



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

SCOTLAND BILL COMMITTEE

Thursday 3 February 2011

Session 3

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SCOTLAND BILL COMMITTEE
5th Meeting 2011, Session 3

CONVENER

*Ms Wendy Alexander (Paisley North) (Lab)

DEPUTY CONVENER

*Brian Adam (Aberdeen North) (SNP)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)

*Tricia Marwick (Central Fife) (SNP)

*David McLetchie (Edinburgh Pentlands) (Con)

*Peter Peacock (Highlands and Islands) (Lab)

COMMITTEE SUBSTITUTES

Michael Matheson (Falkirk West) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Roger Bright (Crown Estate)

Mr David Gauke MP (Exchequer Secretary to the Treasury)

Robin Haynes (Scotland Office)

Tom Mallows (Crown Estate)

Michael Moore MP (Secretary of State for Scotland)

David Mundell MP (Parliamentary Under-Secretary of State for Scotland)

Lord Wallace of Tankerness (Advocate General for Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Committee Room 6

Scottish Parliament

Scotland Bill Committee

Thursday 3 February 2011

[The Convener *opened the meeting at 12:45*]

Scotland Bill

The Convener (Ms Wendy Alexander): Good afternoon and welcome to the fifth meeting of the Scotland Bill Committee in 2011. It is our second meeting—probably our fourth, if we include informal meetings—this week. Before we start, I suggest that people turn off BlackBerrys, pagers and any other devices they have with them.

I welcome to the committee the Secretary of State for Scotland, the Parliamentary Under-Secretary of State for Scotland and the Advocate General for Scotland. We are waiting on the Exchequer secretary to the Treasury, who will join us very shortly. I am also delighted to welcome the chief executive of the Crown Estate and his colleague.

We have a huge amount of evidence to get through today, and, as members will know, standing orders require us to finish by 2.15 pm. In light of that, we have agreed that we will start with financial matters and let the discussion run for about 45 minutes or so. We will then move on to non-financial matters, followed by the Crown Estate, with legal issues at the end. I invite members to be brief and precise with their questions, and members of the panel to be similarly so with their answers.

Without further ado, I invite the Secretary of State for Scotland to make short opening remarks.

Michael Moore MP (Secretary of State for Scotland): In the spirit in which you have asked us to appear before the committee, we will observe your request to be brief. I am grateful for the opportunity to appear before the committee again, and I particularly thank you and your colleagues for making the additional effort to suit our timetable; I appreciate that this is not your normal meeting time.

The Convener: Thank you. We will move straight to questions, beginning with some of the bigger financial issues that have been raised with us. The Scottish Government's main criticism of the Scotland Bill is that it does not provide economic levers for Holyrood. Should it not do so?

Michael Moore: We have a very different view of the way in which the devolution settlement should be taken forward. The Scottish Government—the Scottish National Party—clearly

has a very different view of Scotland's role, either as independent from the rest of the United Kingdom, or under fiscal autonomy within the UK. It will not be a surprise to you or your committee colleagues that we continue to respect that difference, but hold firmly to it.

As far as the economic powers in the bill are concerned, we believe that the enhanced financial accountability that is at the heart of the proposed legislation will give significant new economic opportunities to the Scottish Parliament. That is not least because the requirements of financial accountability and the closer dialogue that will be needed with the people of Scotland, and with businesses and other interests throughout Scotland, in setting the tax rates will—I expect—lead to a much better debate on the purposes of those taxes and the levels at which they should be set.

Fundamentally, there will be for the first time a much closer link between tax raising and the spending of the taxes that have been raised. Closer scrutiny of that spending will, I think, help Scotland's economic opportunities.

Aside from the tax powers, of course, there is the major new power for capital borrowing, which—if it is used appropriately—could be a significant boost to Scotland's economic position.

The Convener: A number of the witnesses who have appeared before the committee suggested that it would be better for the Scottish Parliament, instead of levying a single rate of income tax, to be able to levy a greater share of the higher rates. Will the UK Government change the bill to allow that? If not, why not?

Michael Moore: As you will recall, we touched on that the first time that we debated the bill in this committee. Since then, we have had our own second reading of the bill—this time last week—in the House of Commons.

The fundamentals of what we seek to achieve involve providing for greater financial accountability while maintaining the integrity of the United Kingdom tax system and the distributional aspects within it. We believe that the structure that we have put in place, which follows the arguments and the logic of Calman, achieves that. Those principles are, for us, the most important ones.

The Convener: A number of witnesses who have appeared before us have suggested that those who pay additional top-rate tax are by definition the most mobile in our society, and that if the Scottish Parliament is not able to apply different rates to different bands, we may inhibit the use of new powers. The question is one of principle: will the UK Government change the bill to allow the Scottish Parliament the right to change the bands differentially? We might move

slightly higher on the basic rate, while not wishing to go higher on the top-rate tax because of the mobility of those individuals.

Michael Moore: It is not our intention to do that.

The Convener: Why?

Michael Moore: For the reasons that I have set out. We intend to maintain the integrity of the United Kingdom tax system and the distributional impact of that in terms of setting out what happens at the different tax levels. We are keeping the power to change the tax bands and the basic tax rates for the United Kingdom Government, as we believe that that is important.

I appreciate that, under different models, people may wish to argue for different approaches, but we believe that that is the best balance.

The Convener: The Holtham commission makes exactly the suggestions that I have mentioned. What sort of hearing do you envisage that they will have from the UK Government?

Michael Moore: Those are under active consideration by colleagues in the Treasury, and my colleagues in the Wales Office and others will look at what we take forward in Wales once the referendum is past. I do not wish to pre-empt that discussion, nor what is being discussed in Northern Ireland.

Tricia Marwick (Central Fife) (SNP): You said that the provisions in the bill will enhance financial accountability. The UK command paper that accompanies the bill suggests that the Scottish Government will be responsible for raising 35 per cent of what it spends. We have heard evidence from Reform Scotland that in fact the figure will be only 26 per cent. Can you outline how you arrived at the figure of 35 per cent?

Michael Moore: I believe that we submitted papers on that previously, but I will hand over to Robin Haynes, who is the senior economist in the Scotland Office; I am sure that he can give you the detail.

Robin Haynes (Scotland Office): The 35 per cent figure is a repetition of one that appears in the Calman commission's final report. In very rough terms, we can say that the current budget of the Scottish Parliament—the budget that is available for the provision of public services—is something like £23 billion or £24 billion, looking to the spending review.

The local taxation figure, if I remember rightly from the most recent edition of "Government Expenditure and Revenue in Scotland", is about £3.6 billion. Both the UK Treasury and the Calman commission estimated that receipts from a Scottish income tax set at 10p would equate to, in round figures, about £4.5 billion; the estimate for

the two other taxes to be devolved is, again in round terms, about £0.5 billion. If you add up those tax receipts—£1.8 billion, £4.5 billion and £0.5 billion—and divide that by the Scottish Government's current budget, which is what the Calman commission did, you come up with something like 35 per cent. Of course, that would change if the tax rate was different.

Tricia Marwick: Page 105 of the Calman commission's report certainly uses the figure of 35 per cent, but you will be well aware that the bill as presented to us excludes two of the taxes that made up that figure. So, the real figure is nowhere near 35 per cent. What exactly is the figure, when you exclude two of the taxes that Calman recommended should be devolved?

Robin Haynes: From what I recollect—I will not slow the committee down by trying to look up the reference myself—the taxes that will not be devolved immediately are relatively low yielding.

Michael Moore: But they will still be devolved. I repeat a point that has been made previously. The aggregates levy is not being devolved at the present time because of a court case. As soon as that is resolved and we have certainty, we will look to devolve it. As far as air passenger duty is concerned, you will be aware that the UK Government is reviewing that whole policy area. As the command paper indicates, we intend to devolve air passenger duty, as appropriate, once the review is complete.

Tricia Marwick: But the bill that we are looking at does not include those taxes. It also does not include another Calman recommendation, on the raising of interest on savings. All those figures together probably add up to 35 per cent. Do you not agree that Reform Scotland has got it about right and that the figure is actually 26 per cent, which is nowhere near 35 per cent?

Michael Moore: You will not be surprised to hear me say that we do not accept Reform Scotland's figures. Robin Haynes has set out most of the detail around that.

Brian Adam (Aberdeen North) (SNP): Going back to first principles and following on from what the convener said, are economic growth and job creation objectives of the bill?

Michael Moore: All Government policy and all structures that we put in place should look to improve economic growth. Certainly, I do not know many politicians who would look to contrive something that did the opposite. However, the bill's primary function is to increase the accountability of this Parliament and get it closer to the people of Scotland. The Parliament represents them well, but it can do better. As I set out in my first response to the convener, I believe that there will be some very useful consequences

of that, which will indeed help economic growth in Scotland.

Brian Adam: Specifically, which of the economic levers will do that? How is the bill going to help economic growth?

Michael Moore: The capital borrowing power is a very significant one that will have immediate impact. That depends on how it is used, but let us assume that it is used for wise, productive capital projects, as would be expected. At the very least, the construction industry will do well out of that in the short term and, depending on what asset the power is used for—a transport project, for example—it is hoped that Scotland can continue to drive economic growth from it for the future.

The stamp duty land tax replacement is a major piece of tax law that will be for the Scottish Parliament to determine. I would be very surprised if looking to economic impacts was not one of the key decisions taken in the designing of the new tax. Let us also not forget the provision in the bill that says that with the agreement of the UK Government other taxes may be devolved. There is a lot of potential there.

Brian Adam: So you accept that there is a link between tax rates, if they are used appropriately, and economic growth. The logic of your argument is that having more economic levers will give the Scottish Parliament and the Scottish Government greater flexibility and greater powers to help economic growth.

Michael Moore: I cannot think for a minute where this is going. Look, there is plenty of academic debate about the different aspects of what the drivers and levers for economic growth are in terms of the tax rates. The committee has taken evidence from a range of academics on that. My observation on the evidence that you have taken so far is that how the money is spent is as critical as anything, and that there is no direct link between having tax powers and economic growth. How the taxes are designed and how the money is spent are much more relevant than having the power per se.

13:00

Brian Adam: I absolutely accept that it is about how we use the powers. However, the bigger the range of powers, the greater the flexibility and therefore the greater the opportunity to grow.

On a more specific issue that has exercised us, the Scottish Government said that the Scotland Bill would have cost Scotland £8 billion if it had been introduced in 1999, but you have said that the cost would have been much less than that. Does that not mean that there is a deflationary bias, irrespective of whether we are talking about

several hundred million pounds, as the UK Government suggests, or several billion pounds, as the Scottish Government suggests?

Michael Moore: I do not accept that. We had a few exchanges on the issue during the bill's second reading at Westminster last week. Depending on where you draw the line, you can make the numbers stack up for just about any argument. Our point is that if you run the numbers through to 2014-15 at an appropriate level, you see a net benefit to Scotland of just shy of £400 million.

The presumption in the £8 billion figure, which I think is a nonsense figure, is that you somehow base your entire adjustment to the block grant on the worst year in the worst post-war recession—I pity the Government that tried to sell that as a proposition along the way.

In the command paper we set out a rational, reasonable way forward on how we will make the adjustment to the block grant, which will not depend on the UK Government handing down from the Treasury from on high—I say that because David Gauke has just arrived—or anywhere else and saying, “This is the adjustment; get on with it.” The matter will be worked through carefully, using a number of years, and because that will happen in a few years' time we expect to be well past the worst effects of the recession.

Despite the scare stories and all the nonsense around the £8 billion figure, I hope that we can have a more rational debate and start working towards how we make a sensible adjustment.

Brian Adam: The figure of £8 billion came from a period of 10 years, not just one year—

Michael Moore: But it is about how you apply the percentage reduction to a period. It is a long time since I was an accountant, but I learned that depending on the assumptions one chooses one can get a range of outcomes. The £8 billion figure represents a fantastic example of the principle.

David McLetchie (Edinburgh Pentlands) (Con): Secretary of State, may I ask you about your letter to the convener of 2 February, and in particular the final paragraph? As you know, much of the Scottish Government's critique of the bill is about how the provisions do not go far enough in conferring fiscal powers or levers. Mr Adam alluded to that. However, it appears that not much of an alternative was presented in detail to the UK Government in all the discussions that we heard about—I think that we heard that there were something like 16 sessions with the Treasury. Can you enlighten us on the substance of those representations? What were they based on?

Michael Moore: I hope that my letter was helpful and that it clarified some of the issues that

the committee has been addressing. In essence, a range of meetings took place between officials. I welcomed the meetings, because they presented an opportunity for officials at the Scotland and UK levels to consider the different propositions that were being put forward.

It is perhaps suggested that detailed proposals and modelling were put to the Treasury or the Scotland Office. That is not the case. An argument was put to us about fiscal autonomy—Mr Adam and others have outlined that argument today. However, nothing was put to us in detail that would show what taxes were proposed, how they would impact, what the costs would be for Scotland and how that would impact on the Scottish budget.

On welfare proposals, which we were told excluded pensions, no detail was given about what they would mean for the Scottish budget or what we would have to do about pension provision as a result. The arguments were made and discussions were had, but the only detailed proposition is the one that we have made.

David McLetchie: Is it fair to say that the basis for the Scottish Government's argument was the paper that Professors Hughes Hallett and Scott wrote, to which it has referred several times? No further substantive academic evidence was submitted in support of the Government's case. Is that correct?

Michael Moore: I am not aware of further evidence. We have asked people to look carefully at the records, but no detailed supporting work has been submitted from those professors or on their behalf.

Robert Brown (Glasgow) (LD): I will continue with the relationship between growth in income tax receipts and growth in the block grant. You say in the command paper that you expect that relationship to stay "broadly neutral over time", if we assume that the start position is right. You also say that you can compare what happens over time. Am I right in saying that an element of a double lock applies? If the relationship was got wrong and went majorly out of line, you would look closely at the grant consequences.

Michael Moore: Through the new mechanisms that we propose to sit alongside the new tax arrangements—through the UK-Scottish tax committee and other ministerial contacts—that stuff will be carefully kept under review. That must be done for Scottish and UK interests. We say on page 35 of the command paper that we will keep the system under review, because we would not want the situation to go too far out of kilter, particularly if another economic shock occurred.

Robert Brown: You will establish an intergovernmental bilateral committee on fiscal devolution. The command paper says:

"Terms of reference for the Committee will be published in due course."

Will you consult the Scottish Parliament and the Scottish Government on that?

Michael Moore: Absolutely.

Robert Brown: What is the timescale for that work?

Michael Moore: The work will begin once royal assent has been given. We must bear it in mind that we will have a few years between royal assent—although I do not wish to anticipate the committee's work or the work of the Parliament in London—and implementation. I give the committee the assurance, which I will be happy to repeat any time that I am asked, that we will proceed on the basis of partnership working, recognising everybody's interests and ensuring that Parliaments and Governments are properly involved in the process.

Peter Peacock (Highlands and Islands) (Lab): Grant reduction has become a fairly significant part of the evidence that we have taken; we touched on the issue when you last appeared before the committee. The evidence has confirmed that people are concerned about a lack of transparency in relation to the arrangements that will be in place for grant reduction. Why have you not developed your thinking on that further than what is in the command paper?

Michael Moore: We have a pretty good basis in the command paper, but I guess that you would expect me to say that. For some of the reasons that we have teased out, we have set out key principles. We will not simply pick one year out of a cycle as the basis on which we will reduce the grant. Calman did not say that that was the way to operate. A period of years will have to be used and the economic circumstances of the time will have to be considered.

The position will have to be agreed between the Treasury and the Scottish Government and scrutinised by the Parliaments—that goes to the heart of my answer to Mr Brown. That will be a fundamental moment in the future of Scotland's taxation system. We want to get that right and we will do so only if we engage fully with people. That is why the principles are set out. We will consider a period of time. We have shown through our submissions to the committee the different sensitivities. That goes back to the £8 billion—the percentage that is taken to reduce the block is key.

Members would be alarmed if I told them that we had a prescriptive arrangement into which

nobody would ever have input. We have a set of principles and an absolute commitment to work with Governments and Parliaments to achieve the right mechanism and, as we reach that point, to make clear to people what we are doing.

Peter Peacock: Do you envisage that, once the process had been worked through in the way that you have described and a conclusion had been reached of a reduction of X per cent, the percentage would apply thereafter without revision? Do you see it as a fixed percentage from that point forward?

Michael Moore: That is the essence of making this an accountable arrangement.

Peter Peacock: We have received evidence from Gerry Holtham. The Holtham commission addressed the issue, and there is an indication in his thinking that the figure could be indexed in a number of ways—he suggested one particular way. Would you be open to thinking about that as the argument develops?

Michael Moore: It is not at the heart of what we are proposing at the moment. For the reasons that I mentioned in response to the convener earlier, we are still looking at what Professor Holtham has suggested in the Welsh context and how it might apply. The command paper sets out how we intend to work, but we will listen to arguments for the future, for example if the committee puts them forward as conclusions. At present, however, it is not our proposal to index the figure.

Peter Peacock: I will move on from that. You have alluded to some of the principles that will apply to the reduction, and you said in previous evidence that part of the UK Government's underlying philosophy is to insulate the Scottish budget from the effect of UK policy changes. Are there other aspects that inform UK Government policy in relation to the Scottish Government? Is it only about insulating the Scottish budget from UK policy changes, or are there other dimensions of which you want to take account?

Michael Moore: I am sorry if I am not picking up the hints or if I am being terribly unimaginative, but I am not quite sure what you have in mind. However, it is worth my taking the opportunity to reinforce the point. The major adjustment will come when the Scottish Parliament takes on the income tax powers, but we have made it clear in the command paper that, if there were a change to tax bands at the UK level, the adjustment for the impact on the Scottish block would be worked through the system. That is why we need the mechanism to be clear. People need to be comfortable with it as it is the basis on which we will work.

Robert Brown: I will move on to short-term borrowing in relation to the income tax issue. As I

understand it, the facility for short-term borrowing will remain unchanged from what is in the Scotland Act 1998. Given that the Scotland Bill will add to the potential fluctuations, I want to understand the logic of arriving at the borrowing limits of £500 million in total and £200 million in any one year. Given the relative smallness of those amounts vis-à-vis the UK and Scottish budgets, why is it necessary for the UK Government to insist on such detailed controls? Should that sort of thing not be left to the discretion of the Scottish Government?

Michael Moore: I will start the answer and then give David Gauke an opportunity to follow up on it.

In our looking at the range of possible fluctuations, the figures were worked out by the Treasury, and broadly speaking they give a good degree of comfort on the fluctuations that might be expected. Beyond that, the UK Government clearly retains overall responsibility for borrowing levels for the country as a whole. That is why there are to be controls in the arrangement.

Mr David Gauke MP (Exchequer Secretary to the Treasury): I will add to that, but first I apologise for missing the start of the hearing—that was due to a delayed flight.

As is often the case, this is a question of trying to balance the needs for greater accountability and flexibility from a Scottish perspective with the wider UK perspective of having control over overall borrowing. It is also worth making the point, as Michael Moore alluded to, that given the work that the Office for Budget Responsibility has done on the differences between forecasts and outcomes—I think that it has shared the analysis with the committee—the numbers look reasonable. It is also worth pointing out that there may be some flexibility on the borrowing numbers as a whole. We need to look at them, and the bill allows borrowing numbers to be increased but not decreased below the numbers that it sets out.

13:15

Robert Brown: That is very helpful. I am really looking for an element of flexibility. If you get it wrong, we will be left in a rather tight position that is beyond the control of the Parliament. We are talking of a figure of up to £500 million, which is hardly significant in macroeconomic terms at UK level, even if it adds very marginally to the overall UK public sector borrowing requirement. Should consideration not be given to flexibility and what is at the limits? The evidence that we have heard suggests that the limits are too tight for the fluctuations that may be expected.

Mr Gauke: As I said, on the evidence of the disparity between forecasts and outcomes, the figures look reasonable. However, a few years

down the line, circumstances may be different, and the number is not one that is never to be changed and is set in stone. There is a case for looking at the numbers, the circumstances at the time and whether there is a need for greater flexibility.

Robert Brown: I particularly like your qualification

“a few years down the line”.

I turn to income tax estimates. I understand that the Office for Budget Responsibility makes estimates at the beginning of a spending review period and that the estimates remain unchanged during it. Would it not be better to revise the estimates on a rolling basis, thereby reducing the fluctuation element?

Mr Gauke: There will be annual forecasts and scope for the Scottish Government to reflect in its spending policies any changes in forecasts as we go along, so there is some scope for adjustment. That applies to every Government. There is a need to adjust to circumstances year in, year out. Once things are set up, it will not be the case that they cannot be changed as a consequence of conditions changing.

Robert Brown: Obviously, we have to deal with income fluctuations. Does it follow that the Scottish Government should be able to guarantee the ability to carry forward savings that are made in one year to the next? Should such end-year flexibility be statutory? Would that not make EYF rather more substantial?

Mr Gauke: You have to remember that end-year flexibility deals with departmental expenditure limits. The intention is that money should be spent as it is budgeted in the year to which it is attributed. I think that we all want to ensure proper management of such spending. The money should be spent when it is supposed to be spent. That is different from tax revenue fluctuations, and it is right that we consider such fluctuations and have some flexibility.

Robert Brown: Is that not the central point? We are not a department of the UK Government. A federal relationship is developing, in which more discretion is being given to the Scottish Government. Surely it would be sensible to make available such marginal things at the edges—indeed, there is no earthly reason in principle why that should not happen.

Mr Gauke: End-year flexibility is different in nature: it relates not to tax but to spending. One would expect EYF to be dealt with and spent in-year. However, there is a point about looking at departmental expenditure. I know that the Scottish Government is not a Government department. Nonetheless, we have to look at departmental

expenditure across the board to ensure that it is consistent with fiscal forecasts and plans. Without that, we would create unfortunate uncertainty. It is also worth pointing out that we are looking at revising the end-year flexibility arrangements, so they may be somewhat different in future.

Peter Peacock: I want to move on to capital borrowing. We have heard clearly in evidence that people do not understand where the figure of £2.2 billion came from. It bears a remarkable resemblance to the cost of the new Forth bridge. There must be something more to it than that. Can you shed some light on that for us?

Mr Gauke: Again, it is a matter of taking a balanced view. The Scottish Government needs to have greater flexibility, but fiscal discipline must still be maintained. From a UK perspective, especially in the current circumstances, we must have a credible plan for public finances. There must not be too many complexities as a result of the number being very large. The number was an attempt to balance the two objectives. However, it may need to be looked at. Within the legislation, there is flexibility for the number to be revised upwards from £2.2 billion.

Peter Peacock: An alternative way of introducing an element of flexibility would be to tie the borrowing limit to the upper portion of the budget in any year, so that they moved in line. Doing so would establish a principle that everybody understood clearly. Could that idea be on the table for consideration?

Mr Gauke: I am not here to rule things out. I note your point, and I think that we could consider different ways of doing things. At the moment, we feel that the figure of £2.2 billion is reasonable. However, by the time we come to the full implementation of Calman, circumstances may be different. It could be looked at again.

Peter Peacock: You have hinted at the timescale for implementation. The UK Treasury has made a welcome move towards giving borrowing powers. Is there any particular reason for not giving those powers now?

Mr Gauke: It is all part of a package. We have a set of policies in the bill that, taken together, will improve the accountability and responsibility of the Scottish Government. It therefore seems sensible that things should move as one.

Peter Peacock: But there is no particular reason why things could not be brought slightly further forward.

Mr Gauke: We would listen to such a recommendation carefully, if you wanted to make it, and we would consider it. However, the intention of the package in the bill is that there should be a substantial increase in the

responsibilities of the Scottish Government, and that will work best if the package is delivered at one time.

Peter Peacock: The Treasury is retaining, in the short term, powers over approving particular projects. As I say, I welcome the significant move on the part of the Treasury towards giving borrowing powers. However, that retention of powers seems to be a degree of control too much. This is a mature and maturing Parliament, and surely we can decide on the merits of the projects for which we require to borrow, without the need for Treasury approval. Is there a particular reason why the Treasury is retaining those powers?

Mr Gauke: Over time, it is not the intention that the Treasury will micromanage capital projects here; the power will to some extent be a long-stop power. We will wait to see how things work out.

The Convener: But, with respect, what is said in the white paper sits a little incongruously with the fact that the Scottish Parliament has had more than £3 billion-worth of capital borrowing powers for the past dozen years. During that time, no attempt has been made to require us to seek approval for individual projects. Why now, after 12 years, should you start saying that you are going to start picking the projects for us? Why should you have to sign off the projects?

Michael Moore: These are additional powers; this is an additional facility; and the arrangement is transitional. Much of what is in the command paper and the bill takes us into very new territory.

If we consider the bigger financial picture, the United Kingdom as a whole is dealing with a very difficult debt position—although different parties have different views on that. As I said during the second reading of the bill last week, the conditions in the bill are not unreasonable, and the UK Government will not unreasonably withhold consents to get on with projects.

The Forth replacement crossing has been mentioned. I made a pitch at second reading for a railway—[*Laughter.*]

The Convener: I take it that it was not the Glasgow airport rail link.

Michael Moore: I am sure that we could make common cause—many of my constituents would love to get to Glasgow airport that way.

The point is that we are discussing a massive new power, with a big amount of new flexibility. Very quickly, the full powers will be with the Scottish Parliament and Government. In the short-term, however, coinciding with the spending review period that we happen to be in, and as we tackle the biggest deficit in post-war history or whatever it is, there will be particular constraints.

David Gauke has indicated this, and I hope that I can also reassure the committee: we will work very closely and constructively on all these matters. You have got a lot out of the Treasury so far, and a lot more is coming your way very quickly.

Tricia Marwick: On the point about working together, John Whiting of the Chartered Institute of Taxation drew the committee's attention

"to proposed new section 80G of the 1998 act, which will give the Treasury immense powers to make amendments just by statutory instrument"

whatever we agree today. He continued:

"That is a serious power—it is generally known as a Henry VIII power ... The Treasury is reserving to itself the right to amend absolutely anything that it feels like amending."—[*Official Report, Scotland Bill Committee, 25 January 2011; c 305.*]

That will be without reference to the Scottish Parliament, or indeed to Westminster.

Why, if we are going to have such a mature relationship, is new section 80G still in the bill? Given the mature relationship that we are going to have, can we have an assurance that you will be mature enough to take that new section out of the bill and allow us to do the work that we need to do?

Mr Gauke: Such powers are by no means unusual. Their purpose is largely to deal with minor and consequential matters, so that we can address practical concerns as and when they arise without needing further primary legislation. It is clear that, across the board, the Government is keen to engage with the Scottish Government, and that consultation matters a great deal. Michael Moore can say more about that than I can.

Tricia Marwick: The fact is that new section 80G will give the Treasury unlimited power—

Michael Moore: Come on—

Tricia Marwick: Withdraw it, then. Will it or will it not give the powers that I am suggesting it will? Of course it will.

Michael Moore: I tell you what: we could withdraw it if you wanted—

Tricia Marwick: Oh, good.

Michael Moore: Then we would not be able to do all the good things that that section will enable us to do. We would need new Scotland acts or whatever.

Tricia Marwick: Ah, so you are all heart again.

Michael Moore: Let us not do the half-empty stuff. Let us consider this as an opportunity.

Let us step back a minute. Imagine the Westminster Government that says, "See that wee

section 80G, that black hole provision? We're going to use it and we're going to take back all those powers." What a lot of nonsense. The provision is not designed to undo any of the things that we are putting into the bill. The command paper goes to great lengths—I am disappointed that you are not already reassured, but I hope that you can be now—to establish that there will be strong constructive links with the United Kingdom Government and the Treasury. The Exchequer Secretary will chair the committee. There will be very close working. If issues arise—small technical ones, or occasionally even bigger ones—rather than having to wait for another Treasury bill or Scotland bill to be introduced, the provisions in the bill will give us the facility to deal with them.

Tricia Marwick: But if we are to have a mature relationship, why do you need a provision that will not only allow the Treasury to amend anything without reference to us, but which goes as far as to allow retrospective amendment? That could be done without consultation with the Scottish Parliament in the future. If we are going to have that mature relationship, why not take that provision out and let us work through it?

Michael Moore: If I may say so—

The Convener: Let me suggest what reassurance the committee is seeking. There is potentially a substantive point here. The committee is seeking reassurance that the provision as written parallels what is found in all Finance Acts—

Michael Moore: You can have that reassurance.

The Convener: Perhaps we could have that in writing. We would like to know that the Scottish Parliament is not in any sense being singled out for harsher treatment than usually applies when the Treasury drafts clauses in Finance Acts. There is an issue here. It has been raised. We have five minutes, so we are not going to resolve it all today. I am happy for you to write to the committee to address the point.

13:30

Mr Gauke: I will write to you on that and set out the purposes behind the provision, the circumstances in which it can be used, and examples of other legislation in which similar provisions have been used.

The Convener: That would be helpful.

Brian Adam: I want to develop that a little further. We have heard debate about whether 26 per cent or 35 per cent of the budget will be controlled by the Scottish Parliament. Irrespective of that, it is about 3 per cent of the UK budget. Why is it necessary for the Treasury to retain such

significant input, even as a long stop, into revenue budget borrowing, which is restricted to £200 million a year, when we have already had indicative figures from the Scottish Government that there would have been a shortfall of £800 million in a recent year? Although it is true to say that we cannot look at just one year, when it comes to a specific budget, that is the year that you look at. The total available amount of £200 million would have been totally inadequate in that year.

The same is true of capital borrowing. I accept that the capital borrowing power is significant and new, and I hope that we will all use it wisely, but that is against a significant background. Why is it necessary for the Treasury to retain all those long stops, even to the point of saying that specific projects, whether they be the Borders rail link or anything else, are more appropriately determined by the Treasury than by the Scottish Parliament and Government?

Michael Moore: They will not be determined by the Treasury; they will be determined by this Parliament and the Government that is formed from it. As we have set out in the bill and the command paper, and as you have heard in our discussions this morning, the period of greater control is the first couple of years. The provisions will go very quickly and the Scottish Parliament and Scottish Government will have the full range of powers that they need.

Mr Gauke: We all agree that these are substantial new powers and they represent a relaxation of the Treasury's control. We should put it in perspective.

Also, we are doing this at a time when the stresses and strains on public finances, and the need to have a credible position on borrowing and debt, have rarely been more important. It is not unreasonable that, on a transitional basis and in a spirit of flexibility, we should retain some limits and see how it works and whether we can—

Brian Adam: Borrowing on the revenue side represents something like 0.6 per cent of the revenue that is available each year. The figure is absolutely tiny, especially in circumstances in which there is evidence that we could have a variation that is four times that size. Before we get to the transitional period, you should crunch the numbers again and see what an appropriate level would be. The Scottish Government and Scottish Parliament will have to be disciplined, because they can only spend money that they can afford. They will have to finance the money that they borrow. Why does the Treasury have to second-guess that?

Mr Gauke: I do not have anything to add to my previous answer.

The Convener: I have a question on implementation. Intergovernmental and territorial finance is complex—it always has been. In the white paper, the Government wisely praised the argument for simplicity in the structure of the income tax power. We have heard a lot of evidence about the case for simplicity around the grant reduction mechanism, and frankly we are puzzled by your wanting to have two different grant reduction mechanisms through the transitional phase. If we are going to have simplicity in the income tax power, should we not parallel that with simplicity in implementation and have one step to the final grant reduction model?

Michael Moore: We talked about implementation of the smaller taxes earlier, which clearly will have consequences for the block grant. The income tax powers will come along later. Unless you wish to delay all taxes so that they come in at the same time, they will inevitably come in at two different points. Perhaps I am not getting your point.

The Convener: We are looking for one agreed model of grant reduction. The entire system should be implemented four years hence, in 2015, rather than having two different grant reduction models.

Michael Moore: Mr Haynes may be able to shine some technical light on the matter.

Robin Haynes: I think that you are referring to the transition mechanism that is spelled out in the command paper. The thinking behind it is that the Scottish income tax power—notwithstanding that the Scottish variable rate may or may not be used—will effectively be a new tax power and will use new mechanisms. People who remit moneys to HM Revenue and Customs will be dealing with new circumstances and HMRC will be dealing with a new system. In the early years of its operation, a degree of revenue risk will derive from the fact that the administrative system is new. The transitional arrangements are intended to provide a financing mechanism as soon as is practical to oblige the Parliament that is elected in 2015 to determine a rate of income tax and vary its budget accordingly, while the UK Government bears the revenue risk that derives from the fact that there is a new administrative system.

The Convener: In which year is it envisaged that the final grant reduction mechanism will come into place?

Robin Haynes: The command paper envisages that the transition mechanism will last for perhaps two years. Forgive me if the language is not quite right, but the intention is that the UK Government will bear the revenue risk that may arise from implementing new administrative tax collection systems.

Tricia Marwick: We have already discussed the 35 per cent figure, which the Government has lifted from Calman despite the fact that some of the taxes that Calman suggested should be devolved are not included in the bill. Also, we have not had a good explanation for why £2.2 billion is the limit for capital borrowing.

However, I will move on to the £45 million to set up the administration. We took evidence from the Institute of Chartered Accountants of Scotland, which told us that the £45 million figure is doubtful and mentioned a figure of up to £150 million, depending on the difficulty in defining who is a Scottish taxpayer.

We are talking about the cost being anything from £45 million to £150 million. First, can you tell us how you arrived at the figure of £45 million? Nobody seems to know how you arrived at it. Secondly, do you accept that the more complex that it is to set up the administration, the more likely it is that the figure will be £150 million? Would you also like to comment on the statement from ICAS that, in its assessment,

“the UK Government almost invariably underestimates the cost of legislative change—indeed, quite often, it does so significantly.”—[*Official Report, Scotland Bill Committee*, 25 January 2011; c 268.]

So ICAS has no faith in the figure of £45 million and the rest of us think that you have plucked it from thin air—

Peter Peacock: Speak for yourself.

Tricia Marwick: Well, by the rest of us I am talking about me.

Where did you get the £45 million figure from? Do you anticipate that the cost will be as high as £150 million? Given that the money is coming out of the Scottish budget and that we have to pay for setting up the administration, are you prepared to accept the robustness of your own figure and put a cap of £45 million on it?

Michael Moore: First, I had better disclose an interest, as I am a member of ICAS and Mr Derek Allen taught me all that I ever knew about tax in the early 1990s.

Tricia Marwick: Well, ICAS will have told you about this, then.

Michael Moore: You would expect me to say nothing less than that I fully respect Derek Allen's experience in these matters and acknowledge the track record to which he refers and which we all know about as citizens and as politicians.

I will hand over to David Gauke shortly. We do not recognise the £150 million figure. I point out that the £45 million figure—David will say a little bit more about the basis on which we arrived at it—is provisional and is heavily caveated in the

regulatory impact assessment. I hope that you have already seen that.

We are not capping the cost at £45 million, nor are we suggesting that it needs to be as much as £45 million. We are saying that that is what we think it will be, on the basis of the best evidence that is available. I am sure that you will have noticed that we said in the impact assessment that much will depend on what the Scottish Government wants in the way of detail, P60 documentation and so on. As the UK Government, we could just say, "Here it is—impose it," but we will not do that. We will discuss and work through it.

As regards what I will refer to as the inelegances of the Scottish variable rate situation, it will be important that there is serious senior engagement on that very early on. I hope that that helps.

The Convener: In view of the time, we need to move on, unless David Gauke wants to add anything.

Mr Gauke: I agree with everything that Michael Moore said, of course. I simply add that we are working hard to ensure that the process is as simple as possible and that there is a clear definition of who is a Scottish taxpayer, which is one of the key points. We want to ensure that the administration of the new system through the tax code will mean that the impact on employers and individuals will be limited, and that HMRC will be able to address the concern about implementation that some have raised.

The Convener: Thank you. We will write to you with some follow-up questions, one of which will be about the definition of a Scottish taxpayer, on which lots of issues have been raised. The question that arises relates to whether, in the next five years, Her Majesty's Government has any intention of revisiting the definition of a UK taxpayer, under which a definition of a Scottish taxpayer could be nested. Any indication that you could give us of whether you anticipate that the definition of a UK taxpayer will be revisited at some point in the five years before implementation would be helpful.

Mr Gauke: It might be worth making the point that there is a definition of a Scottish taxpayer under the SVR, even if it is not a statutory definition involving a statutory residency test. That issue is under active consideration.

The Convener: It would be very helpful if you dealt with that when you write to us, because that would allay many of the anxieties that we have heard.

Peter Peacock: I was going to mention the SVR and the existence of a different definition of a

Scottish taxpayer and to ask whether there was an opportunity to tidy that up, but I think that we have been given the answer.

The Convener: We move on to non-financial matters. I realise that David Gauke might be pushed for time, so I thank him very much for his evidence, brief though it was.

We will have questions on elections, drink driving and speed limits. Members can have one question each, although more might be needed on elections.

Brian Adam: I have three questions on elections. Why do the provisions not require the secretary of state to consult Scottish ministers on any proposed Scottish election rule changes? Would the UK Government be minded to agree a dual key approach to voter registration, rules about the composition of the Scottish Parliament, the procedure for filling any regional seat vacancy during a parliamentary session—I cannot imagine that that affects anyone other than folk in the Parliament—and rules relating to disqualification, but to leave the detail of the last two issues to the Scottish Parliament, as they are predominantly housekeeping issues? In its written evidence, the Electoral Commission asked whether the bill's provisions would allow the remit of the proposed electoral management board for Scotland to be extended to cover Scottish Parliament elections. Would the UK Government be minded to amend the bill to extend the board's remit in that way?

David Mundell MP (Parliamentary Under-Secretary of State for Scotland): I will respond to those questions.

Clearly, it is already the practice of the UK Government to consult the Scottish Government on any provisions that relate to elections to the Scottish Parliament. In recent weeks, the order relating to the forthcoming Scottish elections has gone through the House of Commons and the House of Lords. That order proceeded on the basis of full consultation and co-operation. In relation to the powers that remain with the UK Government, that is the way in which we intend to proceed.

Brian Adam: So would you put that in the bill?

David Mundell: We feel that the measures that we have set out in the bill offer the appropriate balance of responsibilities between the Scottish Parliament and the Westminster Parliament.

13:45

Brian Adam: Would you put it in guidance then, if you are not prepared to put it in the bill?

David Mundell: To be fair to the previous Government, there is a history of co-operation

between the UK and Scottish Governments in working on issues of this nature, and it is our intention to continue to work on that basis. We are also working closely with the electoral management board in the build-up to the Scottish Parliament elections, and I understand the legislative framework that has been created here for local government elections. Certainly, there would be a willingness to look at how the electoral management board's arrangements for the Scottish Parliament elections could work best with the Scottish Parliament's statutory footing for local elections.

Brian Adam: We will probably come back to you on that.

The Convener: We have given you a flavour of the issues.

Brian Adam: We had evidence earlier this week on the powers in relation to drink-driving limits. Would it not be better, as was suggested to us, to devolve powers for all relevant matters related to drink driving, such as the limits, penalties and regulations on random testing? The reason for asking about the penalties is that currently there is a particular level for drink driving, but those with higher levels of alcohol are likely to be liable to higher penalties, whether that is points on their driving licence, a fine or a disqualification period. However, if you are going to lower the limit, you might also wish to have the power to vary the penalties. So, the suggestion is that we should devolve the entire package of powers: the alcohol limits, the penalties and the regulations on random testing. They really ought to come as a package rather than separately.

David Mundell: The first important point, particularly given how some of the evidence to the committee is reported, is that devolving powers over certain matters under the Scotland Bill will not automatically lead to change on those matters. Whether the Scottish Parliament makes changes to, for example, drink-driving limits, speed limits or the regulation of air guns will be entirely a matter for it to determine.

On the specific point about the range of drink-driving powers, that issue was considered in detail by the Calman commission, which concluded—and the Government shares this view—that responsibility for the other powers should rest with the UK Government. That was to ensure certainty of provision throughout the UK while allowing the Scottish Parliament and Government to influence issues in relation to alcohol consumption and crime in Scotland.

The Convener: I am mindful of the time, so I will leave the other questions in this area. Robert Brown will move on to the BBC trust.

Robert Brown: I have just a brief question. There are some issues about the BBC trust, but the main one that has emerged concerns MG Alba, whose board is appointed by the UK Government, despite the fact that it is funded by the Scottish Government. Although that is not directly relevant to the bill, would the UK Government be prepared to look at the issue on the basis that the responsibility should follow the money?

David Mundell: My understanding is that representations were not made to the Calman commission about MG Alba. Perhaps if other parties represented here had been involved such representations might have been made. However, as the matter has been raised, it will be looked at.

Robert Brown: That is very helpful. My final point is on the different issue of the regulation of health professions. We have had evidence that the regulators of the currently devolved health professions are prepared to work with either the existing system or the proposed one but are fairly content with the current co-operation and arrangements. Therefore, is there any reason to re-reserve the regulation of the health professions?

David Mundell: My understanding is that contrary evidence was given to the Calman commission in the sense that there was a view that there would be a benefit in re-reserving the regulation of the health professions. There would also be a benefit going forward in that new, emerging health professions would not have to be defined. As we have seen over the period of devolution, new professional groups have emerged. The Government is still of the view that re-reservation is the preferred way forward.

Robert Brown: If that happens, would the UK Government be prepared to undertake formally still to have full and proper consultation with the Scottish Government and Scottish interests on the implications that arise?

David Mundell: The Government is committed to working with the Scottish Government on all matters of mutual interest.

The Convener: Members will now address more general issues that we will probably write to you about, but I want to give people the opportunity to say something on the record.

David McLetchie: On air weapons, the evidence that we had on Tuesday on the bill's proposal that there should be partial devolution of the regulation of air weapons was less than convincing. Indeed, I think that both of the witnesses that we had on the issue—Assistant Chief Constable Ewing and the witness from the British Association for Shooting and Conservation—suggested that there was actually

merit in keeping firearms regulation and regulation of air weapons together in a single corpus of law. I think that it was felt that, on balance, that best sat at Westminster. Is that something that might be reviewed?

David Mundell: I do not know whether you have seen the transcript of the second reading debate of the bill at Westminster, but your current Scottish Parliament colleagues Margaret Curran and Cathy Jamieson, who are both now members of the Westminster Parliament, argued passionately for the devolution of air-gun regulation because of their belief that there are specific issues in Scotland that such devolution would allow the Scottish Parliament to address. The Government was sympathetic to those representations.

Tricia Marwick: In fairness, some of our witnesses said that they would be quite happy for, and saw no insurmountable problems in, devolving responsibility for air guns, including those that we have discussed that are already banned.

David Mundell: It is clear that if the seriously dangerous air guns are banned throughout the United Kingdom, it would not be the Government's intention to change regulation or devolution in that regard. As I said earlier, if the bill proceeds as set out, it will be a matter entirely for the Scottish Parliament whether to make changes.

Peter Peacock: I have a brief point about the A9, which you will appreciate I have an interest in. Indeed, your colleague Murdo Fraser has a particular interest in it, too. We have had representations that it is not clear whether the bill's provisions on speed limits would allow the piloting of different speed limits on different roads in Scotland. The A9 was cited as an example of a major trunk route that has particular problems because of the convoying of vehicles on it. I do not necessarily expect an answer to the question today, but perhaps you could look at the issue to try to ensure that any provisions that are devolved have suitable flexibility to allow such piloting to happen.

Brian Adam: The issue is in relation to heavy goods vehicles. The Road Haulage Association would appreciate it if the provisions allowed the flexibility, particularly on the A9, to increase the speed for HGVs from 40mph to 50mph.

David Mundell: I am happy to take that specific point away and respond to the committee in writing on it.

The Convener: That is very helpful. I suspend the meeting for a minute to allow the Crown Estate witnesses to join us. If we are lucky, we can come to the Advocate General for Scotland in the last 5 minutes.

13:54

Meeting suspended.

13:55

On resuming—

The Convener: I welcome Roger Bright, the chief executive of the Crown Estate, and Tom Mallows, the external relations manager. There are policy issues and operational issues to be considered and, given the constraints of time, we will move straight to questions. Peter Peacock will lead off, to be followed by Tricia Marwick. We will see whether we can cover the ground over the next 15 minutes or so.

Peter Peacock: To begin with, I wonder whether the witnesses would clarify one point for me. I take it that the Crown Estate relates to the Treasury—it is its sponsoring department, so to speak, in Government. Am I right in saying that your accountability is through the Treasury?

Roger Bright (Crown Estate): First of all, convener, I thank you very much for inviting us to attend today. We are very pleased to have the opportunity to appear before you.

In answer to your question, Mr Peacock, yes, formally our statutory accountability is through the Treasury to the UK Parliament.

Peter Peacock: Thank you, that is helpful.

An interesting point in the context of our discussions, and in the wider context of your work, is the significant shift from your traditional work into the new sector of renewables. I guess that all the devolved Administrations will be interested in that; there could be huge economic benefits, and environmental questions will fall within the competence of the devolved Administrations. Some of those questions will be shared with the UK Government.

By what mechanisms are the devolved Administrations currently able to participate in investment decisions in relation to developments in renewables? Do you act as a kind of development agency enabler, in a way in which you have not acted in relation to your more traditional functions?

Roger Bright: In relation to offshore renewable energy, we very much see ourselves as an enabler and facilitator. Clearly, the UK Government and the devolved Governments have a keen interest in the development of offshore renewable energy. That interest coincides with our business interests; there is clear alignment between our interests and the interests of the Scottish Government and the other Administrations.

As you quite rightly say, Mr Peacock, our accountability is formally to the UK Treasury. However, we have nevertheless developed informal accountability arrangements with the Scottish Government, the Welsh Assembly Government and, to some extent, the Northern Ireland Government as well. That involves close working at operational level between my staff—based here in Edinburgh and in London—and Scottish Government officials and Marine Scotland officials. We are also developing contacts with the Welsh Assembly Government and its administrators. Furthermore, we also, of course, have a very good relationship with the Scotland Office.

Peter Peacock: You have indicated that there is a developing set of relationships. I know that you will not be able to comment on the formal accountabilities—you will work within whatever you are given, so to speak—but would it complicate your life unduly if we tried to create new, firmer, accountability arrangements that involved the devolved Administrations, albeit still through the Treasury? I am thinking in particular of the whole question of the strategies to do with investments in renewable energy.

Roger Bright: It would depend on how those arrangements might work in practice. At the moment, we have absolutely no difficulty in working with both the Scottish Parliament and the Scottish Government. That is not causing us the slightest problem; nor is working with the Welsh Assembly Government or the Government in Northern Ireland. In practical terms, there is no problem. However, it is difficult to hypothesise about what more formal arrangements you might have in mind.

14:00

Peter Peacock: All right—I will now address the question to Michael Moore or any of his colleagues, because it raises political points and policy points.

In the Scottish context, it is clear that there is a desire for some shift or development in the relationship with the Crown Estate. Indeed, the noble lord sitting to your left—Lord Wallace—has expressed views on the subject in the past, although I will not seek to compromise him in any way. However, we have heard significant evidence that it is time for some kind of move.

The proposal in the bill on the appointment of a Scottish commissioner in consultation with the Scottish ministers is, in a sense, the most token change that is potentially available. Some argue for complete devolution of the Crown Estate to Scotland and therefore a separation, if you like, of both the income stream and the administration

and power. Another permutation is that the office of the Crown Estate commissioner for Scotland could be vested in the office of the First Minister to try to give it greater accountability.

Those suggestions have been put to us and we will take more evidence on the matter next week. However, is there not still scope to go much further than you have gone in the bill, although not necessarily as far as full devolution—if, as I suspect, you are opposed to that; I would be interested to get your view on it—and to look for a new form of accountability, which might involve the Scottish ministers and Treasury ministers in a formal joint arrangement between the devolved Administrations and the UK Government to develop the relationship without impacting on its fundamentals?

Michael Moore: You have elegantly and helpfully set out the whole range of options that lie before us. Therein lies one of the interesting aspects of the debate, as there are plenty of ideas but there is precious little in terms of detailed, worked-up proposals outlining what such arrangements might look like.

As you know, we founded the bill on what was in Calman. I will not speak for my good friend Jim Wallace; he will be able to speak for himself shortly and I am sure that he is itching to do so, having sat quietly for the past hour and a half. No detailed proposals were put to the Calman commission, per se. However, I do not want to appear to suggest that we are immune to the concerns that some people have about the issue and there is recognition, as Roger Bright has already established, that accountability needs to go beyond the formal mechanisms.

As the Secretary of State for Scotland, I have a power of direction, but it is something of a nuclear option and a very specific set of circumstances would be required for it to be used. However, I interpret having that power as placing a requirement on me to ensure that I am engaged with what the Crown Estate is doing. We have had three formal meetings since I was appointed, which I guess is quite a few more than some of my predecessors had in a similar period, and we will develop that approach. Next week I will meet Justine Greening, the Treasury minister responsible, to consider some of these issues.

We are open to the idea of more transparency and accountability and I am confident, not least because of what you said and what I hear elsewhere, that other ideas will come forward, but at this point in time the bill is clear about what we intend to do and that is what we will deliver.

Peter Peacock: I will press you a bit further. I hear what you have said and I accept it in the spirit in which you said it. However, can I be absolutely

clear that you are not ruling out considering other options before the bill completes its course, either potential changes to the bill—although perhaps you are ruling that out; you would no doubt want to see any proposals first—or policy changes that might mean that devolved Administrations can be much more firmly engaged in the accountability mechanisms for the Crown Estate?

Michael Moore: I will make two or three quick points. First, in the spirit of all the engagement that we have had with the Scotland Bill Committee and the Parliament more generally and that we will have when we go through the processes at Westminster, we will listen to all the points that are put to us and we will consider them when the committee reports.

I am not currently minded to change the provisions in the bill, but I am not for a minute trying to dissuade the committee from making however compelling a case it wishes to make on particular aspects of the bill. I wish to reassure you and, I hope, others who may not be here today that it is our intention, in the Scotland Office and in the Treasury, to develop our own engagement with the Crown Estate and certainly not to put any barriers in the way of the Crown Estate engaging properly with the Scottish Government.

Roger Bright: I add that we have formally offered to appear annually before committees of this Parliament and before ministers in the Scottish Government to explain and discuss our strategies and plans and to better understand the Scottish Government's objectives. We are already very engaged and we are happy to appear formally on a regular basis before either the Parliament, the Government or both. We have no difficulty with that.

Tricia Marwick: The written evidence that the committee has received is overwhelmingly in favour of devolving responsibility for the Crown Estate to Scotland. In making that demand, Lord Wallace is joined by the former UK energy minister, Brian Wilson.

Offshore wind installations will be a big thing in the future. Can you give us an estimate of what the revenue from them will be?

Roger Bright: That is quite a complicated picture, but I will do my best, with the help of my colleague Tom Mallows.

There are a number of different scenarios for the pace at which offshore renewable energy will develop. Currently, it is thought likely that the revenues will come on stream in a significant way in about 10 years from now, in 2020. Roughly speaking, there are three broad scenarios for the kind of revenues that will be generated for the UK by 2020, which range from about £80 million to about £200 million. Our current best estimate for

the Scottish component of that ranges from about £12 million to about £48 million. That is the current assessment, but there are a number of uncertainties and dependencies in that.

Tom Mallows (Crown Estate): I add that those figures cover the 0 to 12 nautical mile area and the 12 to 200 nautical mile area—in other words, the adjacent waters as well as Scottish territorial waters.

Tricia Marwick: I find it very interesting that the Crown Estate is talking about revenue for the UK of between £80 million and £200 million when I have been told that, in the shorter term, we are talking about income of £300 million a year for Scotland alone. Is that a figure that you recognise? Is it in the right ball park?

Tom Mallows: That is not a figure that we recognise. It is necessarily quite a broad range of estimates, because of the scenarios that we have used. The estimate at the lower end of that range is based on the Government's renewable energy strategy, which relates to the development in Scotland of around 3.1GW of offshore wind energy out of a UK total of 14GW. The upper scenario involves about 42GW of energy generation from offshore wind, 11GW of which relates to Scotland and the adjacent waters. That is where we get the figures from. The figures for Scotland represent assumptions by the Crown Estate about how the apportionment of UK energy generation is likely to develop in that range of scenarios.

The Convener: We need to move on so, in conclusion, it is fair to say that the committee has anxieties about the fact that the way in which Calman sought to address the governance issues surrounding the Crown Estate was by the creation of a Scottish commissioner. Because the Crown Estate is an organisation that has at least three distinct missions—the first of which relates to the mature market of its urban estate, the second to its rural estate and the third to its marine estate, which is subject to rapid change—all the evidence that we have seen means that we are not convinced that governance arrangements that might be appropriate for the urban and rural estates are necessarily appropriate for the marine estate, in which there is a significant Scottish interest. That issue goes beyond the Scotland Bill, but it is highly pertinent when we are talking about an organisation with assets that are worth £6 billion. Even though less than £200 million of that relates to Scotland and the organisation spends less than £3 million a year here, it will have a significant developmental role to play.

We would welcome some acknowledgement that that wider range of issues needs to be addressed because the governance solution that is proposed in the bill does not seem to us to be the right one, given the diverse challenges that

different parts of the organisation face. I say no more than that at this stage, although the secretary of state can comment if he wishes.

Michael Moore: I repeat what I said earlier: we will look very carefully at all the recommendations that the committee makes once it has considered all the evidence.

Roger Bright: I would like to add a final point. Perhaps it is worth bearing in mind that there is a clear distinction between ownership of the sea bed and the regulation of it, which clearly lies with the Scottish Government and Marine Scotland. We do not have a regulatory role; we are just the landowner. In that capacity, we seek to work closely with the Scottish Government so that we can understand its policy objectives and try to work out how we can best work with them.

The Convener: Suffice it to say that we might struggle to find a Scottish commissioner who is equally adept in the areas of your urban, rural and marine estates. Perhaps that exemplifies the problem.

We are very grateful for your evidence. We move to questions to the Advocate General for Scotland.

David McLetchie: I have a couple of questions for Lord Wallace, who has been patient. I want to put to him the Scottish Government's proposition on the change in the bill relating to section 57(2) of the Scotland Act 1998. In effect, that proposition is that the Supreme Court should have no role to play in the criminal law of Scotland, which was historically, until the advent of the Scotland Act 1998, a matter for the High Court in Scotland, and that if there is any perceived transgression of the European convention on human rights, the matter should be arbitrated and determined in the High Court rather than in the Supreme Court both under the current system and in the form of appeal that you propose. Will you comment on that, please?

Lord Wallace of Tankerness (Advocate General for Scotland): Yes. Members have the report from the expert group chaired by Sir David Edward. I think that they also have access to the evidence and submissions that were given to the expert group. There was a clear strain of argument that people have already been given rights, and it is difficult to take them away. More than that, it was argued that, in issues relating to human rights and our obligations under the European convention on human rights, it is important that, to achieve consistency throughout the United Kingdom, citizens in all parts of the United Kingdom should have access to the Supreme Court to have those rights determined or vindicated. The Law Society of Scotland's evidence to the expert group in particular crystallised matters. It said:

"the key to understanding devolution issues raised in prosecutions, is not that these relate to criminal law, but rather that they relate to alleged contraventions of either Convention rights or Community Law which arise in the context of a criminal prosecution."

That informed the expert group. I set up that group with no predetermined idea of what it would come out with or what I wished to see. Having received its report, I thought that a compelling case was made for having access to the Supreme Court in determining our citizens' human rights.

David McLetchie: If the Supreme Court determines whether a human right has been breached, should it not limit itself to that, and should any determination of the criminal culpability of an accused person in effect be referred back to the criminal court rather than allowing the Supreme Court ultimately to overrule a conviction?

Lord Wallace: A test was set out in the expert group's report and the draft clause has not yet been finalised. However, we took the view that the Supreme Court should have the power to make any order that it would be competent for the High Court to make, but if there had been an incompatibility with convention rights or European Union law and that had led to a miscarriage of justice, that would be the criterion on which the Supreme Court would act. Therefore, there is a direct link to either a breach of the convention or a breach of European Union law.

The Convener: I am minded to close the meeting because of the time. I give many thanks to the Advocate General. He will know that the Lord Advocate will give us evidence next Tuesday, and it is likely that we will write to him following that evidence session and about two or three small points that the Law Society has raised.

Lord Wallace: I was going to say precisely that. I appreciate that time is short, but if there are issues relating to that matter or any other legal matters—

The Convener: There are three minor matters that the Law Society raised that we will be happy to write to you about.

Lord Wallace: I would be more than happy to respond.

The Convener: Many thanks. I thank all the witnesses for their evidence.

Meeting closed at 14:14.

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