meet the local population's needs.

**Dennis Robertson:** Will the minister take an intervention?

**Liam McArthur:** Will the minister take an intervention?

**Michael Matheson:** I will give way to Mr McArthur.

**Liam McArthur:** I am grateful to the minister for giving way. I appreciate what he said in relation to ratios but, as he will have heard, there is no ratio at all in the case of Orkney. I therefore suggest that the issue needs specific attention in order to meet patients' needs in the Orkney Islands.

**Michael Matheson:** I am going to come to Orkney in a minute, when I hope that I can address that point.

I am more than happy to give way to Mr Robertson, too.

**Dennis Robertson:** I thank the minister for giving way. With regard to the ratios, does the minister share my concern that in Aberdeen there is only one specialist nurse with a full-time permanent contract, with the other nurses being on temporary contracts? It is possible that we could end up with only one heart failure nurse, which would potentially leave us in a real crisis situation.

**Michael Matheson:** I will turn to those points on Orkney and Grampian after making a little progress on the wider issue.

It is important to recognise that some progress has been made since 2008 because, of the 15 heart failure nurse posts that were funded by the British Heart Foundation, nearly all, but not all, of those nursing posts are now funded by the NHS. We must ensure that we continue to build on that progress.

Given what is in the very useful report "Review of Specialist Heart Failure Nurse Services—Scotland 2013", I intend to raise the matter specifically with directors of nursing in the NHS in Scotland in order that they ask their boards to look at the report's findings and consider what wider measures they need to take forward at a local level to address some of the points that have been highlighted.

On the specific issue of NHS Orkney, Mr McArthur referred to the fact that the board has been reviewing the way in which it provides cardiology services in the Orkney Islands. I understand that, as a result of that review and through additional resources that have been provided, NHS Orkney has recruited an extra consulting cardiologist to help support the service

and that it is working in partnership with NHS Grampian on the way in which it delivers some of the services.

I understand from NHS Orkney that it hopes that that will allow it to free up some of the time of the clinical nurse specialist that it has at present so that they can do some extra work on heart failure matters, which there is no time for at the moment. That will help to support and extend the work that can be taken forward there. No doubt Mr McArthur will wish to pursue those issues with his local health board to ensure that it continues to make progress on them.

On the NHS Grampian matter to which Dennis Robertson referred, my understanding is that an option appraisal paper is being prepared for the board's consideration this month that will look at a number of options. Part of that work will involve looking at how NHS Grampian can support heart failure nurse services in the board area. The process should be completed by August this year. Again, of course, we expect NHS Grampian to ensure that it can meet the needs of cardiac failure patients in its area in line with what is set out in the SIGN guidelines.

Nanette Milne made an important point. Most chamber debates on long-term conditions to which I respond involve a request for more specialist nurses in one long-term condition or another. Specialist nurses have an important role to play, but they also play a role in supporting our other NHS staff to work more effectively with patients with specific conditions such as heart disease. That is why we have invested £150,000 in the heart disease education programme called heart-e, which will support our heart failure specialist nurses in training and supporting other nursing and clinical staff to deal with patients more effectively and to be more confident in managing heart failure. The programme will be launched in November and will support that area of work.

Finally, I turn to the national advisory group to which Dave Thompson referred. That group has now been established and is acting as a heart failure hub that is drawing together expertise in how we can build on progress in the use of heart failure nurses. The group took a little longer than anticipated to get established, but we expect it to meet within the next six weeks. The chairs have been appointed and its membership has been agreed.

We are also in the process of appointing a national co-ordinator to support the group's improvement activities across NHS Scotland. By acting as a hub in drawing together good practice from different board areas, the group can help to disseminate that good practice in other board areas, and the national co-ordinator will have an

overview of the progress that is made by individual boards.

I recognise the importance of specialist nurses and of heart failure nurses in particular. The Scottish heart failure nurse forum report is an important contribution to that area of work. We will work with our health boards to see what further measures can be taken to build on the progress that has been made since 2008, so that we can continue to provide the best possible service for those patients who suffer from heart failure.

*Meeting closed at 18:17.*



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