



House of Commons
Scottish Affairs Committee

The Scotland Bill

Fourth Report of Session 2010–11

Volume II

Oral and written evidence

*Additional written evidence is contained in
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at www.parliament.uk/treascom*

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The Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)).

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Taken before the Scottish Affairs Committee

on Wednesday 2 February 2011

Members present:

Mr Ian Davidson (Chair)

Fiona Bruce
Cathy Jamieson
Jim McGovern
David Mowat

Fiona O'Donnell
Mr Alan Reid
Lindsay Roy
Dr. Eilidh Whiteford

Examination of Witnesses

Witnesses: **Professor Sir Kenneth Calman**, University of Glasgow, and **Professor Jim Gallagher**, gave evidence.

Q1 Chair: We are ready to start. Can I, first of all, welcome you to the meeting and ask you to introduce yourselves for the record in whatever form you wish to be known?

Sir Kenneth Calman: My name is Kenneth Calman. I was Chairman of the Commission on Scottish Devolution.

Professor Gallagher: My name is Jim Gallagher and I was Secretary of the Commission on Scottish Devolution. I was also the Director General of Devolution in the UK Government. I should say that I am also at the moment the adviser to the Scottish Parliament Committee that is considering this Bill, but none of these people is to blame for anything I say.

Q2 Chair: Can I start off by asking you to comment on any issues that you feel aggrieved about not having been picked up by the Government in their Bill that were investigated by yourselves? One of the issues that we have been asking people to comment on has been things that are in the Bill that were not in Calman and vice versa. We would welcome hearing your view.

Sir Kenneth Calman: First of all, it was a very real privilege to chair the Commission. It was a remarkable process and great fun at the same time. Having been through the Bill in outline, I cannot see anything that hasn't been covered. There are one or two changes but these are inevitable, and none of them seems to me to be significant enough to raise at this stage.

Professor Gallagher: The Bill substantially implements the Commission recommendations. There are three noticeable areas where there is an absence. Two are that the small taxes that the Commission recommended have not been included, although they are both mentioned in the Government's White Paper. The third is that the previous Government did not want to take forward the recommendation that there should be an assignment of a proportion of the amount of savings and incomes distribution income tax. The argument against that was that it produced variability in the tax year without increasing accountability.

Q3 Chair: What would the implications be for Scotland if the Scottish Parliament rejected the Government's proposals?

Sir Kenneth Calman: I think it would be a wasted opportunity. Here is an opportunity to shift some of the balance in terms of devolution reserved. That could be done without it, to look at the Scottish Parliament. It is an opportunity to get the relationship between the Parliaments and Governments right, and that respect agenda, which we talked about before, is important, and an opportunity to increase the financial accountability of the Scottish Parliament. It would be a pity if that didn't go through. The Commission hasn't met since June 2009 so I cannot speak on behalf of the Commission, but having met the occasional member, they are all delighted that it has got as far as this and I think that is remarkable.

Professor Gallagher: I agree.

Q4 Chair: I would like to move on to the major issue, which is obviously the question of finance, and ask you whether you feel able to comment on some of the discussion that has been raging since the Government published their proposals and whether, with hindsight, you wish you had done some things differently.

Sir Kenneth Calman: That is an interesting question. Since the summer of 2009 I have kept in touch through the press and the newspapers so I haven't been heavily involved in the detail, until about a week or so ago, when I gave some evidence to the Scottish Parliament. I attended the session before I was on at which there were four or five international experts on the financial side of things. I thought that was a first-class session. It was a very positive session. If you have not read that session, it would be worth looking at because one or two issues did come up there that I thought were worthy of further discussion, which I can mention if you felt that helpful.

Chair: Yes.

Sir Kenneth Calman: The first one was whether you should or should not have any kind of progression with income tax; in other words, you go a bit higher at some points. I don't think there was a clear answer to that. The answer that we came to was that you would just leave it as is, which is probably about right, but it was quite an interesting discussion. The second was, in terms of reducing the block grant, whether that could be indexed in a different way. They

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mentioned income tax as a way of indexing it. That was quite an interesting idea for me.

The third point was that there is no formal link between decentralisation of the budget and growth.

The final point, which came out very clearly—for me it is right at the heart of all of this—was that if you want to have better governance in whatever system it is, then the financial component, whether it is full fiscal autonomy, no fiscal autonomy or a little bit of fiscal autonomy, is what your policies are and not necessarily the amount of money. If you have the wrong policies, you won't get economic growth. It was quite a strong point and quite important, because as you shift the amount of money that the Scottish Parliament is or is not accountable for, that is only one part of the process. The other part of the process is to get the policies right, and that is the bit that is key.

Q5 Chair: I was particularly interested in the point you have just made about whether or not decentralisation automatically leads to growth. Given the furore that there has been, is there anything that you would change now upon reflection about what you produced in your report? Again, I appreciate that you are here as the chair and not necessarily speaking on behalf of everybody. What I am really interested in finding out is whether anything new has come out as a result of all these to-ings and fro-ings that you were not aware of at the time.

Sir Kenneth Calman: The answer is no. In other words, the special economic committee chaired by Anton Muscatelli, looked at all of these things. There is no new evidence. The evidence in relation to whether you decentralise or do not decentralise remains the same. It hasn't shifted. There is some debate around it, and that is why the evidence given at the Scottish Parliament was so helpful. You have to ask the questions: did we miss something? Was there something that we didn't see? As far as I can see, the answer is no. That group would have said, "You should have done something differently", and they didn't when asked directly.

Professor Gallagher: I agree with Ken in relation to the connection between the public finance system and economic growth in the private sector. A lot of nonsense has been talked about that. As he says, the issue is what you do as a government institution with the policies and tools that you have.

To rephrase your question slightly, if the Commission had another six months, what more might it have done? There is one major area where there has been some discussion since that illustrates the next phase, which is what has to be thought about next. That is the point that Ken made about how we calculate the balance between the stream of income tax revenue that the Scottish Parliament will have under the proposals in this Bill and the grant that it gets from the UK Government.

If we ignore local taxation for the moment and just leave that to one side, one can say that the Scottish Parliament at the moment is 100% funded by grant, which happens to be calculated by the Barnett formula. Under the system which is envisaged in the Bill, it will be partly funded by grant and partly

funded by its own resources. It will have access to a stream of tax revenue, mostly income tax. Obviously, the Commission concluded that there should be—I think I've got the words right—a commensurate reduction in the amount of grant. The question is, what is a commensurate reduction for access to this stream of revenue?

The analysis of that question is very important. The best work that has been done on it was done by the Holtham Commission in Wales, which attacked it from both an economic and a political perspective. How you calculate that in the end will have a very important influence on the total spending power available for the Scottish Parliament. It is possible to do a calculation that would show, you might think, that Scotland would have more or Scotland would have less. The key is to find the right way to do it so that whether Scotland has more or less depends on the tax decisions the Scottish Parliament takes and how successful the Scottish Parliament is in growing the Scottish economy. That is the policy objective one should set. To say that the system has either an inflationary or a deflationary bias is not right, but it does expose the issue. The important question now is to get the balance between the income tax powers that will be available and the grant that will continue to be still the majority support for devolved public spending in Scotland.

Chair: Eilidh, you wanted to come in on financial questions.

Q6 Dr Whiteford: Yes. I am very happy to do so. Welcome, gentlemen. It is good to have you both here. We took some evidence last week from commentators across the political spectrum, but one of the things they agreed on was the importance of economic growth to the Scottish economy.

One of the concerns that has been expressed on the proposals in your own report, Sir Kenneth, that have been translated into the Scotland Bill, has been about the income tax proposals, in particular the flat rate of 10p regardless of whether you are a basic rate taxpayer or a highest rate taxpayer. I guess some of the concerns expressed have been that this will leave any future Scottish Government between a rock and a very hard place, in that if they leave the tax rate as it stands and don't make any alteration to the status quo, the revenue will actually fall because of the inherent deflationary bias, whereby so-called fiscal drag is likely to see the proportion of tax-take rise from those higher rate bands, which, of course, the Scottish Government won't be accruing. That, in essence, means that there is a perverse incentive for a Scottish Government to raise tax, to fill the gap that is emerging in its funding for social policy areas that are devolved, but at the same time that could be undermining economic growth. On the other hand, if they do it the other way and lower tax, they won't be the beneficiaries of that. They will still see reduced revenues, whereas the Exchequer in Westminster could reap the benefits of that.

Professor Gallagher: There is quite a lot in there, and I have to tell you that I don't agree with most of it. The first thing to understand is that what this country's Parliament will have is the capacity to levy a

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percentage of taxable income as a stream of tax, so it will be 10p, 11p, 12p of the total taxable income in Scotland.

Over time, taxable income grows along with the economy because income is a big part of GDP. So income typically grows in proportion to economic growth. As the economists say, it has an elasticity of 1. If the GDP goes up 1, income tends to go up 1. It goes up and down a bit over time, but it would not work otherwise if income didn't grow in proportion to the economy. Progressive income tax tends to grow more, obviously. The UK's progressive income tax tends to go 1.2 times as quickly as the economy because richer folk pay more. But that doesn't mean there will be a shortfall in the Scottish Parliament's income because the income consists of a stream of tax revenue and a stream of grant revenue. I go back to what I said first. If the grant calculation is right—we don't exactly know how the Government propose to do the grant calculation yet—the reduction from the grant will be the expected value of the stream of tax income that the Scottish Parliament gets. There need be and should be—you certainly can't say there will be—a hole. That is the first point you made.

The second point was one that I struggle with a little; it is the idea that if the Scottish Parliament cut taxes or tax rates it would not get the benefit of that, whereas the Westminster Parliament would. In the jargon—you're going to like this bit of jargon—that's called a vertical fiscal externality. I so enjoy that piece of jargon.

Sir Kenneth Calman: We didn't use that in the Commission's report.

Professor Gallagher: We only use it on special occasions like this.

Chair: People in Govan talk of little else.

Professor Gallagher: Indeed they do; that is right. It is dropping money out of a high flat. It means that when you have two levels of Government that share access to the same tax base—in this case income tax—the decision of one Government will have an impact on the other. That means that if the UK Government were to decrease income tax, for the sake of illustration, there might be a small effect of incentive that would make people work harder and they might declare more of their income so the income tax base would go up. There is quite a lot of evidence to suggest that there is some relationship between tax rates and tax base. If the UK were to increase income tax, you might expect that the tax base would be depressed a bit. If they increased it by 1p in the pound, they wouldn't get 1p's worth back; they would get a little less back. Similarly, if they were to decrease it, you wouldn't expect to lose all of 1p's worth of decrease; you would get a little benefit from doing that. Each Government has the capacity to influence the tax base by its tax decision, to a small degree. It is not as if the UK is in a place where, if you decrease income tax, the income tax goes up. If you decrease income tax, you get less revenue in. You just don't get quite as much less as you would if it was entirely proportionate.

When each Government affects the tax base, yes, it will have an effect on the other Government either way. If the UK were to decrease taxes, the Scottish

Parliament would get a wee bit of a bonus. If the Scottish Parliament were to decrease tax rates, the UK taxpayer would get a wee bit of a bonus too. That's just a fact of the way that they both share a tax base. It just happens. I don't see that it is a problem.

Q7 Dr Whiteford: Can I ask a related question? One of the things that everybody agrees with is the importance of improving the financial accountability of the Scottish Parliament. One of my concerns about these tax proposals is that there have in fact been 17 changes to income tax in the UK since 2007, which is a very short period of time to have had so much change. I am concerned about the accountability of the Westminster Government to people in Scotland. I suspect that that is something that will grow more acute in the coming years. We have a Tory Government now at odds with the wishes of most voters in Scotland. I am concerned that the reverse accountability will be undermined by a very unpredictable set of income tax proposals that a Scottish Government is going to have to work within.

Professor Gallagher: There are two elements to that question. The first is about the technicalities of income tax. What the Commission considered and what the Government White Paper says, rightly in my view, is that what you might call the policy risk of the tax base is owned by the UK Government. It is responsible for deciding what the tax base is. If it makes decisions on the tax base, to increase the personal allowance or whatever it might be, it has to take the financial consequence of that. If the UK Government decides, as it has done recently, to change income tax in such a way that there is less taxable capacity in Scotland, it has to make an offsetting change in the grant that it makes to Holyrood. The effect of that is borne by the Government that makes the decision, and that must be right. One of the ways that you might think of doing that is by getting the indexation of the grant correct; otherwise you have to do it by ad hoc adjustments every time you make a change to the tax base. The White Paper certainly says that the UK will do that.

As to the second part of your question about accountability, of course, the accountability of the UK Government to the people of Scotland and to the people in the rest of the UK is in the fact that they elect you folks.

Chair: And long may they continue to do so, in my view.

Professor Gallagher: I couldn't possibly comment.

Q8 Chair: Can I ask one point about the issue of the grant being adjusted accordingly? How transparent is this process going to be? I can foresee, whatever happens, that somebody is going to dispute it unless it is clear on what basis changes have been made. We have seen economists fighting like ferrets in a sack in the recent period, with more heat than light, and I have been lost by some of it. I can understand the general idea that it has to be open in some way. What guarantee is there that that would be done?

Sir Kenneth Calman: I think Jim can add some detail, but in a sense the people of Govan and Partick who have to understand the process and the language, so it is not about vertical whatsits. There is an

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understanding. The way that this comes out for me, first of all, is that there is a huge amount of comparative data across the world on administrations that do something similar to this. They have worked around it and it is possible. Secondly, a key part of the Commission's report, and indeed within the Bill, is about the respect agenda: that is, we need to talk to each other and to do that openly and to be able to discuss issues. Lastly, the discussion at the Scottish Parliament about the block grant and how it is indexed was an important part and gave us a way through the really important question that you raised.

Professor Gallagher: There is, however, a second arm, which you raised, Chairman—the transparency in all of this. The UK's public finances are relatively untransparent by international standards because we have one big government. Most countries have lots of governments. They mostly have both national and federal, or federal and state level governments. Scotland, Wales and Northern Ireland are unusual in the UK context. One of the weaknesses of our system, which I don't think this Bill will wholly cure, is that the central Treasury, for whom I have a very high regard, nevertheless sometimes tends to think of the devolved Administrations as just another Government Department and treats them in that way. You have heard me on this subject before. One of the things that we will have to do as time goes on is to have a greater openness about all these financial calculations. As you say, somebody will grumble about them and the day somebody grumbles about them they will have to be explained, so the Government may as well start by explaining fully at the beginning.

Q9 Chair: Can I be clear, though. This is doable, is it?

Professor Gallagher: Och aye.

Q10 Chair: You say “och aye”. I am not quite sure that I would be as optimistic. If we recommend, for example, that there should be sufficient openness to undermine the credibility of those who wish to cause mischief just for its own sake—believe it or not, there are such people around—we want to know that it is actually doable.

Professor Gallagher: Yes.

Q11 Chair: If somebody comes back in a couple of years and says, “Look, this is just far too complicated. We can't possibly work this out. We just have to make the best guess we can”, then you are leaving the door open for constant disputes. I want to be clear that as far as you are aware, the question of overcoming unwarranted suspicion by adequate transparency is actually doable in this regard.

Professor Gallagher: The answer to that is yes. There are two or three sensitive challenges and they mostly fall in the basket of the Revenue and Customs identifying Scottish taxpayers correctly and making sure that the payments they make are properly credited to the Scottish account, and then a set of challenges of the sort you have described, of working out, as it were, the intergovernmental effects of these decisions. There is no reason why that can't be done. It is certainly done successfully in other countries.

Much more complicated things are done in other countries. This model, which is one substantial tax, one single rate, the same taxable income, the same allowances and the same reliefs in income tax throughout the UK, is about the simplest way of doing this that you can get.

Q12 David Mowat: Just picking up on Dr Whiteford's point on fiscal drag, it seems to me, given that the formula is coming in over the next couple of years at a time of public spending restraint, that you would expect income to be rising faster than public spending, which being the case, Scotland is likely to do incrementally better than it would have done under Barnett consequentials, unless something goes wrong in the public spending constraints. I think I am right in that, aren't I? Would you agree with that?

Professor Gallagher: You are on to the right point, undoubtedly. If you were to start this system today, which no one is proposing, and if you were to apply a simple percentage reduction to the grant, which was the model that the Scottish Government exemplified in their discussions to demonstrate, as they saw it, that Scotland would have been worse off, yes, Scotland would be better off. The budget would be bigger. But if you look at the proposals in the Government's White Paper, the way in which they propose to phase it in means that that should not happen because in the initial phase, they are going to cap the budget at the Barnett level and make the once and for all reduction in the grant, which is what we have been talking about here, after a period of stability in the public finances.

Q13 David Mowat: So they are adjusting for the effect that I have just mentioned.

Professor Gallagher: Funnily enough, the Treasury spotted that one.

Sir Kenneth Calman: If I can add to that, it seemed to me that one of the key parts of the Commission's report was that this should happen over a period of time with proper planning and allowing many of these issues to come out. There is no reason at all why it should not be transparent. I have been enormously impressed that the Treasury has actually bought this whole thing. It can only do that if it is able to be transparent about it and allow the discussion that the people in Scotland really need. I am entirely behind that.

David Mowat: Thank you for that. My main question is about the base line that we are going to use for this.

Chair: Before we go on to Barnett, do you, Cathy, want to follow on with the previous discussion?

Q14 Cathy Jamieson: Yes and thanks for coming along. I know there has been a great deal of discussion from the people who are in favour of the proposals, as I am, but also to try and properly scrutinise them. There are a few things that I want to get on the record so that people are absolutely clear. Referring to the evidence that has been submitted by Professor Hughes Hallett and Professor Drew Scott, there are two points I want to raise. One is on the point that they raise about the lightweight job losses in the public sector in Scotland and what that will do potentially to tax

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revenues over the next few years. Do you have any comment in relation to that?

My second question concerns their point: “We have already noted that evidence demonstrates a persistent trend for Treasury to over estimate tax revenues. This means that the Scottish Government will, on average, always find itself repaying money to Treasury in the annual reconciliation round. As borrowing is capped at £500m in total, this necessarily means that public spending in Scotland will have to fall eventually to finance this repayment.”

As you will appreciate, a number of trade unions and others are very concerned about those kinds of assertions and I would like to hear your response.

Sir Kenneth Calman: Jim will pick up some of the details. Let me make a general point, which is that I have hugely welcomed the scrutiny afforded to this Bill. It really is great. I have no problems about that at all. I welcome it. I think in the discussion one or two things will come out which perhaps weren't there before. That is entirely positive and it is the way it should be. We need to involve people, both in Westminster and in Scotland, about the Bill and what it is going to look like. Therefore, I am delighted with the scrutiny; it has been great. Can I ask Jim to pick up the detail?

Professor Gallagher: You raised two slightly different points. The first is the idea that there are potential job losses. If there were such, it would be because, overall, there was less money available to fund public spending. That is the only mechanism by which a change in the public finance system could cause job losses.

Q15 Cathy Jamieson: I am sorry, but that was not exactly what I was suggesting. I was suggesting that in the current climate there are cuts and job losses. The suggestion in this paper is that that will have an impact on the tax revenues. I am sorry if I did not explain myself.

Professor Gallagher: You are quite right. The same set of folk were in the same argument. First of all, during the present period of public expenditure restraint, the present Government's proposals are ones which will result in the Scottish block being calculated by the Barnett formula, albeit that there will be a substitution of some of the tax income. During the transitional period that the Government propose, the fact that there may be job losses in the public sector and therefore a reduction in tax income in Scotland will, under the present Government's proposals, not affect the Scottish block. At the time in the future when we have moved to the complete implementation of this system, the Scottish budget will depend, to some degree, on the income tax revenue in Scotland and that will depend on how the Scottish economy is going, but during the transitional period that will not be the case.

The second question is a very interesting one, and that is how we are going to manage the fact that at present the Scottish Government gets its money in monthly instalments from the Treasury. As it needs to spend it, it simply draws down on the bank that is the consolidated fund. Under this system it will have to rely on uncertain income tax revenues. Income tax is

lumpy. It does not come in at the same amount every month and it is spread over more than one year. So the income tax for any one year comes in as some this year, some next year and even a wee bit the year after that. The way the Treasury proposes to deal with that—that wasn't a recommendation of the Calman Commission; it is something that has been done subsequently—is for the Treasury to absorb that risk. The proposal is that every month the Scottish Government will be guaranteed an amount of money from the Treasury so that they are able to plan their services accordingly.

The calculation of that guarantee—I will come to tax estimation in a moment—depends on what you think the tax income is going to be. The proposal in the White Paper is that that calculation will be done by the Office for Budget Responsibility. They have never estimated a Scottish tax revenue before, so I don't know whether they will be over-optimistic or under-optimistic. History shows that forecasters always exaggerate the present trend; if things are getting bad, forecasters always say that it is going to get even worse, and if things are going well they always say it is going to get even better. Typically, all forecasters do that, and maybe the OBR will be just the same. If they overestimate the tax revenue, then the Scottish Government will be able to put it in the bank, in a creation called the Scottish cash reserve. If they underestimate it, that will be a charge on the short-term borrowing.

Are we worried about that? It would be good if it was right, but let's look at the scale. Let's think how big these numbers might be. The tax revenue here is about 15% of the Scottish block. We are now talking about the extent to which there is an error in the forecast of that. The biggest drop there has ever been in one year in Scottish income tax revenue is 7%, so the biggest risk that the Scottish block would face in one year would be about 1% of its budget. If the forecast got that 80% right, then it is only 0.2% of its budget. The risk sums are not big and they are certainly not going to cause big economic effects and turn us into a cyclical disaster area.

Chair: Back to David on his specialist subject.

Q16 David Mowat: My question was about the baseline for the proposals, which are clearly sensible. You did not address the Barnett formula in the report, although you did mention it as not being based on need. You have both mentioned in your remarks the Holtham report, which did come up with estimates of what the potential difference might be between the current block grant and a block grant that would have been based on need. That was quite a big number—of the order of £4 billion. Has that given you pause for thought in terms of starting what is a very sensible fiscal arrangement on a baseline that may have to change in the future, or that in any event may not be sustainable?

Sir Kenneth Calman: It did, and it does. It was an issue that came up throughout. As we were going through the discussions on the Commission, another review of Barnett was going on at the time and, therefore, it was slightly difficult for us to get involved in that.

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Q17 David Mowat: That was in the House of Lords.

Sir Kenneth Calman: Yes. At some point, it will have to be looked at. It will be quite an interesting one to do—he said—based on need. I have lived in the north of England for many years, and there are areas of England that need to be looked at in the same way.

The conclusion we came to was that we could not make a decision on that, but it is an issue that was in the back of our minds all the time. The Bill makes the assumption that it continues but that there might have to be some change at some point. It seems to me that managing that process, however it is done, is going to be a key part of the next few years, which is why, if the Bill becomes an Act, it is something that needs a bit of time to be thought through. I don't think there is a simple answer to the question, but it was certainly in the back of our minds all the time.

Professor Gallagher: You are right to say that it is hard to justify the Barnett formula as a needs-based formula because it is a base led plus population increment formula. Such work as has been done does not suggest that the relativities between the nations of the UK follow anybody's particular measure of need, because everybody's measure of needs tends to be different. It depends on what you think is valuable and what should be supported and what shouldn't.

There is another question. If I were somebody like Boris Johnson, I would say that expenditure in my area should be determined not by need but by the fact that I generate all the tax revenue. In fact, there are at least two principles under which you might distribute spending geographically: an assessment of need or an assessment of taxable capacity. Most systems worldwide have a mixture of the two. I agree with Kenneth that this is a very difficult area and one which at some point may have to be faced up to, but it may not just be a question of doing a needs assessment.

Sir Kenneth Calman: I agree with that, too. Having looked at other issues around health and quality of life in other places, it is not simple at all. It can be quite complicated. I don't think there is a three-month answer to the question. My own preference is to see this Bill become an Act and start being implemented and, at an appropriate point, there might be another look at the Barnett formula, which is partly based on need but partly based on tax revenue.

Professor Gallagher: I would just like to add one point. At the moment, as you said, Mr Mowat, we are in a period of what is generally called fiscal consolidation, and public expenditure is going down all over the place. If I was advising the Treasury on redistributing spending geographically, I would tell them to do it at a time when spending was going up, not going down, because when spending is going up you have the opportunity to increase some people faster than others.

Q18 David Mowat: Just as an observation, there are two components to the way that the formula works, as you will know. One is as a proxy for need. The other is population or relative population change. Actually, that would have been a relatively easy change to have made, but it never has been in terms of the baseline. This is the end of my questioning and I just wanted to get your views on this. Because we

are going to link income tax to Barnett pretty directly going forward, potentially, it is going to make it quite hard to change in the future. That is my concern. In a sense, if it is a £4 billion number, which is the Holtham number, that is equivalent to perhaps 10p on income tax in Scotland. That is a huge number.

Professor Gallagher: It is a big number. I don't think that the proposals do link income tax to Barnett. By whatever means you decide the block grant, the deduction from it, to take account of the availability of income tax, is calculated in the following way. That block grant might be decided by the Barnett formula, by an adjusted Barnett formula, by a needs formula that is applied to local government or in some other way. There is nothing in the proposals in the Bill that obliges you to keep using Barnett in the future.

Q19 David Mowat: I wondered if it was an unintended consequence. Thank you for that.

Sir Kenneth Calman: We kept in touch with the Holtham Commission while we were working and they have progressed beyond that. He gave some very helpful evidence to the Scottish Parliament a week or so back that picks up a number of the points you raised.

Q20 Fiona O'Donnell: During the debate on Thursday, I think the Member for Glasgow North East mentioned a proposal from SCTI, which relates to the role of the Office for Budget Responsibility. This suggested that there should be a Scottish OBR. Do you think that that would be in any way better equipped to make less exaggerated predictions about economic growth?

Professor Gallagher: I don't think there is anything in Scottishness that makes you either more reliable or less reliable in making economic predictions. OBR is a new beast. It is only coming into existence at the moment. We don't know what it is like because we haven't seen it do anything yet. We do know, as with any other of these institutions, that it will require a substantial corpus of expertise. This will be a big job. I am not sure that having a tenth of that expertise focusing simply on forecasting Scottish tax revenues would be a good thing, but it will need the contacts and the data feeds particularly to enable them to do Scottish tax revenue predictions, which is something that no one has done so far. Many models of the Scottish economy have been created in the last 20 years. Twenty years ago it wasn't possible. Some of them are better than others, but they do exist, and just declaring UDI on that, I am not so sure about that.

Q21 Lindsay Roy: You described the Commission's work and the Bill as a process rather than an event. We have had some reassurance about the Barnett formula and the management of risk. We are now into a period of robust scrutiny. Would you agree that the success has to be underpinned by openness, respect and trust but also by an attitudinal element where people want to work together to achieve a common outcome?

Sir Kenneth Calman: I agree with that entirely in the sense that you have put it perhaps more clearly than I did. It seems to me that the whole purpose of having

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the Commission was to open the debate on a number of areas. We gave some quite useful conclusions. That work has now been transferred into a Bill. It still requires exactly the same type of scrutiny, and I welcome that. That is the whole purpose of it. If in Scotland and, indeed, at Westminster there is not sufficient discussion, debate and argument around it, I would be disappointed. I am entirely happy with that. On all the financial discussions we have had over the last few weeks, again, I agree entirely.

The last point you made about attitude is critical, too. This is about working together to get a good outcome for Scotland. For me, that is what this whole process was about—doing better for Scotland within the Union, because that is the remit we were given by the Scottish Parliament. If we fail to do that, we failed the Scots—to pick the opportunity that is in front of us right now to improve the way in which Scotland is governed within the UK. It is a huge opportunity. I hope you and others will take it. This Committee is a critical part of the whole process.

Lindsay Roy: And one not to be missed.

Q22 Chair: I would like to ask about dialogue and discussion. At least one source of evidence suggests that this is being unduly rushed and that there is no reason other than the forthcoming Scottish elections in determining the timetable. There could have been much more consultation and all the rest of it. At the beginning, you expressed some enthusiasm for almost the alacrity with which the Government have picked this out. In terms of striking a balance between more discussion and moving quickly forward, where do you lie?

Sir Kenneth Calman: We had about a year during which we took a great deal of evidence. I won't go through all the evidence we took as it is all in front of you in the report. There was an opportunity for groups across Scotland, all political parties, to interact, and I certainly would have welcomed all of that. We saw a great deal. It has been a year or so since the Commission reported. There was an intention in the Queen's Speech that something would happen. There has been quite a lot of time for people to make comments. I suspect people didn't think it would happen. The fact that it is now a Bill and moving forward means that people have now to interact perhaps in a way that they had not interacted before. I still welcome that. As somebody who believes in discussion and debate as the best way of going forward and the best way for Scotland to go forward, then we should do it. But I don't see any reason why we should delay it. We would just have a longer time discussing things that we have discussed in the past.

Q23 Chair: I would like to turn to the question of whether or not you have been too modest in terms of what you have gone for. There has been some criticism about corporation tax, for example. Why have you not said that corporation tax should go to the Scottish Parliament? Some of the evidence we have had, and subsequent comments made, have been that it's hardly been worth the bother because you have really squeaked and produced a mouse rather

than what is necessary. How do you respond to those points?

Sir Kenneth Calman: I have been called many things. The answer is that if you are going to begin somewhere to make some significant changes to the way in which the Scottish Government and the people of Scotland are funded, you have to start with where you are. What I think we produced was something that allowed that process to get started. In a sense, it produces a toolkit that says, if you reduce the block grant by a bit, you have to put it up by doing something else to it. "Here are some of the ways in which you could do it. Here are some of the examples." Of course, you could extend that and develop it, but that was not the right thing to do, and it is not the right thing to do at this particular moment in time. There may be times for that in subsequent discussion. This would get the system up and running and working. If that happened, all sorts of other things could happen as well.

Professor Gallagher: I entirely agree with that. To add to what Sir Kenneth just said, the model which the Commission adopted for a shared tax base in relation to income tax was taken from the Canadian experience. The idea of knocking 10p off the UK tax and allowing the Scottish Parliament to substitute some tax—the so-called notion of tax room—was something that happened in Canada in the 1950s, which gives one reassurance that it might work. It has been very interesting to see what has happened there since then. As time has gone on, the provincial tax capacity has grown in some places, in some respects, and in some respects it has shifted. Sometimes it has shifted back towards the centre. Institutions develop as time goes on. Certainly, our Canadian witnesses were pretty clear that for them that had been the right place to start, and I am strongly of the view that it would be the right place for Scotland to start. That doesn't mean you can translate everything that happened in Canada subsequently to what is going to happen between Scotland and London because Canada is a different place. Apart from anything else, it is a bigger place and size makes a difference.

As far as corporation tax is concerned, there is quite a lot that one can say about corporation tax. First, it is not a tax I would want to bet my house on, because if there is a declining tax, it is corporation tax. There is tax competition across Europe and corporation tax rates tend to get driven down. The more decentralisation there is in corporation tax, the faster that happens—the rates tend to get driven down.

The second problem with the idea of devolving corporation tax, which was covered in the Commission's report, is that you should devolve taxes and things that don't move around very much. Taxes on land are just fine for devolution, but taxes on corporate profits, which can be booked anywhere you like, are quite hard to devolve because there is a strong incentive for the company involved to book its profits where the tax bill will be lowest. People often cite the Republic of Ireland for its very low corporation tax rate as being an advantageous thing, and for them it certainly has been pretty advantageous, despite their present circumstances. What they fail to mention is that they have quite a big corporation tax

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income because many multinationals book their profits in Ireland. The devolution of corporation tax within the UK would be a way of ensuring that we cannibalised our own tax revenue. If it is devolved to Scotland and Scotland takes, for the sake of argument, 10p off the corporation tax, there is a strong incentive for companies not to change their actual economic behaviour but to change their corporate structures so that they book their profits in Edinburgh and pay less tax. The net effect of that is that the UK as a whole gets less tax and we have simply cannibalised our own tax income.

Q24 Chair: Presumably, the question of whether you have cannibalised our own taxes depends who you believe “our” applies to, doesn’t it?

Professor Gallagher: Quite so.

Q25 Chair: Therefore, if you are only focused on Scotland, presumably, cannibalising English taxes is not a concern for you.

Professor Gallagher: I would agree. Of course, the Commission was not wholly focused on Scotland. It was focused on Scotland within the United Kingdom, but there is a model of the world in which you see Scotland as a big tax haven, like another Isle of Man, and, as it were, making a living by allowing English institutions to launder their affairs through Edinburgh and escape taxation in England. From the point of view of Scotland within the United Kingdom, that is clearly a bad model.

Sir Kenneth Calman: We looked at Australian data, if I remember rightly, where one of the states had done that. In fact, everybody just moved there and then everybody else reduced their taxes.

Professor Gallagher: That was inheritance tax.

Sir Kenneth Calman: Inheritance tax is another one. Every other state reduced their inheritance tax so everybody lost because there wasn’t very much inheritance tax.

Q26 Lindsay Roy: Increasingly, people move around and you have gone for an income tax base. How have they resolved the issue about defining, within the provinces of Canada, for example, who is a resident of that province? There is an issue, obviously, around who is a Scottish taxpayer.

Professor Gallagher: Mr Roy, if I ever knew it, I have forgotten what the Canadian tax law is. The Bill produces quite an elaborate definition of a Scottish taxpayer. It is elaborate because the law in relation to tax and domicile has been developed in the UK to try, bluntly, to catch people who try and live here but pretend to live abroad.

Q27 Lindsay Roy: Do you think it is adequately robust as it is defined?

Professor Gallagher: I think it is pretty complicated. You have to be a UK taxpayer before you can be a Scottish taxpayer, so you have to nestle within that system. I would like to think that at some point in the future the definition of a UK taxpayer would be simpler, so the definition of a Scottish taxpayer could be simpler. As far as I can tell, what the Revenue have come up with is reasonably okay. The challenge is not

so much the legal definition but the administration of it all.

Chair: We have all forgotten the detail of Canadian tax law.

Q28 Fiona O’Donnell: There are a couple of specific recommendations from the Commission that I wanted to ask about. One is the proposal to simplify the law relating to the regulation of charities. Why was that included?

Sir Kenneth Calman: That is quite a good point. Some of us who are involved in charity work across the UK with UK-wide charities recognise that there are slightly different definitions. We came across one or two examples where Scottish charities couldn’t really raise money in England, which seemed a pity when the cause was good. That was because the two regulators had slightly different definitions. One, if I remember rightly, was around sport, for example. If you had a sport charity in Scotland, you couldn’t raise funding in England. I think I am right in that. The issue was that if we were able to see similar charity regulations across the UK, it would allow Scottish charities to raise money in England, if that was appropriate. It may well be an entirely appropriate thing. If there is only one charity in the UK dealing with a particular issue, why shouldn’t it be able to raise money in England? If it is blocked from doing that because of the regulations, that seemed a pity. That is why.

Q29 Fiona O’Donnell: Apologies that I have not read all the evidence that you received. Was that based on evidence?

Sir Kenneth Calman: Yes, it was. That was the purpose of it. Again, some of us, like myself, are quite heavily involved with charities that are either in Scotland or go across the UK. There are sometimes difficulties in being able to raise the funding and to have tax regulations around that, because of the current charity regulators.

Professor Gallagher: It may be worth adding, because sometimes I think people have misunderstood the purport of that recommendation, that the Commission did not recommend that charity law be reserved to Westminster. It recommended that the UK Government and the Scottish Administration should get together and find a way of agreeing a consistent definition that would operate between the two.

Sir Kenneth Calman: It certainly was not meant to be reserved at all. That was not the issue. But if there are significant differences that block Scottish charities raising funds in England and, indeed, English charities raising funds in Scotland—entirely appropriately—that seemed a pity.

Q30 Fiona O’Donnell: That’s helpful because we are meeting the SCVO next. I want to ask about the recommendations on drink driving limits and national speed limits. Why were those included in the recommendations?

Sir Kenneth Calman: They came up quite early in the process of listening to what the public wanted. These were two issues that came up. Scotland doesn’t have the power to do these things at the moment. Why

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shouldn't it, if that is what it wants to do? We received a lot of feedback quite early on, partly because it was in the public domain. People wanted that to happen and that is why we recommended it.

Q31 Fiona O'Donnell: There are now some questions being asked about these recommendations in the Bill. Do you think you had enough evidence to support that this was workable?

Sir Kenneth Calman: We didn't have a huge debate because we assumed that it was quite a good thing to do. If Scotland wanted to alter its drink drive regulations, that would be entirely appropriate.

Q32 Chair: I would like to go back to the question of charities. I was looking at your recommendation 5.2, which I just happen to have with me, which says: "There should be a single definition of each of the expressions 'charity' and 'charitable purpose(s)', applicable for all purposes throughout the United Kingdom. This should be enacted by the UK Parliament with the consent of the Scottish Parliament." That is, in a sense, power being handed back, being re-centralised, but almost subject to a Sewel motion, isn't it?

Professor Gallagher: That was quite carefully drafted to make it clear that the Scottish Parliament had the legislative competence and should retain the legislative competence to enact the definition of a charity, which is why its consent would be needed to a UK Bill. Obviously, only this Parliament could legislate for the rest of the UK. Therefore, a Bill would have to be in place.

Sir Kenneth Calman: Putting it as simply as I can, this was an opportunity for Scottish charities to be able to be freer to do things across the UK. Some of them are unique to the UK, and why not? This was meant to help Scotland. It was not a re-reservation issue at all.

Chair: Sometimes when you try to do things for people's own good, they don't always understand it and appreciate it.

Sir Kenneth Calman: That is the story of my life.

Q33 Chair: What can I say? The reaction from Scottish charities does not seem to be totally enthusiastic about some of that. Do you think that is because they misunderstood what was being proposed or some other motivation?

Sir Kenneth Calman: I have not seen that comment particularly, so you would need to tell me a little more about it.

Q34 Chair: Some of the written material that we have had coming in is quite harsh, I thought.

Professor Gallagher: I am aware of it, Chairman. The first thing to say is that there is absolutely nothing in the Scotland Bill about that, and there wouldn't be, given the nature of the recommendation, because the Scotland Bill is about the constitution of Scotland. It is not about charities. If people want to put something in the Scotland Bill, there would be a difficulty because it would have to apply to England. There is a view, and the charity sector will speak for themselves, that the Scottish charity definition is awfully good and

rather better than the English one, for reasons which folk can no doubt explain. There is a fear that it might be watered down in some way. I suspect that is the motivation.

Sir Kenneth Calman: Certainly, the intention was in no way to diminish the role of OSCR. We wanted to strengthen it, particularly in a way that would benefit Scottish charities. That was the intention.

Q35 Fiona O'Donnell: It would be appropriate to read from the submission that we have had from the SCVO. It would be good to be able to clarify this. They say: "In the one area of specialist interest to SCVO, the Calman Commission made an ill-considered and idiosyncratic proposal to reserve some aspects of charity law. We are pleased the UK Government disregarded this proposal promptly." Is that an accurate reflection?

Sir Kenneth Calman: No, because it wasn't to be re-reserved. It was to be discussed to ensure that Scottish charities had an easier way to do things because their regulations are better than the English ones anyway.

Fiona O'Donnell: That is helpful. Thank you.

Q36 Chair: I must say that I read, "This should be enacted by the UK Parliament with the consent of the Scottish Parliament", as being a Sewel motion, in a sense. I did not see it as being a negative process.

Professor Gallagher: You don't get a Sewel motion unless it is a devolved matter.

Q37 Chair: No, but I have been here on occasions when there has been a Sewel motion passed on a particular subject. That effectively means that responsibility for that whole area is then passed to here. There is not an ongoing dialogue about it. Once you give up by-passing the Sewel motion permission for Westminster to deal with it, you do not have the opportunity to amend it subsequently.

Professor Gallagher: I don't know about that. The first Sewel motion Bill I did when I was head of the Scottish Justice Department had five LCMs at Edinburgh and a process of dancing back and forward that lasted 18 months. Yes, there is scope for dialogue, most certainly.

Chair: That is helpful.

Sir Kenneth Calman: Perhaps I could clarify the process. This is why scrutiny is so important in this area. If there is debate on this, it is the intention that we need to clarify, which was to make it easier for Scottish charities to raise funds outwith Scotland. If it is unclear, I think we need to clarify that.

Q38 Chair: I think that has helped to clarify things quite a bit. Could I just come back to the question of drink driving and speed limits? The view has been expressed to us that you had taken no evidence on the need, requirement or desirability of raising the speed limits and that it had just come out of the blue. Indeed, one journalist was saying that it was an article he had written. I think you sat down, read his paper and said, "Oh, that looks like a good idea", and stuck it in. If you are saying to us that it was as a result of views being expressed in public meetings and so on, this is

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presumably recorded somewhere and we can identify that.

Sir Kenneth Calman: If I recall it correctly—I would have to look back—a number of these views had come from the Scottish Government, in relation to speed limits and drink driving. They wanted to have that. It seemed to me that that was entirely appropriate, which is why we put it in quite early on.

Q39 Chair: For drink driving, there was something from the police.

Professor Gallagher: That is right, and the Royal Society for the Prevention of Accidents.

Chair: Just because it came from the Scottish Government doesn't mean to say that it should have been ignored at all. We recognise that.

Sir Kenneth Calman: We thought it was quite an important body.

Chair: Aye. It is an entirely legitimate organisation to be coming in on these matters.

Jim McGovern: Chairman, I want to point out that at the moment there is no such thing as a Scottish Government.

Chair: That is a fair point. However, it will be changed. It should be termed the Scottish Executive at the moment.

Can I ask whether there are other issues? We tried to flush this out at the beginning but I want to return to it if I can. In all the discussions and dialogue that there have been subsequently, are there any items that you think you should have looked at a bit more? Are there omissions that you recognise, even if they are relatively small things? It would be helpful to us.

Sir Kenneth Calman: We put in two additional taxes—the air passenger duty and the aggregates levy—that are the subject of discussion and debate. If I had known that they were the subject of discussion and debate, we might not have used them. On the other hand, it seems to me that the answer, following discussion and debate, is that they will be back in again. That is the intention. You could spend a long time trying to find individual taxes that might or might not be practical. These were the ones we thought most practical and useful, but as Mr Roy has said, this is part of a process. This is where we are now. The possibility of that changing in the future has to be there. This gives us a good start.

Q40 Mr Reid: You came out against recommending that the Crown Estate should be devolved. Could you tell us why you came to that decision?

Sir Kenneth Calman: We took quite a bit of evidence on that and discussed it with quite a lot of people. I think it was quite difficult to come down as clearly as that. That would be, for me, an area that it might be appropriate to open up again, but you have to stop at some point. If we had gone into that, it would have taken us an awful lot longer and it would have been much more complex. It is an issue that I suspect will be raised again.

Q41 Mr Reid: Would you tell us what your main reason was as to why you came out against it?

Sir Kenneth Calman: It was partly because of the complications within it. It is not simple to change the

Crown Estate one way or another. For that reason, and Jim might want to add a bit to this, we felt that that was not appropriate at this time.

Professor Gallagher: There are two things I would add. One is that you must understand that one of the main functions in life of the Crown Estate is that it is a revenue raising body. It is the remains of the Crown's capacity to live off something other than taxes. That did not look like an obvious thing to devolve without considering the revenue or financial effect of it.

The underlying issue, which is clearly a very sensitive one in Scotland, is about the relationship between the Crown Estate and Scottish political institutions. The Commission's recommendation was to involve the Scottish Ministers in the appointment of one of the Commissioners. That in itself does not add up to terribly much, you might think, but it was a symbol of the notion that there ought to be a better and deeper connection between the Crown Estate and what it does in Scotland and the Scottish Parliament. Many of the things it does are of course very relevant to devolved matters. There may be other ways of improving that relationship. There might be ways of considering whether the Crown Estate might report more fully than it currently does, and that it might converse more openly with the Scottish political institutions. That goes back to what Sir Kenneth was saying at the beginning. Where you have distributed power and different institutions of Government responsible for different things, a really important part of the fabric has to be well-structured relationships and proper conversations. That may apply to the Crown Estate as much as it applies to the two levels of Government.

Q42 Mr Reid: You say in the report that a lot of evidence was submitted that the Crown Estate has given too great a priority to maximising income. You then went on to make the following recommendation: "The Secretary of State for Scotland should, in consultation with Scottish Ministers, more actively exercise his powers of direction under the Crown Estate Act 1961." Under the Crown Estate Act—I don't have the exact wording in front of me—do the Crown Estate Commissioners not have a duty to safeguard the revenues of the Crown Estate and maximise income? I am finding it difficult to envisage how the Secretary of State for Scotland could use powers of direction. How can he use powers of direction to somebody who has a duty under an Act of Parliament to maximise revenue?

Professor Gallagher: If that was a problem, it would be a problem with the Act that gave them the powers of direction, which of course already exist. They are sitting in the 1961 Act.

Q43 Mr Reid: Did you give consideration to making a recommendation that the Crown Estate Act be amended?

Professor Gallagher: I don't think we did actually look at that, no.

Sir Kenneth Calman: It is an area, interestingly, on which I would have welcomed more involvement from a wider group of people. Some groups did not give us as much input into the whole process as they

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might have. This is one which might have been quite interesting.

Q44 Chair: Am I correct in getting the impression that, to some extent, you are cherry-picking in a non-prejudicial sense some of the things to come across. So you thought of the aggregates levy and the air passenger duty, but they ended up being quite complicated. You thought of this one, but then you thought, “This looks just too complicated, so we’ll go on to the other ones.” There was not an ideological objection or some enormous reason—a killer fact—that meant you could not possibly do this at all. You just thought, on balance, that these other ones were better.

Professor Gallagher: Cherry-picking is not the way I would describe it. Think of it in two chunks. Think, first, about the finance and taxing questions, where the Commission certainly didn’t cherry-pick. It made an analysis of every possible tax that might be devolved and concluded against most of them for one reason or another.

On the devolved/reserve split, rather than on finance, the Commission’s main conclusion was that in 1999 this was broadly right. When you look at what has been devolved and reserved, about 60% of public expenditure in Scotland is now the responsibility of the devolved institution. Of the remaining 40%, the vast majority is social security benefits of one sort or another. The Commission concluded that that big chunk should not be devolved, for reasons which I think are good.

You are then left asking yourself, “Are there any other small areas where the shoe is beginning to rub, where problems are emerging, or where concerns have been expressed that the settlement is not working as well as it might?” The list of changes in one direction or another—some to come back here and some issues to go to Holyrood either as Executive powers or legislative powers—are areas where, in evidence, there seemed to be some rubbing points or some shoe-pinching.

Chair: With the Crown Estate, there were no problems. You did not think there was anything there.

Q45 Mr Reid: We have evidence that there were problems. You have mentioned in the report that there was evidence.

Professor Gallagher: There was evidence. There were concerns raised about the Crown Estate. The Commission did not do a complete review of the functions and nature of the Crown Estate, but it did say that, somewhere in the boundary between the reserved and the devolved, the Crown Estate is living on one side of that boundary—at the moment it is entirely reserved—but its activities impact on the other side, on the devolved side of the boundary. The recommendation was a way of trying to create a relationship between that reserved body and the devolved institution. There may be better ways of doing that. If the Committee can think of them, I certainly would not be averse to hearing them.

Sir Kenneth Calman: There was nothing said that we couldn’t touch it, if I can put it that way. The evidence we had, I think, suggested that it was quite a

complicated one to do and we would have to spend quite a lot of time on it. Maybe we should have spent a lot of time on that, but we were anxious to finish the work of the Commission. I think it is an area that could bear further discussion.

Q46 Dr Whiteford: I am reassured to hear that because I share Alan’s concerns about the Crown Estate, particularly their accountability and transparency to the people of Scotland. I see in my own constituency all the time how the Crown Estate is holding progress back.

Sir Kenneth Calman: We did have a lot of evidence in relation to that and that is part of the point I am trying to make.

Dr Whiteford: Alan has just highlighted, with respect, some of the evidence that was given.

Mr Reid: I quote from your report: “However, the Commission takes note of the strength of feeling in the evidence submitted that the Crown Estate in Scotland has given too great a priority to maximising income with what might be a disproportionate impact on some Scottish businesses.”

Q47 Dr Whiteford: From my point of view, what I am really keen to know is, what did you think the strength of the proposals that you did make was going to be? What did you want it to achieve, and are you disappointed that it has not been taken up in the Bill, or only partially taken up in the Bill? As to the recommendations that you did make on the Crown Estate, I am disappointed that they didn’t go much further, but are you disappointed that even the limited recommendations you did make have not been wholly taken up?

Sir Kenneth Calman: Yes, I think so. I would have liked to have seen a little more included. This is the scrutiny part of it and that is why I welcome this discussion.

Chair: As ever, it is for your own good.

Q48 Mr Reid: Chair, can I come back in on that? The Commission made the recommendation that “the Secretary of State for Scotland should more actively exercise his powers of discretion”. How could that be put into the Scotland Bill? Could you give an example of what you think the Secretary of State could do?

Professor Gallagher: This is an entirely hypothetical example because I am certainly no expert in the nature of the Crown Estate’s business. One of the issues that I suspect is behind some of these concerns, and for all I know it may well be a real concern, is the Crown Estate’s ownership of the foreshore. That is sometimes thought by people, particularly in the Highlands, to be used by them as a way of stopping development because they demand too much money for it, essentially. One can imagine a direction that gave the Crown Estate some steer as to the desirability of development on the foreshore, for the sake of illustration. You could imagine a direction of that sort or a direction which said, in relation to certain kinds of activity or activity in certain areas, such as areas which were less well off, that the Crown Estate should be more forthcoming. Ingenuity can produce directions.

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Q49 Mr Reid: Did you look at the Crown Estate Act 1961 to see if that would be a valid direction, given what that Act says about the need for the Crown Estate Commissioners to look after the revenue of the Crown Estate?

Professor Gallagher: We did not look at the 1961 Act. That illustration is one that I have just made up in response to your question. I see no reason why such directions could not be made.

Q50 Fiona O'Donnell: I have a small point but one on which I was interested to hear your comments, which was the fact that your recommendations on food labelling were not taken forward. Are you satisfied with the Government's explanation that they feel that is sufficiently constrained by EU legislation?

Sir Kenneth Calman: The answer to that is yes. We had quite a lot of debate about whether Scotland should have separate food legislation in terms of labelling, etc. The complexity of that in terms of selling things in different parts of the country was the bit that switched us off. The EU was the mechanism by which that could be done.

Professor Gallagher: The Commission was certainly of the view that if Tesco are selling baked beans, they have to be able to sell the same baked beans in Edinburgh as in London. Concerns were raised as to whether the current settlement might permit of legislation that would have stopped that. The UK's view, as far as I can tell at the moment, is that the EU regulation is such that it can happen. I, myself, am not absolutely sure whether that is correct or not. You need a very expensive lawyer to tell you that one. The policy objective that the Commission set was for a single market in foods.

Q51 Chair: Last week we met the Federation of Small Businesses. One of the things we were discussing with them was blockages to growth and so on. One of the issues that came up was the functional illiteracy and innumeracy of so many of Scotland's young people, even at the moment. That

is clearly an issue that is already devolved, yet it does not seem to have been given nearly as much attention as the minutiae of constitutional change. Do you have an explanation why there has been more focus, perhaps in some sections of Scotland, on changing the constitutional arrangements than actually working with the powers that have already been provided?

Sir Kenneth Calman: That is a point I made really early on, at the beginning actually, in relation to what the expert group had said. The issue is not so much about what the funding mechanism is, but about what the policies are. That is the key to it. If you look at Scottish education, I don't think it would be appropriate for me to discuss that, but it is within the powers of the Scottish Parliament right now. Full stop.

Professor Gallagher: I tend to agree with you, Chairman. I have been working for the last four or five years on constitutional issues. In the end, they are quite easy because you have control over them and you can legislate. The issues that are hard to deal with—the wicked issues—are the ones where constitutional structures, writing laws and even providing budgets are not an apt tool for dealing with educational under-achievement—Mr Roy will know about this—or public health or many other issues. Criticism has been made of the Calman report, and indeed of this Bill, that it does not contain economic development tools, but nor does it contain tools for improving public health or the education of the Scottish people.

Constitutions are a framework within which Governments operate. This is seeking to create the right framework, with proper incentives, including financial incentives, within which the Scottish Parliament—the Scottish Government—working with other institutions in the UK, can do the best it can for the Scottish people.

Chair: That is a very good note on which to end. Thank you very much for coming to see us today. You are regular attenders. We will get you a gold star at some point during the proceedings.

Examination of Witnesses

Witnesses: **Ruchir Shah**, Head of Policy and Research Department, Scottish Council for Voluntary Organisations, and **David Griffiths**, Chief Executive, Ecas, and member of the Scottish Council for Voluntary Organisations Policy Committee, gave evidence.

Q52 Chair: Gentlemen, welcome to this meeting of the Scottish Affairs Committee. You were able to sit in on the earlier hearing so you will have an understanding of the format. Would you introduce yourselves and give your names and positions for the record?

David Griffiths: I am David Griffiths. As listed, I am chief executive of Ecas, which is an Edinburgh based charity working with people with disabilities, but I am here as an elected member of the policy committee of the Scottish Council for Voluntary Organisations.

Ruchir Shah: My name is Ruchir Shah. I am the head of the Policy Research Department at the Scottish Council for Voluntary Organisations, which is the umbrella body for third sector organisations in Scotland.

Q53 Chair: I wonder if we could start by asking you about the letter and the material that you sent us. I am a bit unclear about the phrase that the concerns and issues highlighted in the response have been "validated by the SCVO's 30-strong policy committee" and so on. What does that mean? Does that mean that they have agreed this letter?

Ruchir Shah: The way to explain that is that we estimate that there are around 45,000 voluntary organisations in Scotland. Obviously, how do you get a representative view of that many organisations? It is such a diverse sector. SCVO has 1,300 members which cover right across the breadth and range of the sector, from very small organisations to very large national organisations. Through its various members, SCVO has a consequential reach to around 35,000 of

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those 45,000. These 1,300 members elect 30 people to sit on SCVO's policy committee. The policy committee has gone through this document and said, "Yes, this is the kind of policy position we want to offer on behalf of the sector." We are providing a sector position on behalf of the third sector in Scotland.

Q54 Chair: I want to be clear. When you say "validated by the 30-strong policy committee", the policy committee have actually seen it and approved it letter by letter or word by word, as they have approved the statement that you have sent to us?

David Griffiths: We have been through a whole process, and, speaking as one of those elected members, even before that position, there was discussion in the policy committee before we gave evidence to Calman and so on. This particular document was sent round to all of us. We were all asked to comment on it at draft stages and again before the final document was released. Every member of the policy committee has had an opportunity to comment. I couldn't say whether we all did.

Chair: Fine. It is just an odd wording. I wasn't sure whether or not somebody had written this on the back of an envelope and then said, "Because I am on the policy committee, it therefore stands." It has actually been seen and circulated. That is okay.

Q55 Lindsay Roy: If that is the case, and many other organisations had the opportunity to contribute, why have you said: "Both the Calman Commission and Scotland Bill have failed to live up to the high expectation of openness, inclusion and participation"?

Ruchir Shah: As you know, the Calman Commission held events and received 300 submissions from organisations in Scotland. A substantial number of those were from our third sector, who played a very active role in contributing to this. Our sector also held its own discussions and events. We fed a lot of material into the Calman Commission. The issue we have is around process. This has been very much a one-way process. I am not talking specifically about the Calman Commission in isolation but also the Scotland Bill and everything together. It has been a very one-way process in the sense that information and evidence has gone in, then reports have been produced and a Bill has been produced off the back of that. What we have not had is a way of taking the balance of the options that were considered and selected, and put that back out to Scotland's people, to wider civil society, to voluntary organisations, and ask, "Are these the priorities that you feel you were trying to give us?" That is the issue we have raised around process.

Q56 Lindsay Roy: Are you not participating in that scrutiny now as part of the operations here?

Ruchir Shah: An argument could be made as to whether the right time to be doing this kind of discussion and debate is when the Bill is going very rapidly through Parliament, or should that kind of discussion and debate have been taking place before? There has been no consultation process as such for the

Scotland Bill. The Scotland Bill itself has picked issues from the Calman Commission—not all the Calman Commission proposals—which itself was a one-way process. Information went in.

Q57 Lindsay Roy: Do you accept that you have an opportunity now to input to that process through your participation here and, indeed, the paper that you produced?

Ruchir Shah: I have an opportunity and the 30 people on the SCVO's policy committee have had an opportunity to review this, but it is not enough time for a sector of 45,000 organisations to give that kind of input properly.

Q58 Chair: Presumably, you heard Professor Calman and his colleague indicating why they wanted to move fairly quickly. Does it not seem to you reasonable that parties would want to put their positions and make their positions clear before the next Scottish elections, and there is then a much wider forum within which people can determine because there is an election? People can then cast individual votes, which go far beyond the restrictive number of organisations for which you speak. Everybody in the country will then be able to express a view.

David Griffiths: There is a concern, as you have implied, that the timing is being driven by the election. We would normally have hoped to have had a consultation prior to the Bill being published.

Q59 Chair: I did not imply that it has been driven by the election. You actually say in your report: "Beyond political considerations associated with the date of the next election for the Scottish Parliament, SCVO does not recognise any pressing need". I was lifting the words from your document.

David Griffiths: The impression that we have gained is that the aim is to get the Bill passed before the election, by which time, how people vote in the election will not affect the Bill because the Bill has already been passed. We would have preferred a longer period for consultation to enable more people to get involved.

Q60 Chair: You mention three main points in particular. The final one, and I presume it is not necessarily in order of your priorities, are the things to do with you—"specific issues of concern to voluntary organisations." The main one there is the question of the charity status and all the rest of it, is it not? No?

Ruchir Shah: No, I would not agree. That is a perfect example of getting the balance wrong. We were very clear when we gave our evidence as a sector to the Calman Commission that this was not an issue in the way in which they saw it. Our sector certainly did not have in Scotland—

Q61 Chair: I understand that and I understand you agree with them. I understand that Calman was then produced. I also understand that you were then consulted. Is that not correct?

David Griffiths: In what way?

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Q62 Chair: I am taking this from a paper on your website, which states: “Michael Moore MP, the Scottish Secretary, has initiated two high-level groups to advise the UK Government on the Implementation of the Calman Commission’s Finance and the wider proposals.”

Ruchir Shah: Yes. The first opening statement that Michael Moore made at that group—I was there myself—was that this group is not to consider any of the policy options or policy proposals that have gone through this process if it is purely to inform the implementation. So, no, that group was not a way of consultation.

Q63 Chair: You then go on in your paper to say that SCVO is representing the voluntary sector’s interests. You then go on to say, referring to Michael Moore: “He has however promised further discussion on the charity law issue”. You then go on to say: “SCVO also sought and got reassurance that Calman’s proposals for charities such as a single charity definition will only be explored outside the Bill process and to a different timescale.”

Ruchir Shah: No. That is a slight mix-up. I am sorry. What it says here is about charity tax. The issue that is highlighted is on the Gift Aid rate. There are some very specific technical impacts of the financial consequences of that, which is a separate issue from charity law.

Q64 Chair: I understand that. But charity law, as I understood it, is the main thing for yourselves because you are representing charities.

Ruchir Shah: Not quite.

David Griffiths: I am sorry. To be clear, we are representing voluntary organisations, which would include social enterprises, community groups and so on. They are not all charities by any manner of means.

Ruchir Shah: We do not represent universities. We do not represent the churches.

Q65 Chair: Okay. Let me come back to the question of charities, though. You are saying in your own paper “that Calman’s proposals for charities...will only be explored outside the Bill process and to a different timescale”. That was something you sought and got reassurance on. It seems to me that that was a consultative process. Once Calman had been produced, you pursued these points, you got reassurance from the Minister and the Minister is now dealing with the issue in an entirely different way. That is exactly the sort of consultation that you were looking for, is it not?

Ruchir Shah: That was based on a relation in terms of our ability to meet with the Minister. It was not based on a proper and full consultation with the third sector. There is a big difference there. If a staff member of SCVO is called into a meeting to advise on a particular issue, that is not the same as a consultation on the Scotland Bill with the voluntary sector and the people at large. I can’t see how those two can be conflated into one.

Q66 Chair: I am perplexed by some of the things that you have said in this document. Consultation is

not a never-ending issue. At some point somebody has to decide things. Calman and the debate that preceded Calman has gone on for years. We have Calman produced and then there is an issue for the Government—does it seek to postpone that and delay that still further or does it choose to move things forward? My impression, which I am surprised that you do not seem to have picked up from your members, is that people in Scotland then wanted things to happen.

Ruchir Shah: No. With respect, the Scotland Bill is not the same as the Calman Commission. It has not taken everything from the Calman Commission and put that out.

Q67 Chair: We will come to that in a moment.

Ruchir Shah: There is a step missing between the Calman Commission’s report and the Scotland Bill. That would be a consultation process that would be issued.

Q68 Chair: But why should there be a consultation process? The Government has had its consultation process through Calman. They have then made a decision. You have consultation and then you decide. You don’t have an interminable process of consultation. If you had got everything you were wanting, presumably, you would have been perfectly happy with it.

Ruchir Shah: The Calman Commission, as I understand it, was not a Government consultation.

Chair: Really.

Q69 Fiona O’Donnell: I think an important step has been missed, which is that the Scottish Parliament debated and supported Calman. It did not just result in a report that came straight to this place. I, too, have concerns about how representative the views in your submission are of the wider voluntary sector. We have established the process by which the submission reached us. On your 2010 manifesto, what process of consultation did you undertake for this?

Ruchir Shah: For the manifesto?

Q70 Fiona O’Donnell: Yes, the SCVO 2010 manifesto.

Ruchir Shah: We circulated a set of issues that we would be covering in the manifesto to all of SCVO’s members. They had the opportunity for about four or five months to inform the manifesto committee. We also held a number of discussion events with various networks, including the policy officers’ network of the main organisations.

Q71 Fiona O’Donnell: Did you include Calman in that consultation of your wider membership?

Ruchir Shah: Why would I include Calman in that?

Q72 Fiona O’Donnell: Because it was the 2010 manifesto seeking to influence decision makers who would be elected to this place, and the Calman Commission was going to result in the Scotland Bill. It would seem to me that that might have formed part of your consultation.

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Ruchir Shah: No. The step that would have been important there would have been a Green Paper or something similar.

Q73 Fiona O'Donnell: I am not talking about Government. I am talking about SCVO's responsibility, given that they are being so critical of the process here, to consult your wider membership when you were pulling together your 2010 manifesto, because there is no mention of Calman or what may become the Scotland Bill in the manifesto. I think that was a missed opportunity for SCVO.

Ruchir Shah: I don't quite agree with that. The issues we built into the manifesto were drawn from the concerns and issues that our sector raised with us, which overrode any specific issues that might have come out of a non-Government Commission, such as the Calman Commission, with which we did engage quite thoroughly at the time.

Q74 Fiona O'Donnell: It was a non-Government Commission, but it was a Scottish Parliament Commission. To keep using that terminology is not giving a fair reflection of what the process was. We shall have to agree to disagree on this, but if SCVO thought that this was such an important issue for the voluntary sector, Calman had been published, you should have taken the opportunity to consult your wider membership.

Ruchir Shah: I am sorry, I don't get that, because in the manifesto you will see a number of the key issues that we have raised—issues on benefits and the disjuncture between benefits and welfare in Scotland and so on. Those were the substantive issues. We didn't put in a phrase saying "Calman Commission: what do you think?" We went for the issues and I think that is the right thing to do.

Q75 Dr Whiteford: You alluded to welfare issues, and that is very helpful. You particularly highlighted the disability living allowance and free personal care and the divergence, I suppose, between Scottish social policy and the welfare reform cuts coming from this place. Could you say a bit more about the impact you think that that divergence is going to have on your members in the months and years ahead?

David Griffiths: It is very difficult to look at the impact on members as organisations. If I may, I would rather look at the impact on the people who are really affected, and that is the apparent mismatch where policy rests in one Parliament but some of the financial aspects, in particular benefits and allowances, rest in another. The two, at times, need to be viewed together. The potential impact of decisions taken on policy can be very much influenced by what is happening with benefits and allowances. Therefore, the impact of changes in benefits and allowances can impact on the policy.

Sir Kenneth made the point earlier today that finance is one issue, but very often what is driving things is policy. There is a potential problem with the disability living allowance, which of course is split into care and mobility. Care is devolved, but the allowance is not. Mobility is reserved, but transport is devolved. The end of the Independent Living Fund or its closure to

new claimants—we don't know what will happen in 2015 at the moment—will obviously impact on the packages provided to individual Scots. Their needs won't change, but the provision of care is devolved. We appear to have potentially diverging care policies between Scotland and England.

Q76 Chair: I used to be a councillor for Strathclyde and I remember when we had a UK Government that had divergent policies from the Strathclyde policies. We had, equally, a difficulty because we were trying to achieve one set of objectives and they were trying to achieve another. The only way to overcome that, surely, is to have either complete independence where all these things are handled by Scotland or, indeed, by the local authority, or you have some arrangement whereby things do occasionally rub together. But, as you heard earlier, there is always going to be a bit of tension if you have a bit of separation of powers.

David Griffiths: I am not sure that complete independence is necessary. I think the proposals over income tax, for example, where there is a proposed divergence whereby an element of freedom is given to the Scottish Parliament to alter, up to an extent, to take account of local conditions or different issues either side of the border, offer an example where there is not complete independence but it is allowing local factors to be taken into account. I think of the example within the last couple of years, when there was discussion at Westminster of a national care service for England where, as part of the proposals—it was acknowledged that that may well have a significant impact on allowances—the allowances were going to be pooled.

Q77 Chair: To cut to the chase, wouldn't it be fair to say that, basically, you are maximalists? You want everything devolved to Scotland that could possibly be devolved.

David Griffiths: No, I am not saying that at all.

Q78 Chair: And only the other things retained at the centre. I have read your paper. It seemed to me that that, essentially, is what you were saying. I wanted to flush that point out. We are all aware that there are some tensions and difficulties.

David Griffiths: I am sorry if I have given the impression that I am a maximalist. At present, as you say, things are rubbing together, but more discussion needs to take place on how we can prevent that, and on an enabling measure that allowed, for example, a system similar to the income tax where an element of those allowances and benefits was devolved to allow for different policies.

Q79 Chair: I understand that, but are you saying that nothing should be done until such time as everything is resolved?

David Griffiths: No.

Q80 Chair: It seems to me that in your plea for more and longer consultation that is essentially what you are saying. As you heard Professor Calman indicating earlier on, it is likely that we will have decisions taken, some things implemented, but then there will

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be an ongoing review, some things will be changed later on and so on and so forth. I am a bit anxious because “This is not the right time” is often the doctrine that is argued by those who want to oppose any change at all. It is never perfect. There is always some difficulty that can arise. It is just a means of postponing action.

David Griffiths: No. There is an opportunity at present for this Bill to allow for some form of secondary legislation that would have an enabling element to allow, after that discussion, some action to take place without having to come back and have another Bill. The Equality Act, for example, allows for secondary legislation to be passed elsewhere. We are coming more to systems where we have some element of control further down, and this Bill might provide an opportunity to enable that to take place sooner rather than later, rather than wait for a further Bill.

Ruchir Shah: We are saying that in many cases this disjuncture between benefits and welfare, which is devolved while benefits are reserved, is creating many problems for particularly the most vulnerable people in Scotland’s society. For them, this could be an even more important issue than some of the tax-raising issues. What David is saying and what we are proposing is this. If we can have some kind of partial devolution over income tax, could we not also have some kind of partial devolution over benefits? One way of doing that could be through this particular Bill, which is an enabling Bill, to have a provision where you could devolve powers for secondary legislation on benefits to the Scottish Parliament. The primary legislation stays with the UK Parliament and keeps the social unit as it has been set out.

Q81 Chair: You only see this as being something that is dealt with between the Parliaments. I remember as a Glasgow MP many of us arguing that Glasgow’s position was different from that of the rest of Scotland, as indeed it is, and that the problems faced in Glasgow could not be fully understood by those from the leafy suburbs of Edinburgh, or indeed other airts and parts. Really what we wanted was devolution to Glasgow to take account of the particular circumstances. You did not seem to endorse that approach. It is only an Edinburgh-centred approach that you have. Is that correct?

Ruchir Shah: No. It is just that we are looking at the Scotland Bill at this moment. Obviously, further down the line something else might be relevant, but what we are asking for is that this Scotland Bill offers an opportunity to enact some kind of partial devolution on benefits in the same way as partial devolution on tax.

Q82 Dr Whiteford: I wanted to raise another issue from your report, which is about the National Lottery; you highlighted the diversion of Lottery funds towards the London Olympics. You might not know the answer, but how much have Scottish communities and charities lost out as a result of those diversions? What impact is that having on the folk you are representing, and how could you see the Scotland Bill being amended to rectify that anomaly?

Ruchir Shah: The diversion of funds towards the Olympics from the Lottery initially created a drop. We came out publicly saying that it was around 70% of the funding. The Lottery funding is a really important source of funding for our sector because it is an independent source of funding. It is not tied in the same way as many contracts and grants are. It is critical for the innovative approaches that our sector can provide to make a real difference in communities. The issue there was about policy fit and policy design. Decisions were made in a particular jurisdiction in Whitehall that had a massive effect on organisations delivering to some quite vulnerable people in Scotland and that created a mismatch with the funding mix that the organisations were experiencing in Scotland. It is that kind of effect that we think could be addressed. We have noted that there are some very welcome developments and proposals on strengthening the joint ministerial committees and the joint ministerial committee structures, which is a great thing. If there could be some more oversight either through that or jointly with the Parliaments over UK-based institutions including the Lottery, but also including, as my colleague mentioned, the Equality and Human Rights Commission, the research councils, and the UK Border Agency, policy design in Scotland will be better aligned with policy decisions made in Westminster. We think there are opportunities in the Scotland Bill to do that.

Q83 Jim McGovern: I would like to go back to a point that a couple of other colleagues raised as to just who exactly you represent here. It says in the paper: “There are over 45,000 third sector organisations in Scotland involving around 137,000 paid staff and approximately 1.3 million volunteers.” Do you represent every one of these people?

Ruchir Shah: We do not represent any one of them.

Q84 Jim McGovern: None of them?

Ruchir Shah: The point is that we provide a sector view. That has to be the distinction. Much of what we do is a facilitating voice on behalf of voluntary organisations right across Scotland. What we can’t do is speak with one voice on everything as a sector. It is really critical that we explain that. Our sector is diverse. Different organisations and different individuals in our sectors will be on different sides of a number of issues. A number of issues have been put into the Scotland Bill on things like air guns, traffic management and so on.

Q85 Jim McGovern: You are digressing. You are moving totally away from the point I am trying to make. There are 45,000 third sector organisations. You have mentioned a couple of times that they all had the opportunity to respond to this consultation.

Ruchir Shah: Yes, because through our networks we are able to reach 35,000 of those 45,000 because many members of SCVO have their own memberships. There has been a communication loop of getting out the information on, say, the Calman Commission or the Scotland Bill through those networks and that is what we do on a regular basis. The information that comes back is what we pull together. If there is a

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sector perspective on something, if a consensus is developing, then obviously we will push that forward.

Q86 Jim McGovern: Of the 45,000 organisations, how many responses did you get?

Ruchir Shah: This is not a poll that we are doing. This is a kind of—

Q87 Jim McGovern: Just answer the question. It is an easy one.

Ruchir Shah: It is the wrong question, I am afraid.

Chair: But it is the question he has asked, though. The way it works is that we ask the questions and you answer them. If you then want to add something, we don't mind that. So just repeat the question, Jim.

Q88 Jim McGovern: Of the 45,000 third sector organisations in Scotland that you said had the opportunity to respond, how many did respond?

David Griffiths: I am not sure, and I apologise for this, that we can give a precise answer because, as Ruchir explained, a number of those are umbrella organisations and we don't know how many fed in. For example, I can't remember how many members the Edinburgh Voluntary Organisations Council has, but they would have fed in an answer and, quite possibly, have held consultation meetings. We wouldn't know how many organisations had attended that.

Q89 Jim McGovern: How many responses did you get?

Chair: How many responses did you get?

David Griffiths: That I don't know.

Ruchir Shah: I don't have that information right now. We could pass it on to you. We do have it on our website in terms of the discussions we held on the Calman Commission and the national conversation at the time.

Q90 Chair: Let me just be clear. You will be able to tell us how many written submissions were made that formulated this document.

Ruchir Shah: No. It is the other way round. We facilitated discussion, so we encouraged a lot of organisations to submit their own responses to the Calman Commission. That is the way it works. We don't try and speak for them. This is the point I was making, which may not have come across very clearly.

Q91 Chair: You have come out with some fairly strong views here. What we are trying to clarify is whether they are your opinions or whether they are based on a wider assessment. We are trying to clarify how many people responded to the papers that you sent out, and you are unable to tell me.

Ruchir Shah: Thirty people reviewed this paper and agreed with it. Those 30 people were elected from SCVO's membership of 1,300 organisations to provide a sector view on behalf of the sector.

Q92 Chair: So 30 people have agreed this out of the 45,000 or so?

Ruchir Shah: That is right, yes.

Q93 Chair: So you are here representing 30 people.

David Griffiths: With respect, Chairman, we don't know how many people those 30 people consulted. As an elected member of the policy committee I didn't just read this, hit "Reply" and say "Yes". I feel sure that my colleagues in umbrella organisations, in particular, would not have done so. I am involved in one of those umbrella organisations and I know that they go to considerable efforts to consult their members, as many as time permits. It depends on how long I had to consider this particular document, and I can't remember how long it was, but if Ruchir gives me a month, obviously, we will talk to more people than if there was a shorter time.

Q94 Chair: You had much more than a month, surely. You have discussed here about how truncated our processes are.

David Griffiths: I was going to say that that was one of the points that we tried to make. I can't remember exactly how long we had to respond to the Scotland Bill.

Ruchir Shah: I don't think there was a consultation.

David Griffiths: There was an opportunity to submit written reports to this Committee by 31 January.

Q95 Jim McGovern: I come back again to my original question. It says here: "The SCVO is the national body representing the third sector." Just exactly who do you represent and whose views led to this response?

Ruchir Shah: We represent our 1,300 members.

Q96 Jim McGovern: Thirteen hundred?

Ruchir Shah: Yes.

Q97 Jim McGovern: Out of 1.3 million volunteers and 137,000 paid staff from 45,000 organisations.

Ruchir Shah: Of those 1,300 members, many of them are themselves umbrella organisations that represent many other organisations.

Chair: Jim's point was about how many submissions you received. You are unable to tell us that but you are going to come back to us on that.

Q98 Cathy Jamieson: I just want to pick up some of the themes. I preface my remarks by saying I have worked in the voluntary sector and very well understand the tensions of trying to develop policy at the same time as trying to develop services. I also have experience of submitting views on behalf of voluntary organisations to Governments long since gone. One of the things that concerned me a bit about this paper was that it is littered with references, for example, to a process that has been dominated from beginning to end by politicians and political considerations. It then goes on to talk about an overly politicised mandate and so on. I just wondered if you now feel that the tone of the paper may have diverted from the very meat of the points that you would have liked to make on behalf of the constituent bodies that you represent.

David Griffiths: On reflection, having listened to the discussion for the last half an hour, yes. I am very happy to take that point back and acknowledge it.

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Q99 Cathy Jamieson: Can I follow up on a couple of very specific points on which I am now trying to get some further information? There is a section that says: “If the Bill is enacted then an unhelpful precedent will have been set—power devolved is power retained and the UK government will determine the future parameters of devolution with insufficient regard to the views and interests of the people of Scotland. We believe one potential option could be a ‘consent referendum’ to be associated with major changes to devolution.” Would you explain what you mean by that?

Ruchir Shah: Sure. There was a bit of frustration. The point we were raising was that we didn’t feel as though we had had enough opportunity as a sector—I am not talking about SCVO here but as a sector—to input into the proposals put out in the White Paper and the Scotland Bill. What we are trying to say here is that there are some issues as important as devolution that do, probably, need to have a bit more of a feedback loop to the wider public—not even just charities and voluntary organisations. One of the proposals in the paper, and that is by no means exclusive, was looking at things like consent referendums. I think Wales already has that kind of approach. It was just one option amongst others.

Q100 Chair: Are you calling for a referendum on the Scotland Bill?

Ruchir Shah: On major changes?

Q101 Chair: No. On the Scotland Bill.

Ruchir Shah: No, we are not, not specifically on the Scotland Bill.

Q102 Cathy Jamieson: The Scotland Bill does propose a major change to the devolution settlement. I wanted to be clear whether you were proposing that there ought to be a referendum on that.

Ruchir Shah: No, we were not. We were proposing a referendum on some of the key issues like, for example, the specific issues within the Scotland Bill, but also outside Scotland.

Q103 Cathy Jamieson: Could you give me an example? What would you have a referendum on?

Ruchir Shah: For example, tax issues, the proposals on whether to keep a single social union and those kind of proposals.

Q104 Cathy Jamieson: If there are any further changes to tax you believe there ought to be a referendum.

Ruchir Shah: Indeed. I think so, yes.

Q105 Chair: Before we move off that, the proposal that is being made is quite a substantial proposal on tax.

Ruchir Shah: Sure.

Cathy Jamieson: Absolutely.

Q106 Chair: Why are you not suggesting that there should be a referendum on that?

Ruchir Shah: We are just putting out a proposal of an option that this is the kind of thing we could use

in future, but I don’t think as a sector we have had enough discussion on whether this should be the option that is used. That is something that our sector has discussed. It is certainly an example of an option.

Q107 Chair: We have asked for evidence. You have written to us with evidence. You have put in your paper the suggestion of a consent referendum. You presumably expect us to take it reasonably seriously, and now you are telling us that it was just an idea you were kicking around.

Ruchir Shah: No. As we say in the paper very clearly: “We believe one potential option could be a ‘consent referendum’ to be associated with major changes to devolution.”

Q108 Chair: What is a major change if this is not?

Ruchir Shah: I am not disagreeing. All I am saying is that that is a potential option. It is not something that our sector says has to be there.

Q109 Cathy Jamieson: My next question was linked to that because we have heard here today about the idea that the Scotland Bill should become an enabling Bill with secondary legislation. That does not seem to fit with the idea that major changes would come with a referendum. Could you explain that? Because I don’t see the bit about enabling and secondary legislation anywhere in your paper either. I might have missed it, but could you point it out to me if it is there?

David Griffiths: Our ideas are developing.

Q110 Cathy Jamieson: Chair, can I be really blunt? Some of this looks a wee bit like SCVO has gone into a huff because you did not get as much involvement as you might have liked. That is how it reads.

Ruchir Shah: I think a lot of this draws from the frustration that our sector expressed during the time when some of the ideas before the Scotland Bill had been developed, particularly the kind of highly politicised nature of the national conversation on one side and the Calman Commission on the other. That created a lot of frustration in our sector and some of that has come through in the paper, I think.

Q111 Cathy Jamieson: Would you also accept that some of the proposals that you are, perhaps, putting forward here would suggest an alignment with one particular side of that argument? It could be read as such. That may not have been the intention but with the talk of referenda and what was mentioned about powers not being quite independent and so on, it could be read as such. Would you accept that about the paper?

Ruchir Shah: Some people might read it that way.

Q112 Chair: We know that. You accept that it is capable of misinterpretation.

Ruchir Shah: Of course it is capable of misinterpretation, yes.

Q113 Fiona O’Donnell: I absolutely appreciate, Ruchir, the comment you are making that all this has happened in quite a highly charged political atmosphere in Scotland. You make the statement: “A

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Commission which was not inclusive of different perspectives on the principal issues and limited to the policy options presented by just three out of four major political parties.” What do you mean by saying it was not inclusive?

Ruchir Shah: Basically, we felt that events were held, evidence was called for and information was passed in, but then there was not a further discussion with the sector. I think that is what we are alluding to there.

Q114 Fiona O'Donnell: You also mention “three out of four major political parties”.

Ruchir Shah: Yes.

Q115 Fiona O'Donnell: That, to me, implies that one political party was excluded.

Ruchir Shah: Yes.

Q116 Fiona O'Donnell: They were not. The SNP was invited to join Calman and they refused.

Ruchir Shah: No—policy options, sorry, not parties.

Q117 Fiona O'Donnell: But “just three out of four major political parties” is one of the reasons given for saying that it was not inclusive.

Ruchir Shah: I see what you are saying, but it says “limited to the policy options presented by just three out of four major political parties”.

Q118 Chair: That is right, but this is semantics. You must understand that you have responsibilities. You are writing to us and you expect us to take our responsibilities seriously and treat what you are saying with due weight and consideration. You seem to be saying in this paragraph that the whole process in some way was invalidated by the fact that policy options came forward only from three out of four parties. I am not entirely clear what you expect us to do about this, because the fourth party was invited and it chose not to participate. It seemed, not unreasonably to everyone else, that it should not have the right of veto and they continued with those who were willing to participate. At any stage it could have put in policy submissions. Are you saying that because the fourth one wasn't there nothing should have been done?

Ruchir Shah: Not at all. What we are talking about are the policy options, which is the clear point that we are trying to make here; the policy options were limited to those that were proposed by three of the main political parties, not that the fourth political party was not included.

Q119 Chair: So what are you saying? If any one organisation chooses not to submit, that is a veto and nothing else should be considered.

David Griffiths: No. I am sorry, Chairman, but I don't believe that is what Ruchir is trying to say. The point he is trying to make, and Sir Kenneth himself said when I was listening earlier on, is that his brief did not include independence. He was not to consider it.

Chair: That is right.

David Griffiths: I am not saying whether or not independence is the right option, far from it, and certainly SCVO does not have a view on that. However, the point is, I believe, that that option was

excluded from the Calman Commission. Therefore, only three out of four options were considered in coming to the Scotland Bill, because that was excluded from the discussion.

Q120 Chair: No, not at all.

David Griffiths: But Sir Kenneth said it was not in his remit.

Q121 Chair: I think you are entirely misinterpreting. Yes, you are absolutely correct that it was set up by the Unionist parties about strengthening the Union. That is right. There was that parameter. You, as an organisation, have to accept that that is what has been decided or you decide that you are not going to play, or that in some way or another it is illegitimate. Once the parameters have been established, everyone is then free to participate within those parameters. The Nationalists could have participated within those parameters and put forward policy options, such as the various integrations of benefits and the like, but they chose not to do so. For you to cast doubt on the validity of the whole process because you had some feeling of hostility to the political process is almost putting yourselves above those who are elected, because you are saying that your view of this is more valid than the elected representatives of the Scottish people through either the Scottish Parliament or Westminster. In those circumstances, I find it difficult to take anything you say with all that much seriousness.

David Griffiths: I am sorry you perceive it that way. When I read this document before it was sent to you that was not how I interpreted it. I had interpreted it purely as it literally says that the process has considered three out of four options. I, personally, think it would have been more inclusive—

Q122 Chair: What are the three options, anyway? There were not three options.

Ruchir Shah: It was options presented by three of the parties. That is what it says.

David Griffiths: I just took it as literally that.

Q123 Fiona O'Donnell: I will pick out another statement on the previous page. I absolutely get that many of the policy areas were in the manifesto that formed part of the submission, but I think there were significant suggestions in here that could have been consulted on. “Some longer-term strategies, such as the creation of funds from extracting natural resources, may well be more significant for Scotland's economic prospects than any short-term tax and spend options.” What does that mean?

Ruchir Shah: Basically, it is trying to put the income tax raising powers in context. It is looking in the long term about the wealth of Scotland. It is looking at resources such as renewable energy, and saying that the kind of tax resources you might be able to get from that and invest in communities could be much more valuable for those communities than the kind of block grant based changes that might come through on the income tax. That is all it says.

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Q124 Fiona O'Donnell: So “extracting natural resources” is a tax on renewables.

Ruchir Shah: It is the full range of natural resources and energy creation, yes.

Q125 Fiona O'Donnell: Where I am trying to get you to, and I think you know, is that that reads to me as though it is Scotland's oil.

Ruchir Shah: I see what you are saying here, but if you look in the manifestos, both this one and the one we will be launching very shortly, you will see that we talk about renewables and a whole range of other resources. We do say that we call for the tax proceeds from these to be put into communities.

Q126 Fiona O'Donnell: You think, for example, with North Sea oil, that poor and deprived people in Scotland should benefit more from that resource than poor and deprived people here in London.

Ruchir Shah: No. We are talking about the full range of resources.

Q127 Fiona O'Donnell: Yes, but you are talking about an extra tax that would be exclusive on Scottish resources that would be exclusively spent in Scotland, which would be a net benefit.

Ruchir Shah: No, I do not think we are referring to oil per se. The big growth potential at the moment is going to be around renewables. That is the emphasis we would place.

Q128 Fiona O'Donnell: And a lot of that will happen in Scotland?

Ruchir Shah: Yes.

Q129 Fiona O'Donnell: Do you not believe that the benefit of that should go out equally to poor and deprived people across the whole of the UK?

Ruchir Shah: What I believe is not really important. That is the point that is being made through this.

Fiona O'Donnell: I think it is very important.

Q130 Chair: I am sorry, but which is the point that is being made through this?

Ruchir Shah: Basically, that longer-term strategies such as—

Q131 Chair: I have read it. Fiona seemed to be making a point.

Ruchir Shah: My view personally is not important here. As David said earlier, this is a developing area of—

Q132 Chair: In the first paragraph relating to this you have said: “...SCVO does not have a specific view about the central feature of the Bill: the proposal to devolve some tax raising...powers.” Then you go on, basically, to support the idea of the creation of an oil fund. You can understand why we begin to wonder whether this is a political tract or whether you are serious about seeking to influence debate.

Ruchir Shah: There is no mention here of an oil fund.

Q133 Dr Whiteford: I want to come in on the point that Fiona has made because it relates to the

conversation we had in the earlier panel about the Crown Estates, which you both sat in on. I am aware that there are many community groups that are looking after parts of the coastline, stewarding parts of the coastline and parts of the natural environment, where the Crown Estates are blocking progressive moves by community and voluntary groups. Has SCVO done any work on that, and is there anything you would like to add to the comments that were made earlier about the potential for devolving the Crown Estates?

Ruchir Shah: SCVO has not taken a view on the Crown Estates per se, but we know that some of our members have. If I recall correctly—obviously, I can check this for you—the Scottish Environment Protection Agency has taken a view on this, as well as some of the other environmental charities. SCVO itself and the sector at a corporate level has not taken a view on this because it is a specific issue of concern to some specific parts of the sector.

Q134 Chair: I want to clarify this. Just coming back to the question of the timetable, I understand that you are concerned about the, as you say, truncated timetable for consultation. You would take the view that the Government should now be consulting or should have consulted on its view of Calman.

Ruchir Shah: Yes.

David Griffiths: Yes.

Q135 Chair: Right. It should have consulted on its view of Calman. Given that there are Scottish Parliament elections coming up, do you not think that that should have some impact and allow people in Scotland to express a view on the general philosophies and attitudes being expressed by the different political parties on both the Scotland Bill and other things? You only represent a particular sectoral interest. Other groups with whom we are speaking represent different sectoral interests. The people as a whole will have the opportunity to vote in the Scottish elections and, therefore, express a view as to whether or not they regard all this as a waste of time and they want independence, or the various varieties of Unionism. I see, Mr Griffiths, that you are nodding your head in agreement. Does it not seem reasonable to you that the Government have timetabled the measure in order to have decisions taken before the Scottish Parliament elections, which means that the long drawn-out, never-ending consultation that you seem to be suggesting you want is not possible?

David Griffiths: I follow your argument that the people of Scotland will wish to give an opinion.

Chair: Yes.

David Griffiths: You could use how they vote in May as a gauge for their view on some of this and, thus, have a better idea when you pass this Bill. They would have more of a say if you waited until after the election, surely.

Q136 Chair: Let me clarify that. How will you know, whatever the result of the election is, whether or not they were in favour of devolving power over air guns? We have a policy at the moment where three parties are in favour of devolving power over air guns

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and the Nationalists are also in favour of it. What does the election tell you about air guns?

David Griffiths: My suspicion is that as politicians are out and about talking through the process to their constituents and as they conduct endless opinion polls, they will get a very shrewd idea as to what is of importance to the people of Scotland—it may or may not be air guns—and their views on a number of issues, including those that are covered in the Bill. I feel that is a period where you get, as politicians, an awful lot of feedback. I am already getting election literature and questionnaires from people who wish to be the MSP representing me after May.

Q137 Chair: You must be in a marginal seat.

David Griffiths: I am. I have been getting them for about two weeks, and I won't say which parties have been first through the letter box. They are hearing now, and they will hear from now until May, what their constituents think.

Q138 Chair: I want to be clear. Do you take the view that what is in the Scotland Bill is significant and important, sufficient to justify people being asked to vote on it after the general election rather than before?

David Griffiths: Yes, I would accept that.

Chair: I wanted to be absolutely clear about that.

Q139 Lindsay Roy: We recognise that voluntary organisations play a critical and very valuable role in society. I go back to the point that was made earlier. How representative is this paper of the views of the voluntary sector, and how do you know? That would be very helpful to us in gauging what credibility to give this paper.

Ruchir Shah: Essentially, this is a paper which has been endorsed by 30 people. These 30 people have been elected on to a policy committee by 1,300 members. Of those 1,300 members, a number of them are membership organisations themselves and, therefore, their role is to take into account the views of their members. The 1,300 represent a cross-section of the sector itself.

Q140 Lindsay Roy: How widely has this paper been disseminated to the voluntary organisations themselves? It has come here as evidence.

Ruchir Shah: It has been published on our website. This paper, as was noted in the covering note, was issued to the Scotland Bill Committee in the Scottish Parliament and the same paper was then presented to yourselves.

Q141 Chair: Just going through your document, you do not have a view on the devolution of tax raising. You are generally against uncertainty. You are in favour of creating the conditions for a successful economy—I think we could all agree with that—and you are in favour of either an oil fund or something similar. Getting to the process, I am a bit surprised to read that you say: “Both the Calman Commission and Scotland Bill have failed to live up to the high expectation of openness, inclusion and participation which have become the norm in Scotland.” I thought that Calman did a fairly thorough job of consulting

people, meeting them and discussing things with them. Can you just clarify where you thought Calman was inadequate?

Ruchir Shah: Sure. The sense that a number of organisations raised to us when we were carrying out our events on the Calman Commission and National Conversation, was around the rationale for the Commission. For example, on what basis was the decision being made, to prioritise something around charity law over and above issues on the welfare and benefits split, which for us—our sector—was a much bigger issue? On what basis were those decisions being made to prioritise one issue over another, and how was that being validated with those who had submitted evidence? That is the frustration that has come out through this.

Q142 Chair: You are saying openness, inclusion and participation. It was open in the sense that everybody was free to send in evidence.

Ruchir Shah: Yes.

Q143 Chair: Everybody was included in the opportunity to be heard and participate. Participation is the same thing. It seems to me that what you are unhappy about is that Calman did not agree with you.

Ruchir Shah: No. What we are unhappy about is that the balance of what Calman felt was important and not important for further devolution was not then validated back with those who had submitted their views, or with the wider public or with the wider sector.

Q144 Chair: Any time that anybody decides anything, they have to come back and tell you why they have decided it and ask you if you agree it.

Ruchir Shah: Yes.

David Griffiths: The consultation process, by and large, and I have answered an awful lot of Government consultation documents, tends to involve a gathering of evidence, a feeding back of a proposal, and an explanation as to why some things have not been followed up for comment, and then the publication of the final report. That, I think I am right in saying, tends to be the consultation process.

Q145 Chair: But this is also at different stages inasmuch as we now have a Bill being a final process and we are engaged in the consultation process on the Bill. There are some areas where we will probably want to amend the Bill. The Scottish Parliament is going to have the opportunity. You are having the opportunity to put it to us. We have heard from Calman. This is an iterative process.

David Griffiths: Prior to the publication of that report in the process I described, the draft report along with an explanation of how it got there is sent to the participants, who then have a further opportunity to look and see. Let me take a Bill that is coming.

Q146 Chair: You can't have much to do. It seems that you have unrealistic expectations of what a busy political life is like.

David Griffiths: I am sorry. I am talking about a Bill that is in my case at the moment. It came out as a

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consultation document from the Scottish Government on self-directed support. We responded. After the initial consultation there tends to be a report on that consultation before the final document is published. I see Dr Whiteford nodding. That is what then happens. After that final consultation, the Bill is put through. The Calman process appears to me not to have gone through all those stages. I am sorry but I do believe that one or two members of the Committee are nodding.

Ruchir Shah: We recognise that the Calman Commission was commissioned by Parliament and was not a Government consultation process. That is why we were making reference to the Scotland Bill and asking why it is such a truncated timetable for such an important issue. The other step is that the Scotland Bill itself has picked certain issues from the Calman Commission's proposals and not other ones. Again, it is that feedback loop—that validation loop—that seems to be missing.

Q147 Chair: This is the process. This and the process in the Scottish Parliament is the process of scrutiny. We have had Second Reading debates and the like, and it is why we are sitting here discussing this matter with you.

Ruchir Shah: Sure, but it is only a very tight, short-term process.

Q148 Chair: Life is short. If you want to make changes to things, the process is not interminable.

Ruchir Shah: No, but when it is something as important as the changes to Scottish devolution I think it merits a bit more of that kind of feedback.

Dr Whiteford: I think you have raised a fair point. I don't think it is any secret that the consultative processes of the Scottish Parliament since devolution have been significantly better than what people have been used to in the Westminster context. I say that as somebody who has worked for a voluntary organisation and sat where they have and given evidence to the Scottish Parliament many times in the past. There are things that Westminster could certainly learn from the Scottish Parliament in terms of its committee system and the way in which it consults with civil society.

Lindsay Roy: I think we are always open to learn from any other organisation.

Fiona O'Donnell: What does not help is the tone of some of these statements. For instance, this article is not in your paper but it is an article that Martin Sime wrote. I wish he could have been here today as well—I don't know if he was invited. He published an article, which says of Calman and the Scotland Bill: "They have dismissed the views of the very organisations that could help bring about real and lasting change for the better." That is simply not true. They have dismissed some of them, but this implies that they were not in the process in any way.

The conclusions of your own submission say: "What makes this particular review so disappointing is its narrow and over politicised mandate, its failure to engage with civil society in Scotland and the omission of some major issues where a more efficient outcome might actually make a difference to the lives of the

people of Scotland." That implies that this does not make any difference to the people of Scotland. It talks about efficiency, but it seems to want to make this process even longer. I think these statements were ill-considered, unhelpful and inaccurate.

Chair: But apart from that?

Fiona O'Donnell: Yes, I loved it.

Q149 Chair: Can I come back to a question on the heading in your paper of "Major Omissions", where you could have made a valuable contribution but have chosen, in a sense, not to do so by focusing on other issues. Within the framework of Calman and within the framework of the Bill, what flexibility do you think there is, or what opportunities exist, to tackle some of these issues where there is clearly going to be friction as things rub together? I am talking about "Divergence of reserved benefits and devolved care", for example. For reasons that you might not feel have been explained properly to you or that you might not understand or agree with, it has been decided that benefits are going to be reserved. Therefore, it is a question of how we make the best of what you might believe is a bad job. Do you have anything to contribute towards that discussion and, if so, what is it?

Ruchir Shah: One of our proposals, working within the context that you have outlined, and obviously we will want to make the best use of what policy space is being afforded in this Bill, is to try and find a way of resolving the benefits and devolved welfare issue—the tension that occurs between them and similar tensions that take place in employability services, the National Lottery and the other issues that we have raised. One option that we propose, which I think David mentioned earlier, would be to look at a way within the Bill of making some kind of provision—an amendment perhaps—to devolve powers for secondary legislation on benefits to the Scottish Parliament where they align with particular devolved areas that there may otherwise be tension around. This opens up the whole idea of devolution being a process. Having that kind of enabling provision in the Scotland Bill would help us in Scotland as a sector, as people, as Parliaments, to come up with a way of resolving the issue.

Q150 Chair: I understand the words and the notion, but I am not clear, representing as I do a particularly difficult area, what you actually mean in practice. It would have been more helpful if you had given me an example of how Jean Smith is particularly inconvenienced by such and such a circumstance, and if there was the flexibility to allow so and so then that would be extremely helpful to her, because it might very well be that there is more than one way of skinning a cat. In the past we have argued, in some cases successfully, that managers in Jobcentre Plus, for example, should have discretion over some matters. The expansion of discretion to some staff in operation avoids having the row about whether or not these powers should be transferred to another organisation altogether. It actually identifies the issue. It seems to me that that is the opportunity you have

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either missed or chosen to miss because of the way in which you have responded.

I don't think we can expect you to give us examples of all this off the top of your heads. Maybe you would want to reflect on the points that you have made about employability services as well and see whether there are particular rubbing points where an additional degree of discretion within the existing structures and the structures that are likely to remain could be improved, since, unless I am mistaken, your views are of a minority in terms of whether or not substantial new powers should be transferred to the Scottish Parliament over these areas. There are a number of organisations in the voluntary sector that have in the past brought us some really quite helpful and constructive proposals about how things could be tweaked with considerable favourable impact upon the people that they and we represent.

Ruchir Shah: I think we would agree with you. There certainly are different ways of skinning a cat, so to speak. As a sector we have already collected lots of examples, and David can run through one or two or them with you to illustrate, just as you asked. All we are asking for in the Scotland Bill at this particular moment is to allow that space. If you did have some kind of provision for powers for some kind of secondary legislation on benefits, that opens up the possibilities for more consideration.

Q151 Chair: We hear what you say. You also have to understand it is unlikely that we are going to go down that road because, essentially, that is just devolving the whole thing, isn't it?

Ruchir Shah: Not necessarily. I think we mentioned partial devolution of benefits rather than a full devolution, so that with regard to the major decisions made, the primary legislation would still have control of that.

Q152 Chair: You have been consulted to some extent today, have you not, and you have had some degree of consultation over charity law? The bit in the Calman proposal about changing charity legislation so that it will not apply across the UK as a whole has been changed, hasn't it? You are happy with that?

Ruchir Shah: We are very happy that it has been dropped from the Scotland Bill, yes.

Q153 Chair: You are very happy that that has been dropped. That was dropped following submissions from yourselves and others, was it not?

Ruchir Shah: Yes. We were asked during evidence taken by the Calman Commission whether we agreed with that provision. We said no. It was put into the Calman Commission recommendations anyway. After that process, in discussion with Michael Moore, as you highlighted, and with others, that was then subsequently dropped by the coalition Government.

Q154 Chair: Would it be untrue to say that the Bill is coming forward without an ounce of consultation from the coalition Government? It depends on how much is announced, does it not?

Ruchir Shah: You have asked this question of me before, and I think I answered you that that was based

on a direct conversation between Michael Moore and—

Q155 Chair: But that was a degree of consultation, wasn't it? That would count as an ounce, wouldn't it?

Ruchir Shah: Of course it would, but it wouldn't count as a consultation procedure.

Q156 Chair: Why, then, do you think that Martin Sime, on your website, writes: "All this without an ounce of consultation from the coalition Government"?

Ruchir Shah: Are you referring to an opinion piece that he wrote?

Q157 Chair: It is on your website, written by your chief executive, on your comment and opinion column.

Ruchir Shah: We can get back to you on that one.

David Griffiths: I am not being pedantic here, but I think that is on the Third Force News website.

Q158 Chair: I would not know where to find that necessarily. I actually went on to the SCVO website and found it.

Ruchir Shah: It is on the SCVO website. If I understand you correctly, that was an article published in *Scotland on Sunday* a couple of weekends ago.

Q159 Chair: I don't know that. I found it on your website.

Ruchir Shah: That was then put on to the SCVO website. What I can say is that the policy position that has been validated by SCVO's policy committee is in the paper you have in front of you and that is what we can talk to you about, not about this opinion piece.

Q160 Chair: Wait a minute. If the chief executive of an organisation says "without an ounce of consultation from the coalition Government" and that is patently not true, are we not entitled to feel a trifle concerned?

David Griffiths: You are, and it is a very valid comment. I will undertake to discuss it with the convenor when I return to Edinburgh. I am afraid, Chairman, I can say no more than that.

Q161 Chair: That is about as much as you can do in these circumstances. The point is made at the very end of his article: "frankly, what's the point?" He says: "If the Scotland Bill won't devolve the power to protect", etc., and then there is whole number of things that are on your shopping list, "then frankly, what's the point?" Is your advice as an organisation that if we haven't included the things you wanted included, we would be as well not proceeding with the Scotland Bill, or are you of the view that, flawed though it is, it should still, none the less, go forward?

David Griffiths: I feel that the comments in that article are not, to my knowledge, agreed by the policy committee. It would, therefore, be inappropriate for us to comment on them in this context. I have had no opportunity to consult Martin on what he may have said. We have commented on areas where we feel the Bill could be improved, in our view—in the view of

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the organisation. We are not suggesting that the Bill should be stopped, torn up or thrown away.

Q162 Chair: That is very helpful. I think you can understand why I was a trifle perplexed to read from your chief executive, “then frankly, what’s the point?” I think this point has been made, hasn’t it?

David Griffiths: I entirely take your point, Chairman. I will be very happy, if you wish, once I have discussed this with the convenor, to ask either her, or ask her to authorise me, to come back to you.

Q163 Chair: Fine. I would very much welcome that because I think we are getting to the end of this.

David Griffiths: As the elected member on our side, as opposed to the elected Members on your side, I hope you will appreciate that I feel in a difficult position. I feel that I should take this back to the convenor, discuss it with her and then one of us should come back to you.

Q164 Chair: I think that is perfectly fair. You can understand, though, the points I made earlier on, that as well as having rights of access, you also have responsibilities. If you are expressing a view, there has to be a certain degree of consistency in those views. I want to put on the record that we value the work that many of your organisations undertake; many of us work closely with them in our constituencies. We see the support that is provided by the voluntary sector. As a Committee, we would be wanting to consult with you on quite a number of things if we think it is fruitful, but I see no point in doing so if we are either just going to be berated or told that nothing that we are doing has any value to it unless it meets all your objectives and takes an interminable length of time.

David Griffiths: I am very disappointed that that view has come across. It is not the tone in which I had hoped this afternoon’s meeting would go. I can understand your frustration, particularly with the article which was published in that newspaper. As I said a little while ago, with hindsight, this submission was stronger. We do have some useful things to say. We have ended up on the back foot on this occasion. I hope that you would take that into account.

Chair: Life is a process, as has been said in other contexts. Hopefully, we will be able to have a better relationship in other circumstances. We invited you with the best of intentions but, certainly from my own position, when I saw this on your website, it made me wonder why I was bothering. Some of my colleagues want to comment.

Q165 David Mowat: The issue, and you have been on the receiving end today, is that the language of this article is very pejoratively written. It really is. I have just read it quite carefully and Fiona was making several points. If you go to the fourth bullet point on the third page, in the first sentence: “A process which has been dominated from beginning to end by politicians and political considerations.” It is not a sentence, actually, although it does have a full stop at the end. It is saying that you’re civil society—your organisation—and politics is something else, and that none of the politicians around represent civil society,

which is what you are, and as a result this terrible thing has come forward. I am sure that most of your members don’t think that. I think that this is a very unfortunately drafted piece of work. The difficulty with it, from our point of view—I am not an expert in this stuff—as the Chairman said, is that it tends to undermine the good points you are making or can be making when it is so pejorative. There are probably about six or seven quite rude references to politicians. That is fine, but I am not sure that you put that into a paper like this if you are trying to get your point across. It is unfortunate. It is unfortunate for the people you represent because it means that what are good points in many cases are undermined because whoever put pen to paper on this seemed quite angry.

Ruchir Shah: The point you made about tone is something that echoed what Fiona O’Donnell mentioned earlier. As we underlined earlier, we take your point about the tone of the paper.

Q166 Fiona O’Donnell: Thank you.

David Griffiths: In response, we have acknowledged that. I have undertaken to talk to our convenor and come back to your Chairman. We did come to this Committee hoping to discuss some of the more, in my view, important points that Mr Mowat has just pointed out, that affect our members and, more importantly, the people our members try and support. It would be very sad if all our discussion today was purely about the tone of the paper and we did not discuss one or two of the substantial points that, it has been acknowledged, may have some merit. I fully accept what you are saying about the tone, but it would be disappointing if our visit to you today, as a result of that tone, did not have the opportunity to discuss one or two of the issues that are of more importance.

Q167 Lindsay Roy: Let me just acknowledge the recognition that you are, as an elected member, here for a serious purpose and it was not a token gesture. I would welcome any substantive points in addition to the ones that are in the paper—core points that you want to make. If they can be submitted to the Chairman in the very near future, that would be very helpful.

David Griffiths: Sure.

Q168 Lindsay Roy: We have been, in many ways, diverted from some other things you may have wanted to bring up on behalf of the voluntary sector. I think it is important that we do that and we have an accurate reflection of their views.

David Griffiths: Thank you very much, Mr Roy.

Q169 Dr Whiteford: A lot of the evidence you have presented today has been very helpful. Your oral evidence has been particularly clear. I would not necessarily agree with everything you have said but I think you are raising some important and substantive points.

On charity legislation, I should declare an interest in that I am a non-remunerated director of a charity in Scotland. I was somewhat reassured by the evidence from Sir Kenneth Calman that the intention of the Calman Commission was not to re-reserve charity

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law. That is a very important clarification because that is not how it has been reported at all. That is something we have not teased out today. I am conscious that time is against us now, but I would certainly be very keen to see anything more that SCVO had to say on that in terms of the impact on charities and the views of charities in Scotland.

David Griffiths: We have a brief on that.

Ruchir Shah: We have a brief which we will circulate to all members of the Committee. Essentially, we agreed with what was said by Sir Ken and Jim Gallagher, which was that we need to have a full and proper discussion to review charity definitions and regulations, which involves the Parliaments,

Governments, civil society, charities and the people of Scotland, Wales, England and Northern Ireland. That is another reason why it is quite good that that particular provision is not in this Scotland Bill, when it affects Northern Ireland.

Chair: Thank you very much. I am sorry we started a bit late and held you back a bit. As you are aware, we had a vote. I hope this has been an interesting afternoon. Most of the Members of the Committee are likely to be here for some time because the Parliament runs for five years. Hopefully, we will be able to exchange views in slightly different circumstances elsewhere and on other matters. Thank you very much for coming along to see us.

Tuesday 8 February 2011

Members present:

Mr Ian Davidson (Chair)

Cathy Jamieson
Jim McGovern
Fiona O'Donnell

Mr Alan Reid
Lindsay Roy
Dr Eilidh Whiteford

Examination of Witnesses

Witnesses: **Professor Anton Muscatelli**, Principal, Glasgow University, and **Professor Michael Keating**, University of Aberdeen, gave evidence.

Q170 Chair: Welcome to the meeting. We understand, Professor Keating, that you are off on Eurostar to somewhere exciting and therefore you want to be out of here by three o'clock. So thank you very much.

Professor Keating: Quarter to three.

Q171 Chair: Quarter to three. We had better make sure that you go even faster in that case. Professor Muscatelli, thanks very much for coming along.

We have been warned, by *The Scotsman* no less, that academics are delicate flowers who should not be asked impudent questions by "common people like what we is", so if there is anything that you think is impertinent by all means feel free to let us know. You are indicating that you are a trifle more robust than that, are you?

Professor Muscatelli: Absolutely. We are very happy to take any questions from you, Chairman.

Q172 Chair: Fine. Thank you very much. Could I start off by asking you about the general background to the Scotland Bill? At the moment, the Scottish Parliament has the power to vary income tax by up to 3p and they have not done so. Are your proposals to allow them to vary income tax by up to 10p just more of the same or significantly different?

Professor Muscatelli: When my independent expert group considered how to advise the Calman Commission on how to provide greater fiscal powers, we did think long and hard about that question, about whether the tax room proposals that are currently embedded in the Bill would do exactly that.

There are two reasons perhaps why the tax powers have not been used. One possible reason is that there is a tendency to focus on the status quo and it is politically quite difficult when it comes to making decisions on taxation to move away from that frame of reference. This is one of the reasons why we suggested the mechanism, which was defaulting to a rate below the normal standard rate at UK level because that would force Parliament to take a decision and actually debate and discuss the issue. The issue would need to be discussed. Even if the tax was kept at the same rate as the UK rate, it would need to be an issue that is discussed. The other reason why perhaps they have not used the tax powers is because they are rather limited in terms of additional revenue or less revenue. In terms of the level of accountability it is relatively small. That was the reason for providing, or suggesting, larger powers and also

forcing the Parliament to have a discussion on the tax measures.

Q173 Chair: Can I clarify that? Is there not a real danger that they just simply end up at the default position, which is that they take a conscious decision to leave it at exactly the same level as it is in the UK as a whole and therefore they make no change at all so this whole thing is pretty meaningless?

Professor Muscatelli: There is a risk that no decision will be taken at first. We might perhaps go back to the adjustment mechanism for the grant because that will also drive what happens in the transition period. Once we go past the transition period and there is the definitive adjustment in the block grant, of course the revenues to the Parliament will fluctuate with tax revenues so they will no longer be as predictable as a proportion of UK expenditure in devolved areas. Therefore, I think there will need to be a discussion about this. There will need to be a recognition that the tax base matters for the Scottish economy and, in that sense, that will drive the debate towards what the right level of taxation should be to encourage the tax base to grow.

Q174 Chair: Professor Keating, you have a different view.

Professor Keating: I think it is more of the same and there are two ways in which one can look at this issue. One is that this is a minor adjustment of the existing settlement, which is based upon the assumption that we are going to have similar kinds of services and a similar role for the state in Scotland and England, in which case we should be discussing the technicalities of Calman and the Bill. It is very difficult, and it would be very difficult, to do anything other than go for a default rate because of the technical problems of changing it and because of the political problems. No Government has raised income tax since 1975. It is the most difficult tax to raise, so I think there will be a strong inclination to go for the default. The only difference would be, as Anton has said, that you would have to have an explicit decision by the Scottish Parliament to make a tax rate. That might be a small increase in accountability.

The other way to look at the issue is as a radical shift in the basis of the devolution settlement, with real fiscal responsibility which would imply control of a much broader range of taxes. This would be appropriate if we anticipate that there will be

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significant policy differences between Scotland and the UK.

Q175 Chair: Could we come on to the question of what the alternatives are in a moment and just stick with the impact of what is being proposed? I read one distinguished commentator who is indicating that the mechanism was going to be much better in the good times for Scotland and in the worst times much worse. Can you clarify that position? Because the Scottish Government also seems to be saying that had the proposals that you are suggesting been in position for some considerable time in the past, Scotland would have been more in the slough of despond than it is at the moment.

Professor Muscatelli: It is certainly true that once you move to a different mechanism, Scotland's departmental expenditure limit—DEL—will depend not only on UK Government spending but also on the tax base, so the outcomes will be different under the two systems. At a time when Government spending in the UK is rising faster relative to taxation, Scotland will do better under Barnett on the current system. However, if we do not think that that situation is going to happen in the future, then clearly Scotland would do better under the new system whereby a share of UK taxation would accrue to it.

The best calculations I have seen of what would happen under the two different systems are in a technical note which was submitted by the UK Government to the Scotland Bill Committee of the Scottish Parliament. It shows that if the grant reduction was made in 1999–2000 on the basis of the receipts over the whole decade after that, you would be better off with the new system. If, on the other hand, as the Scottish Government says, you had simply made the adjustment before the big expansion in UK public spending, then you would be worse off. I do not think you can choose a fiscal system to be based on the experience of a five or 10-year historical period. It is for life; it is not for a short period of time. Over time, you would expect UK taxation and UK Government spending as a proportion of GDP to be broadly in line. Arguably, what we have seen in terms of public spending in the UK over the last 10 years is not sustainable.

I would think that, in future, the new system would probably work as well. The only difference, of course, is that some of the risks in terms of tax revenue fluctuations would be shared by the Scottish Parliament and it would not simply be a share of UK Government spending.

Professor Keating: I would agree with that as far as the taxes are concerned, but I do not think you can predict the outcome until you know what is going to happen to Barnett, because in the past there have been all sorts of Barnett bypasses which are very obscure and we need to know a lot more about how that is going to work. For example, there is a no-detriment clause and it is priced so that if there is a change in the UK tax allowances, there will be compensation, but that will be discretionary by the UK Government. What I would like to see in the Bill is a much clearer statement of exactly how that would work.

Chair: One of the issues that we have touched on with other witnesses was the question of transparency for a number of areas. Perhaps the one that you are indicating there might be one that we want to pick up as being an area where there requires to be a greater degree of transparency. I think it is helpful to have that drawn to our attention.

Q176 Fiona O'Donnell: Good afternoon, gentlemen. I wonder if I could ask in terms of what did not make it into the Bill that was in the Commission's report. Generally, is there anything that you are disappointed is not there? Specifically, in terms of the four taxes which were in the Commission's report, now there are only two. It may be that we will revisit that and that is amended in the future. Are you disappointed that the other two were left out? I would like to talk about tax revenue from savings and dividends after that, but can we start with the general and then the four becoming two?

Professor Muscatelli: Obviously, I am disappointed that the four taxes that we certainly suggested are not going to be devolved. I can understand the reasons for delaying the decision, but a contingent decision could have been taken on two—the higher passenger duty and aggregates levies.

Our recommendations were originally to include savings and dividends within the devolved taxation powers, but I can understand why that was left out; it does require major amendment in terms of the administrative arrangements for tax collection in the UK, because it is difficult to attribute that without additional administrative requirements, say, on banks and building societies.

Q177 Fiona O'Donnell: There was no provision to alter the tax on savings and dividends. Is that correct? It was just half of the revenue. Where would the accountability be for the Scottish Government?

Professor Muscatelli: You are right. Tax sharing of that type would not involve as much accountability as having the power to vary that taxation. In that sense, perhaps the thought behind the Scotland Bill was that it was not going to add significantly to accountability. In terms of other disappointments, that comes back to the grant reduction mechanism. My group did not make a specific recommendation on how to make the block grant reduction, nor about the mechanisms for co-ordination between UK and Scottish Governments around the issue of the shared tax base. We hoped that this would be worked out, but in fact, as Michael hinted, some of that has not been worked out yet. I think I would like to see that spelt out much more carefully because it is an important issue.

Professor Keating: It is a pity that they did not put the two taxes in, but there was a technical reason for it. It has not been excluded. The more serious issue is the tax on savings. I would have liked to have seen that included. I would also say that in other countries they also devolve the rights and it is not just assigned. So, technically, that seems to be possible.

Q178 Dr Whiteford: Welcome, gentlemen. It is good to see you here. I want to ask a bit about fiscal and economic drivers, especially to you, Professor

Keating, because in your written evidence you highlighted various shortcomings in the Bill in terms of how it would deliver its aims, especially in relation to autonomy, policy innovation and accountability. What, in your view, would this Bill need in order to deliver genuine and effective powers of the sort that you envisage would deliver those aims?

Professor Keating: There are a number of issues here. One is about overall levels of expenditure. What I was hinting at earlier—I may come back to it—is about welfare spending and public services. The debate in Scotland in the last few weeks has been all about economic development. It has been, in my view, somewhat ill-informed debate in many ways. What is important from the experience of other jurisdictions is that when you devolve taxation powers, it is important exactly how you use those powers and what incentives you put in place.

For example, in the Basque country, which is a case I know quite well, the corporation tax is slightly lower than the Spanish level—very slightly. But the use of the powers, the incentives for research and development, the tax credits for cultural industries and so on are a very important instrument used by the Basque Government. It is in the detail of how you use those powers and what the priorities are that is important. Of course that does not happen automatically. That has to be a policy choice by Governments, but we need to allow them to make those policy choices.

Q179 Dr Whiteford: The other thing that you wrote about in the submissions you made to us was about a similar issue of VAT and corporation tax in Scotland. I wonder if you think it was a mistake not to recommend the devolution of corporation tax in the Calman proposals.

Professor Keating: Yes, I do. I think corporation tax could have been devolved. There are huge economic constraints on variation and it probably would not have varied very much because of the loss of competitiveness if you put it too high and the loss of revenues if you put it too low. The tax competition is a fact. This indeed would have meant, as we find in other federal countries, that there is not a huge amount of variation, but it does give the opportunity for the fine tuning I was talking about earlier on and the use of that in pursuit of specific industrial policy objectives. If Scotland had its own priorities, it could use the tax power in order to further them.

Q180 Chair: Could I follow up one point? One previous witness, when we were asking about corporation tax, made the points that you have made, but they also made the point that reducing corporation tax for Scotland could be, essentially, to cannibalise corporation tax from the rest of the United Kingdom. The rest of the United Kingdom would lose considerably as a result of transfers, but Scotland would gain. Now, if you are in the Scottish position, I can see that being sensible. If you are taking the UK position, of course it is not. I wondered if you could maybe comment on either the dangers or opportunities that cannibalisation would be the main driver of any

change in corporation tax rather than growing the economy.

Professor Keating: Yes. There is evidence from Ireland of transfer pricing or declaring profits in Ireland when they were probably generated somewhere else. With something like software creation, which is big in Ireland, you never know where it is actually being done. Then there is a separate argument about the shifting of economic activity to Scotland. I am sceptical about corporation tax as a means of shifting economic activity to Scotland. There is a danger of transfer pricing, which is why, in my paper, I said that we should do like other countries do and have some kind of concordats to control this, which is what exists in Spain. It is to control those negative externalities.

Q181 Chair: Before I ask Eilidh to come back in, can I just be clear? I think what you were saying, if I understood it, was that you were doubtful about the ability of small corporation tax changes to generate additional economic activity. Obviously, a lot of the debate in Scotland seems to assume that marginal changes of corporation tax would result in an explosion of economic development. Your view and your evidence is that that is not the case. Is that correct?

Professor Keating: Yes. I do not see the international evidence for that. Indeed, the studies that have been floating around in Scotland are based upon some dubious methodology. It is the details of what you do with taxes rather than the absolute level, and what you spend the money on, that are more important. If you look at jurisdictions across the world, there is no association between tax levels and economic growth. It depends what you are spending the money on and how you are raising it.

Q182 Chair: Sorry, Professor, do you want to come in before I go back to Eilidh?

Professor Muscatelli: It is just to stress that tax competition was the main reason why our group recommended that corporation tax should not be devolved. We have seen evidence from other countries, including Switzerland, that it would be very likely, if corporation tax had been devolved and, say, the Scottish Parliament had decided to marginally lower corporation tax, that it would have put pressure on the rest of the UK to follow suit. What is happening in other countries like Switzerland is that you sometimes find that, overall, the rate of corporation tax is lowered and the burden then falls on personal income taxation because something has to pay for the taxation hole. That was the reason why we decided not to.

As Michael said, in most countries where corporation tax is varied for economic development reasons, that needs to be as part of a concordat at national level to specify exactly what the aims are of that measure. It is not simply the Basque country saying, “We are going to create a tax haven and all businesses are going to come to us.” It requires quite close co-ordination and then it is not an effective level of fiscal autonomy that you generate that way. It would be driven by economic development issues. I think it is

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something that should be borne in mind. I cannot envisage a situation in which you could simply have complete freedom in terms of setting different rates of corporation tax. Even the Holtham Commission, when it brought recommendations which, to avoid brass-plating, were based not around turnover but around employment, which I think was sensible, basically said, “You should think about this, but it can only be a measure of economic development and not for fiscal autonomy.”

Q183 Dr Whiteford: I want to come back to decentralised fiscal models because I know, Professor Keating, that you have very wide expertise in this area from other parts of Europe and even further afield. I just wondered if you had any more general thoughts on the hallmarks of the most successful models.

Professor Keating: This is all very contextual. There are countries that have very low taxes but very weakly developed welfare states because they are transition economies. They are developing countries as well. They are not particularly relevant. I do not think Scotland wants to go down that road of just radically cutting out the welfare state. Our comparable must be developed welfare states, not emerging economies in central and eastern Europe, Asia or, indeed, the United States, where they do not have a mature welfare state. Canada, Germany, Spain and Italy are relevant and so on.

The experience of these is very different. In Germany, they have a highly integrated system in which there is revenue sharing rather than revenue autonomy. Elsewhere, they are moving towards autonomy. Spain is moving this way. Italy has been moving rather haltingly in this direction. Even in France there are moves in that direction so that local and regional governments are dependent more on their tax base. This is connected with the notion of competitive regionalism—that we no longer have top-down regional policies managing the whole space. Regions are moulding their own development projects. That is where things are going. A degree of fiscal autonomy is important in that, but a fiscal free-for-all, for the reasons that Anton mentioned, would not necessarily be helpful.

Switzerland is the example where you do get this destructive fiscal competition. You do not get it amongst federations because there are intergovernmental arrangements in place to try to control that to make sure it does not get out of hand, as indeed there are at the European level. There is a degree of harmonisation at the European level through competition policy to make sure that this competition does not become destructive. Competition can be dynamic and can promote development, but you can also get this so-called race to the bottom and we need to make sure that that does not happen.

Professor Muscatelli: To support what Michael said, I suppose this was part of our first report to the Commission. I recognise the limits of economics. I do think that this is a place where economics cannot provide definitive answers; it is about what society and politicians believe should be the right arrangements. This is an area where providing additional fiscal autonomy would effectively provide

more autonomy at the expense of more risk in Scotland’s block grant. It would provide more levers but, as Michael said, perhaps at the expense of greater fluctuation. It is an equity versus accountability trade-off and the Commission decided to position itself in one particular place on that. I do not think economics can tell you exactly where you should place because it is going to produce an economic miracle. As Michael said, there are different systems in Germany, the USA, Australia and Canada, for very good reasons. These systems are derived from what these countries want in terms of that trade-off.

Q184 Chair: You seem to be suggesting that full fiscal autonomy is not a magic bullet.

Professor Muscatelli: It is not a magic bullet and I do not think it exists in any other country which is a country.

Professor Keating: “Full fiscal autonomy” is just a phrase. We need to talk about what taxes you are going to have autonomy over and in what circumstances. Even independent states in the European Union do not have full fiscal autonomy. They are constrained in value added taxes and tax competition and so on.

Q185 Chair: I was not sure whether or not “autonomy” in this context was just a weasel word basically to cover separation and that people who did not want to use “separation” or “independence” as a word would use “autonomy”. Is there a distinction to be made between fiscal independence and fiscal autonomy or fiscal separation and fiscal autonomy? Is there some economist-speak that means there is a difference between those terms or are we basically talking about the same thing re-badged?

Professor Keating: I am not an economist. I am a political scientist. I would say that there is a spectrum from being dependent to being completely independent and nobody is at either end of that spectrum anywhere in the world. It is about managing degrees of inter-dependency. The big question underlying this for Scotland is what kind of welfare state and what public services we want in Scotland. Would we be prepared to pay a higher level of taxes to have a higher level of public services, especially if in England they are going to reduce the role of the state? That is the big issue that is coming up there and we need to have that debate, I think.

Professor Muscatelli: I would agree with that.

Q186 Cathy Jamieson: This is linked to that and, I suppose not being an economist either, I am struggling with the kinds of questions that ordinary people have on the doorstep. What they want to know is, knowing what you know just now, is Scotland going to be better off under the Calman proposals—raising that proportion of tax directly in Scotland—or better off continuing with the block grant as it is in terms of being able to provide services? That is what I think people want to know.

Professor Muscatelli: We can certainly give a definitive answer to that, at least based on current forecasts of taxation revenues in the UK. I refer you again to the technical note produced by the Treasury

essentially for the UK Government for the Scotland Bill Committee. It shows that, if, for instance, the Calman measures had been brought in in 2010–11, the grant adjustments had been made then which equate to 17.25% being taken off the block grant and then after that the Calman proposals had run, essentially by 2014–15, as public spending in the UK is not growing as fast but taxation will be growing faster in the next few years, there would be a cumulative gain to the Scottish budget of about £400 million for that period. Actually, if you did implement it now, you would be better off.

However, as I said, there are swings and roundabouts. There are likely to be fluctuations over the period of that sort of measure. Over some period, you will see Scotland benefiting of the order of a few £100 million more or in some period it might be below that, but it will never deviate. There should not be a trend, because Government spending and Government taxation at UK level cannot trend away from each other for very long before either debt accumulates or something else happens.

Q187 Chair: Sorry, we were going to ask some other questions, but that leads directly on, if I may. Sorry, Professor Keating?

Professor Keating: Can I say something as well? The Barnett formula, in principle, is a convergence mechanism. It has never happened that way in 30 years, but had it been applied, Scottish expenditure would be a lot lower. We do not know whether it is going to be applied in the future, but given political opinion in the south, I would imagine that Barnett will be applied in future in a much tougher way, so we cannot depend on getting the slightly higher share of expenditure that we have had hitherto.

Q188 Chair: But I think Cathy asked for a yes or no and Professor Muscatelli was basically saying yes. One of the things that I was looking at was a letter which appeared in *The Scotsman*, the paper of record in these matters, it would appear. Professors Hughes Hallett and Scott said, “The only hole we are concerned about is that into which the Scottish economy is likely to plummet if the provisions of this Bill become law.” That does not seem to have any element of, “On the one hand or on the other hand”. That has the merit of clarity. What I am not quite clear about is whether or not it has the merit of accuracy. I wonder in economic terms, what is a plummet? If they are suggesting that the Scottish economy is likely to plummet, is that a phrase that implies a particular percentage reduction or anything similar?

Professor Muscatelli: I have not seen any percentage associated with that definition by Professors Hughes Hallett and Scott, but I would not agree with that assessment. As I say, over time you should not notice a huge difference between the two, but if you applied it now, on the forecast we have till 2014–15, the Calman proposals will actually generate additional income. But, as I said, I do not think that is the criterion against which you should assess the system.

Q189 Jim McGovern: Professor Muscatelli, you said that you would give a definitive answer to

Cathy’s question based on a forecast and it was swings and roundabouts and speculative. How can that be a definitive answer?

Professor Muscatelli: It is a yes based on the current period, but I am also telling you that over a period of 10 to 20 years you should not notice a difference because Government spending and taxation at UK level should stay broadly in line.

Q190 Jim McGovern: “Should” is not definitive, is it?

Professor Muscatelli: No, but two different systems will produce two different outcomes, otherwise what is the point of moving to a different system? In fact, one of the problems, for instance, with the transition mechanism that is embodied in the Scotland Bill is that, over the transition period, it completely insulates the Scottish Government from any fluctuation in the block grant, which basically means that over that period—I will give you a definitive forecast—there is no way that the Scottish Parliament would vary the tax rate. Why should it? Whatever the tax rate is, it will produce the same outcome as the block grant so it would not. Why should it? We would get no benefit one way or the other. That is the best you can do in terms of the forecast.

Q191 Jim McGovern: It is your opinion rather than a definitive answer.

Professor Muscatelli: It is my opinion based on my own experience.

Professor Keating: One other reason why it is so difficult to predict is that this is a matter of politics, and we do not know what politicians are going to do. They can do something under one heading and we can predict that and then they take the money out of other headings. This is how public finance works. We are talking about lots of slippery numbers here and this is why indeed we need a lot more transparency from the Treasury. It is so that we can actually find out what has been going on and what is going on.

Chair: It is not only the numbers that are slippery. It is a lot of the people that we are dealing with, is it not? Therefore, one of the things that would greatly improve the governance of Scotland would be much clearer sets of figures and so on and a much greater understanding. That is certainly something that has been said to us in a number of points and something we will certainly reflect in our report. Alan, you wanted to come in.

Q192 Mr Reid: Yes. First of all, thank you very much for coming along. It is just to explore the circumstances in which Scotland would be better off and in which it would be worse off. Am I right in saying that the two factors that you say have to be taken into account are UK public expenditure and UK taxation levels? Is that correct?

Professor Muscatelli: UK public expenditure, the UK taxation level and the balance of UK taxation between personal income taxation and other taxes. For instance, if the UK Government decided to raise VAT and lower income taxes by, say, uprating all the income tax thresholds, that would have a negative impact on the Scottish tax base. That is why you need

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an adjustment mechanism which takes account of that. The UK Government and the Scottish Government will share a tax base so that what the UK Government does with personal income taxation would have an impact on the Scottish Government's revenues. That is why you need a grant adjustment mechanism that takes account of it.

Q193 Mr Reid: Is this grant adjustment mechanism in the Bill?

Professor Muscatelli: No. The Bill at the moment suggests a transition period in which the Scottish Government's receipts would be totally insulated so there would be no impact. Then, after that, it suggests a once-and-for-all deduction in the grant. After that, all the risk is transferred to the Government. There is talk about no detriment, but I would much rather see a mechanism that is clear and transparent and which does not insulate the Scottish Government from its own actions, because, after all, that is what accountability is about, but insulates the Scottish Government from actions taken by the Westminster Parliament on taxation because it would be unfair to see that reflected on the Scottish devolved resources.

Q194 Mr Reid: What you are saying is that, with the Bill as it stands at the moment, if a future UK Government was to increase tax allowances above inflation and so reduce the income tax take, the Scottish Government would lose out.

Professor Muscatelli: Yes, absolutely.

Q195 Mr Reid: You are suggesting that a formula needs to go into the Bill to take that into account.

Professor Muscatelli: The formula is very straightforward because the Holtham Commission did quite a bit more research on this area; indexing the grant to the UK income tax base would achieve that result.

Q196 Mr Reid: How does that link to Barnett because Barnett is based on expenditure and not taxation? You would have a more complicated formula then.

Professor Muscatelli: No, you would not have to adjust Barnett. Barnett would stay under the current measure. The block grant adjustment would not be a once-and-for-all adjustment. It would be varied every year on the basis of what is happening to the UK income tax base. On Barnett, I should also say that my group always had at the back of its mind that if we move towards this sort of system of income tax sharing, Barnett might eventually be revisited, as Michael says, because it is not based on need. Perhaps after 15 or 20 years you need to look at the issue of how that is going to be handled. Again, the Holtham Commission raised it in the case of Wales. Convergence has already happened to a large extent in Scotland and there is quite a lot of discontent as to whether Barnett delivers what is needed in terms of public spending there.

Q197 Mr Reid: You mentioned comparable countries such as Canada, Spain, Italy and Germany. How do they address these issues?

Professor Keating: They all have a system of revenue sharing and fiscal equalisation. They sometimes assign taxes and then they have an element based upon need and an element based upon resources. The technicalities of the system are quite different, but they compensate to a greater or lesser degree for the tax base. In Germany, this equalisation is complete so it does not really matter what your tax base is; you get your money. In Canada, it is much less complete. If you are an oil-producing province—because there is oil tax as well—you get the benefit, but you lose when the oil prices collapse.

In European countries where they have regional governments, in Spain and Italy, they are gradually moving towards a similar kind of system. In Spain, they have been doing this for 20 years. I am not talking about the Basque country, which has always had it. I am talking about the other autonomous communities gradually getting a mix of taxes typically involving the sharing of value added tax on a population basis, because it is not suitable for devolution, a share of income tax and a share of business taxation, because business taxation takes different forms. There is then the devolution of taxes that are easily identifiable territorially: property tax, succession tax, vehicle licensing duties and so on.

Q198 Mr Reid: Do you have any personal recommendation for the route Britain should go down?

Professor Keating: Those are the technicalities of it. The brutal reality is that what you get is a political compromise because you do the sums and you show that Region A should lose and Region B should gain, but politically it is impossible unless you have lots of money to compensate people; so you fudge. It is always a political compromise. The difference here is that we are talking about Scotland in isolation from the rest of the UK, even from the other devolveds, which is very difficult to think about. There is no other place that I know that is in that position. Where you have a federal system it is fairly clear because you have rules that apply to everybody.

Professor Muscatelli: My own view is exactly that. In 15 to 20 years' time, within that arc of time, you would hope that the UK Government might look again at the Barnett formula, which was only designed to last for a few years. It has lasted the test of time, but, as Michael says, it is simply an administrative formula which does not take account of relative need and changing need over time.

Chair: We will deal with the Barnett formula next week, but at the moment we had better deal with the Scotland Bill.

Q199 Lindsay Roy: Good afternoon, gentlemen. In your considered judgment, do the proposals fail to provide Scotland with any significant new economic levers? Is there a genuine advance here?

Professor Muscatelli: I think there is a genuine advance. I think it will require the Scottish Parliament to have a genuine debate about resources, taxation and the source of those resources and not simply how to allocate a block grant. I think there is an advance. Is it the final step? That is another issue. What we have

in front of us here today does involve a significant increase in accountability.

Professor Keating: There is a connection because the more you devolve taxation, the more you force stakeholders, Scottish business, trade unions, you name it, to get involved in political debate, which is one of my interests. To a lot of people in Scotland, it does not make that much difference to them what the Scottish budget is. If it really made a difference, then you would improve the quality of political debate. You would have a debate every year about what level of taxation we want and what the consequences of that are. I am not sure this proposal would take us much further in that direction. I think it is too timid.

Q200 Lindsay Roy: Would you agree that a key to success in delivering this is a commitment to work together; in other words, perhaps a stronger attitudinal change?

Professor Muscatelli: That is right and, as Michael said, it probably takes the UK into a more federal direction, but, over time, we have to develop those institutions to have that greater working together between the countries of the UK. It will also lead to a greater engagement between the different political parties and other stakeholders in Scotland because it will involve some substantive discussions about taxation as well as revenues.

Q201 Chair: Can I pick up on the assumption that giving additional powers over some areas results in greater debate and discussion, better policy and so on? One of the witnesses, in a previous session about the Scottish economy, from the Federation of Small Businesses was telling us about the high number of youngsters coming out of schools who were functionally illiterate and innumerate. There were even graduates coming out who were not able to deal properly with interactions and so on. Scotland has had powers for some considerable time to deal with, say, literacy and numeracy, yet not a great deal of improvement has occurred. Simply having the powers does not automatically, in the way that you seem to suggest, result in better decision making.

Professor Keating: Of course not, but there is a lot of work going on in Scotland at the moment about how to improve policy innovation and policy making. This is something that was not thought of at the time of devolution. People talked about the Parliament, the committees and so on and did not think about this. We have had 10 years of experience of how to learn how to make public policy. It has been extremely slow, but I think that is happening. Indeed, when it comes to education and health, the powers are already there. This is going to make no difference to the powers. The spending powers are already there. We should not confuse that with—

Q202 Chair: I understand that, but the point I was responding to is that we still have problems of illiteracy and numeracy amongst young Scottish people coming through the education system for which the Scottish Parliament and Government have been responsible for some 10 years. Therefore, you cannot automatically assume that additional powers in

relation to the economy will result in better solutions being devised, in the way that you seem to be doing.

Professor Keating: My argument is that the existence of those powers for 10 or 12 years or so has gradually improved the quality of policy debate in Scotland and the quality of policy making, but these are very, very long-term things. These are deep-seated social problems that do not have easy answers. Indeed, extending autonomy into the fiscal area will bring more people into the policy debate, particularly the business community that has been a little bit detached from the policy debate in Scotland, because it will affect them very, very directly and they will have to get involved then.

Professor Muscatelli: I would agree with the statement that it is to do with what the money is spent on. However, it could lead to a discussion of the following type. At the moment, the UK is having cuts in public spending. If we thought that solving some of those problems in Scotland required additional expenditure over the next few years, that could be a decision that the Scottish Parliament will be able to take after 2015 with those powers. If we think that those issues are not related with choices on the level of expenditure, then you are right. It is to do with the quality of spending and it does not matter too much. What this does is to improve the accountability on the revenue side. It does not improve accountability of how well the money is spent.

Chair: Eilidh, do you want to pick up the issue about income tax or do you feel that has already been asked?

Q203 Dr Whiteford: Yes, I am very happy to ask about income tax. I guess that one of the concerns there has been around this is about the differential rates of tax in terms of higher rate taxpayers. This is maybe a bit of a geeky economic question for which I apologise, but would you expect, in times of economic growth, total tax yield to grow faster than income tax yield? Within that, would you expect more yield to come from higher rates of income tax—within the higher bands?

Professor Muscatelli: It is certainly true that with economic growth, you would expect the tax base to grow. The sort of estimates we would see—I think this was part of the evidence given to the Scotland Bill Committee by one of the people who gave evidence—is that the elasticity is around 1.2%, which suggests that, for every 1% of growth in the economy, you should get 1.2% of growth in the tax base.

Presumably, behind your question is the issue of the fact that the current powers only allow you to vary all the rates at once and not to change the shape of the tax curve. I think you are right; that is an issue. The reason why we suggested that it should simply be a 10p variation across all the bands is because there was an issue of administrative simplicity. Introducing this other level of complexity would lead to the need for greater co-ordination and greater administrative complexity in terms of applying PAYE. I think that was an issue. You are right that it then raises some issues because, if, say, the Scottish Parliament were to put up the rate by 3p, that might have more impact on the decision of higher taxpayers than standard rate taxpayers.

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Q204 Dr Whiteford: I think this is very helpful and I welcome the clarification that simplicity was the guiding motivation. My concern is that that does introduce a deflationary bias in the system. If the Scottish economy is actually growing, which presumably we are all keen to see, a greater proportion of the tax receipts that accrue are then going to go to London, with a smaller share coming to Scotland. So there is an inherent kind of flaw in the mechanism that perhaps we should be looking at a more sophisticated way of ironing out.

Professor Muscatelli: I would put a slightly different gloss on it. I do not think it is a deflationary bias and I would not see any problem, for instance, if some of the benefits would accrue to the UK after all. The tax base is being shared and that means that in a downswing, Scotland also shares some of the benefits, and some of the risks accrue to the UK tax take. I see it more as an issue of flexibility on the part of the Scottish Government. For instance, higher rate taxpayers are the ones who are most mobile. If the Scottish Parliament, say, was to put up the rate by 10p, that is quite a significant increase in the higher rate tax and might lead to a large number of higher rate taxpayers saying, "I will make my main residence across the border", which might cause a reduction in the tax take. Those spillovers would be more problematic, which should cause us to think about whether, in due course, we should have some flexibility. I am less worried about who benefits, because both the benefits and the risks are shared in the system.

Q205 Dr Whiteford: Professor Keating, do you have any thoughts on that in terms of the differential tax bands and the income tax? How adequate do you think the income tax proposals are?

Professor Keating: I defer to Anton on the economic technicalities of it, but I would favour for political reasons or constitutional reasons—I do not mean party reasons but for reasons of good governance—the devolution of the rates because I think it is a legitimate decision whether we decide to have a higher or lower marginal rate. This applies in other federal countries as well. They change not just the basic rate but also the allowances and the marginal rates.

Q206 Dr Whiteford: Presumably they get over the technical difficulties of doing so.

Professor Keating: Yes.

Professor Muscatelli: I can tell you what the technical difficulties are. It is interesting because in the case of Canada—Mike will correct me—they started by giving the provinces the right to charge a tax on a tax. They started with a surtax, and over time they have given them more rights to change thresholds and tax rates. In part, it is to do with sophistication of decision making.

In terms of the UK tax system—you will be able to ask this question of HMRC, who will know the complexities more—essentially, we have a PAYE system which means that most UK taxpayers do not fill in a tax form. In most other countries which have more complex tax systems and devolve more of the taxation powers at local level, everybody would need

to file a tax return because you would need to do that to properly allocate taxes between devolved Governments and central Governments. I suspect that the only way to start applying different tax rates in Scotland in different thresholds is that you would need HMRC to start issuing tax returns to everyone and then you would need some sort of mechanism to ensure that there is not evasion by people switching residence from one part of the UK to the other. Those are the issues.

Professor Keating: I lived in Canada for a long time, and in Ontario the two tax systems are linked so you fill in your federal tax form and your provincial tax form. It takes about 30 minutes if you have the right software. It is very sophisticated. The province can put into that whatever kind of deductions it wants and it just comes out the other end. In Quebec, you have to fill in two separate systems, but the outcome is the same.

Q207 Chair: Professor Keating, can I just clarify this? Your point about the merits of devolving powers over additional tax rates is based on the politics of it. There is not, again, any economic evidence that automatically devolving the higher tax rates would result in better growth or better decisions. It comes back again, does it not, to this question that it depends on the use that is made of it?

Professor Keating: Yes, exactly.

Q208 Chair: There is no automatic gain as a result of doing one thing or the other.

Professor Keating: No, you cannot. It is impossible to say that a given change in the system automatically produces a policy outcome. It depends on what you do with the powers. This is true, whichever power we are talking about.

Q209 Chair: It slightly confused me because there does seem to be some coverage in some of the press from some authors that would suggest that if you do certain things, then some other things will happen automatically. That is what we are struggling with a little as just mere common people.

Professor Keating: There are various papers. There are many of them and the inferences depend on large-n studies. You generalise from a large number of cases. They are methodologically very problematic, because I cannot quite see what the mechanism is supposed to be. Is it increasing taxes or reducing taxes? The sample of cases is problematic. The application, even if you produced a general result that in general lower taxes produce growth, says nothing whatever about Scotland because Scotland is a particular case and you cannot generalise from a statistical analysis to a particular case. My argument is that the question is not meaningful, not that the answer is wrong. It is just not a meaningful question. It is just not something that social science can do.

Professor Muscatelli: Just to clarify, it is impossible for any statistical study to prove it in my view. Suppose you have two countries. One of them has more fiscal autonomy and the other one has less. Suppose the one that has greater fiscal autonomy just has greater innovation and greater resources and

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happens to grow faster for that reason. You might find over time that that is what is driving the result. It is some other variable that you have not picked up, yet the inadvertent economist might say, "This country has got a greater fiscal autonomy and has grown faster than this other country." It is nothing to do with the tax mechanisms. It is to do with good fortune in the case of natural resources, perhaps good governance in the case of good policies, or some other factor like innovation and entrepreneurship. I would not even start looking at the data. I am surprised that people find this sort of question interesting and apply statistical techniques to it. I just do not think it is particularly interesting.

Chair: I did not say I found it interesting. I just thought I had better ask you about it; that is all.

Q210 Fiona O'Donnell: Moving on from income tax because we have a very long session with HMRC after this, could I ask about the fact that the Bill proposes that any new taxes set by the Scottish Government would have to be approved by Westminster? What are your views on that? Is that about safeguarding Scotland against any risk? Can you understand, though, that that probably will be seen by a lot of people as centralising power, or do you approve of that?

Professor Muscatelli: My view is that I think it is necessary for there to be some sort of co-ordination. I can see why it is couched in those terms, because of issues of tax competition. Suppose the Scottish Parliament were to introduce some sort of payroll tax that impinged on national insurance contributions. This would have an impact on UK taxation so you would need some sort of co-ordination plan. I see it as that. I am not a constitutional lawyer so I cannot say whether the way it is drawn up at the moment is too restrictive, but I think you would need some sort of co-ordination in those cases. You cannot just have a free-for-all.

Professor Keating: Yes, there is a danger of tax exporting as well—tax activity that was not actually in Scotland—and the UK Government would have a legitimate interest in stopping that. Most constitutions I have looked at have a clause that says you can tax something that does not duplicate an existing tax. They have this in Spain and Italy, which is pretty restricting. It has the same effect, I think, as saying that it has to get Westminster approval. I would rather put it in the way that I have just put it. It seems to give more autonomy to the Scottish Government and then ultimately it would be up to the courts to decide whether this was overlapping with an existing tax. It would be two ways of addressing this problem that Scotland should not be doing things that have a negative impact on the UK or vice versa.

Q211 Jim McGovern: Could I just ask, Professor Muscatelli, about the last contribution you made prior to Fiona's question? How could one country have greater fiscal autonomy than another country?

Professor Muscatelli: In the example I gave, if one country had devolved more of its taxes to its local regional state level than another one. For instance, Canada, at the moment, has more fiscal autonomy

than the UK in the sense that the provinces in Canada have to raise more of their taxation locally than the UK countries do. It is in that sense I meant it.

Q212 Jim McGovern: It is not so much countrywide; it is regional-wide.

Professor Muscatelli: Yes, sorry.

Q213 Jim McGovern: There is no such thing as a country having more fiscal autonomy than another country.

Professor Muscatelli: No, you are quite right. I was imprecise. Within the country, the regions, states or provinces have greater powers in the example I gave.

Professor Keating: Yes. There has been quite a lot of confusion in the papers on that point. You might be saying that countries that are decentralised have a greater countrywide rate of growth or that the regions that are devolved have a greater growth than the regions that are not devolved. These are two quite different questions.

Professor Muscatelli: Indeed, in the example cited by Hughes Hallett and Scott, where they got the figure from had to do with devolution to local government. It had nothing to do with devolution to state or regional government. This was why we answered through an article in *The Scotsman*. We felt that it was an inappropriate translation of the data because the study on which it had been applied had nothing to do with devolution to regional or state government.

Jim McGovern: Could I just say to you, at the risk of being even more pedantic, that when they debated the Scotland Bill a couple of weeks ago, it was confirmed that, at the moment, there is no such entity as a Scottish Government? It is a Scottish Executive, for the record.

Chair: You are not really doing very well on a whole number of things, are you? You must pay more attention, I think.

Q214 Mr Reid: In calculating the new block grant, one should take the tax base into account. That will obviously have to be carried out by some organisation. Would you think that the Office for Budget Responsibility is the right body to do that?

Professor Muscatelli: I personally would be comfortable with the Office for Budget Responsibility doing that. I know that some other commentators have said that basically it does still sit within the Treasury and therefore it might be seen as not an independent party. To create yet another body would be administrative overkill, but if the OBR had that responsibility, and if the whole system had oversight from the National Audit Office, I would have thought that would be sufficient.

Chair: Jim, do you want to pick up the questions in question 9?

Jim McGovern: Yes. I am quite intrigued as it mentions the Scottish Government, which we have already said does not exist.

Chair: Write out 500 times, "I must pay more attention."

Q215 Jim McGovern: He has got to go and stand in a corner obviously. I think we have probably done it to

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death actually, but what would the risks to the Scottish economy be of effectively putting all the eggs in one basket when it comes to taxes?

Professor Muscatelli: Our reason for suggesting that personal income taxation should be the shared tax basis is that it is less volatile than the obvious other candidates, which were corporation tax and VAT. In the case of VAT, there are other issues around European competition. If you look at the data over the last 10 years, corporation tax is much more volatile than personal income taxation. Regarding the argument as to whether devolving these other taxes, perhaps through tax sharing, would reduce the volatility, I do not think it necessarily would because you are adding two other taxes which are more volatile than personal income tax and they are quite well correlated over the business cycle. I do not think it would help offset the risks from devolving personal income taxation.

Professor Keating: That maybe gets us on to the other problem that has been raised about this, which is what happens to tax volatility and the fact that the Scottish Parliament, because it is the Parliament technically, does not have the power to borrow. The Bill gives it very limited powers to borrow and maybe there should be a greater capacity to borrow to overcome that kind of volatility, again subject to various constraints and overall thresholds.

Professor Muscatelli: Can I come in on that because I would certainly agree with that point? When I was asked by the Scotland Bill Committee in the Scottish Parliament what changes I would make, one of them was on the grant adjustment mechanisms but the other issue is on the borrowing powers. The £500 million overall limit does not cover the potential fluctuations. If you look at the difference in personal income taxation and receipts accruing to Scotland—this is the total as opposed to the bit that would be devolved under Calman—between 2007–08 and 2008–09 there was a fall of about £500 million in income tax receipts which were attributable to Scotland. This is from the Government Expenditure and Revenue Scotland survey—the GERS report. Over time, if you wanted to protect Scotland from fluctuations in tax receipts or allow them to smooth the total resources available, you might want to look at whether £500 million is sufficient.

Q216 Mr Reid: Do you have any particular figure that you would want to put as the limit?

Professor Muscatelli: Any figure is going to be dependent on experience in the last few years, and the last two years have been particular because of the depth of the recession, but I would have thought that doubling that limit would not be exaggerated in terms of prudence and in terms of giving the Scottish Parliament a bit more room for manoeuvre.

Q217 Mr Reid: What about restrictions to make sure that it is being used wisely? For example, a Scottish Government, coming to the end of its term of office, could decide, “Let’s borrow a lot of money and spend a lot of money to make ourselves popular and either ourselves or the next Government can worry about it after the election.” Do you have a fear that that might

happen and, if so, what sort of restrictions would you put on to stop, say, irresponsible borrowing?

Professor Muscatelli: There are two reactions to that. One is why should that not be part of the political process because it is up to electors then to punish the Government which has behaved in that way? In terms of keeping actual and forecast income taxes in line, one of the things other commentators and I suggested to the Scotland Bill Committee in the Scottish Parliament is that, rather than applying a forecast over four years, we might perhaps update these forecasts more frequently so that you could not have a Government doing this and then saying, “The forecasts were wrong.” By having a rolling forecast and keeping actual and forecast tax receipts closer together, that would become part of the political process. I think that is fair game. That is what politics is about. It is about making promises and sticking by them, or being punished.

Chair: Or not, as the case may be.

Q218 Mr Reid: How about, say, a Scottish Office for Budget Responsibility so that the electorate would be aware of perhaps what independent opinion was of what the Government was doing?

Professor Muscatelli: It is possible, but you could also ask the OBR to play that role. Again, it is a question as to whether you want to create another body given that we are talking here about a fraction of the total resources of the Scottish budget. It is whether you want to create another body—another quango—to do that.

Professor Keating: The mechanism must ultimately be political. The Parliament should answer to its electors, but there are things that you can do. There have been a lot of experiences in Canada in fact with irresponsible Governments racking up deficits in the 1980s and the 1990s and there have been some constitutional changes, some of which provide for a balanced budget, which is a nonsense and never really happens. The more serious ones set a total limit on the amount of Government debt, whether it is for accrued deficits, for revenue expenditure or whether it is capital expenditure, which is what exists in Europe through the Maastricht Treaty. It is not very well applied at the moment as it broke down, but something like that could be done to ensure that the borrowing did not get completely out of hand. Indeed, something like that exists in Spain because the borrowing of the regional governments counts towards the overall Spanish debt for European purposes. The national Government has negotiated with the regions that there will be a limit on the total amount of debt that they are allowed to hold at any given point in time.

Q219 Mr Reid: Do you think there needs to be a legal constraint, or simply transparency such as the OBR saying to the public, “We believe this Government is acting irresponsibly”?

Professor Muscatelli: I would argue that there should be some constraint partly because there is an issue of moral hazard. The thing about regional governments or, in this case, the Scottish Parliament is that there is an issue as to what would happen if, say, very

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irresponsible decisions were taken because there is a central Parliament that can always bail it out. There is a moral hazard issue which would not arise elsewhere. I would go for a limit but I would not have that limit of £500 million.

Q220 Chair: Professor Keating, at the present moment, at half-past two, they will be stoking the boiler of the Eurostar. You have to leave in 15 minutes. In particular, Professor Keating, is there anything that you think the Calman Commission has missed? Is there a better way? Is there something in particular where you would say, “Look, from my experience, they really should have considered X or Y”? I appreciate that a lot of these things are political judgments, but based on what has happened elsewhere, is there something where there is some evidence that devolving powers over a particular area would result in beneficial conclusions?

Professor Keating: It is difficult, as I think we have agreed, to say that any given measure of devolution produces an outcome that is better. It provides the opportunities for politicians to make better decisions. My view about Calman is that it was too cautious. The evidence it received from Government Departments was extremely cautious. The powers had to be prised out of them—not just the Treasury but other Departments as well. I would have liked to see something altogether bolder, including on the fiscal side.

As I said before, it depends on what we are thinking of this and the framework that we are using for this. Are we saying, “We are assuming that devolution is going to continue at present, whereby the Scottish Parliament makes decisions that are marginally different from England?”, or are we thinking about the possibility of political opinion diverging in quite a radical way in the future? If we are, then we will certainly have to revisit this question of fiscal autonomy in a few years and I think we will.

Q221 Chair: That is right, but there does not seem to be anything wrong with the idea of our revisiting the devolution settlement after 10 years. In a few years’ time, depending on whether or not Professor Muscatelli and his expert group got it totally wrong or accurately right, we will no doubt want to review it again. All of these things are political judgments, are they not? In a sense, you are now moving on to the question of your own political judgment and opinion rather than anything that is particularly firmly based on evidence, are you not? What I am looking to identify is whether or not you would be able to say, given your experience, that over most similar regimes, as it were, such and such has tended to be an enormous success.

Professor Keating: On a comparative basis, we can say certain things. The Basque case has been evoked in many places in this debate, sometimes in a rather ill-informed way. In fact, in that case, fiscal powers enabled them to make a much more effective response to de-industrialisation in the 1990s than we had in Scotland, with a much more effective package of proposals and a fine-tuned industrial policy, and they have come out of the present recession much better.

That was not automatically the result of fiscal autonomy because they have had fiscal autonomy for a long time. It was the use of those powers that really mattered. Also, as a political scientist, I can say—it does not matter about my political preference—that where you have the devolution of a lot of spending powers without the corresponding taxation powers, there is a problem about accountability. I think the Scottish Parliament should be raising the money that it spends because then you can get a better quality of democratic debate and accountability.

Q222 Chair: You quoted the example that the Basques were able to respond to de-industrialisation quite effectively. Can you just give me an indication of what powers they had that Scotland will not have?

Professor Keating: They have powers to make tax deductions and tax credits in industrial areas which are focused on particular sectors, particularly hi-tech sectors. They use tax powers not to cut taxes in a blanket way but to focus on key sectors. They are able to bring together various powers, including fiscal powers, in a package without constantly having to co-ordinate everything with Madrid. This gave them flexibility in response that we very often do not have because we have to negotiate responses to industrial crisis in a very complex system. They are also able to engage the actors in the Basque country, whether it is the business community, the trade unions, the social activists and so on, in a very direct way because they are paying taxes and they know that the decisions they make have a very immediate impact upon them. It was that combination, but the fiscal powers enabled that to happen. It did not cause it; it enabled that to be done.

Q223 Chair: We have just completed a report on the video games and interactive technology industries. In there, we are looking at ways in which we can fine tune some elements of financial support, whether or not it is tax breaks, R and D expenditure or innovative expenditure of other sorts. The thing that struck me about that was that, even though we examined it in the context of Scotland in the Scottish Affairs Committee, many of the issues about tax breaks and the like were actually UK-wide and video games industries elsewhere in the UK would equally benefit from this targeting.

I was not clear whether or not you are saying that, in a sense, there is a Scottish response to these things, or whether or not it can be done centrally. There requires a lighter touch and a more delicate touch than the Treasury is perhaps used to. Were they willing to do something like that for the video games industry, which, in the UK, does not depend only on Scotland, it would be reinforced in Scotland by what happened elsewhere in the UK; what is required is a degree of fine tuning and delicacy of touch from a UK Exchequer basis. The objectives you identify could be met in some cases by another mechanism than just simply devolution.

Professor Keating: Yes, but what is happening generally across Europe is that these kinds of industrial policy decisions and regional development decisions are being devolved to the local level where

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you can link up with labour markets, education policies, infrastructure and so on. That is the place where these come together and where we see the most successful examples of innovation. It can no longer be done at the state level.

Professor Muscatelli: Can I—

Q224 Chair: Can I just continue with Professor Keating because he has to go and you don't—we've got you for a little bit longer.

In terms of the advantages of decentralisation, which I understand, can I ask you to what extent that also applies to decentralisation within Scotland, say, to the local authorities? One of the things that has concerned a number of us, I know, is the extent to which power, where devolved to the Scottish Parliament, has then, in Scotland, been sucked into Edinburgh and away from local authorities, from individual economic initiatives and the like. Is that something that from your experience you have noticed happening in Scotland to a greater or lesser extent than elsewhere? Is it something that has been reversed in other circumstances? Is it something that you would recommend we look at?

Professor Keating: Yes, because the local level is critically important as well. Devolution came to Scotland, not because Scotland is some kind of natural economic unit; but because it is an historic nation. Yet it is of the scale that is more appropriate than the United Kingdom for many of these kinds of interventions. Then, of course, within Scotland there is a very important local dimension and this is something that Governments have been struggling with for 30 years, through the SDA, Scottish Enterprise and the enterprise network, to get an appropriate local level response to this. Again, we are still not there. We still have a very untidy institutional landscape when it comes to economic development. It needs an awful lot of work done on it.

Chair: Thank you. Are there any other points that we want to ask Professor Keating before we throw him out?

Q225 Jim McGovern: I want to try and determine something that you mentioned earlier about the raising of tax powers or additional tax powers for Scotland. You said that it would promote debate with trade unions and various other organisations. Are you of the opinion that it would never actually be applied, but it would be something that would be good for an argument?

Professor Keating: Out of that debate, I assume there will be a result and we will be faced with the necessity to decide whether we want high taxes and high welfare or low taxes, because you cannot have both. At the moment, we have been pretending, or if you read a lot of the debate there is a belief, that you can have low taxes and high standards of public services, but you cannot.

Q226 Jim McGovern: The tax powers that the Scottish Parliament have currently have never been applied. Is there any point in varying them in order to promote a debate?

Professor Keating: To take up the point that Anton made, under this present proposal, the Parliament would have to make an explicit decision. That may be just symbolic, but the more the tax powers and the wider the tax powers, the more people are going to get interested because the more people are going to be affected. The evidence internationally, because there are many other things going on, is that this does engage stakeholders in a really serious way. Their pockets are going to be affected so they get involved. We have to face up to the tough decision that we have been avoiding in Scotland for the last 10 years because there has been so much money going around, but the money is going to stop and it is about time we decided now what the priorities are. They may be high taxes or they may be low taxes—that is a democratic decision—but we cannot any longer evade that question.

Chair: Alan, you wanted to come in?

Q227 Mr Reid: Are there any taxes other than the ones that Calman recommended that you think could be devolved to Scotland—the power to vary other taxes?

Professor Keating: I do not see why you could not change the excise taxes, vehicle licence duty, alcohol and petrol tax. Of course, there would be limits because otherwise people would go and buy their petrol elsewhere, but nobody is going to drive all the way from Inverness to Carlisle to fill up their petrol tank. That defines what the limits are. Similarly, with alcohol taxation, there would be a fairly modest variation. The vehicle licence duty is devolved to regions in most countries in Europe. That seems to be an obvious one. You know where people register their car.

Q228 Mr Reid: Is it practical, particularly with alcohol duties? We already have cross-Channel smuggling so would we not just have cross-border smuggling? When I say “smuggling”, I mean legally of course.

Professor Keating: Obviously that imposes constraints. If the tax difference is so high that it pays you to drive a truck down, get the thing and illegally retail it to your friend, then maybe you will do it. If the difference is marginal, then the incentives will not be there. That is true of the world. That is true between the south of England and France, but that is no reason for not devolving the taxes. It is just to say that there are limits on the scope for variation. The more different taxes you have with small margins of variation means that when you put them all together, you get a fairly large amount of discretion.

Q229 Mr Reid: Professor Keating, in your written evidence, at paragraph 8, you say, “If the UK government should commit itself to a radical shrinking of the public sector and the Scottish Parliament choose to maintain the existing welfare state, then more radical devolution of taxation will be necessary.” From what you have said on excise taxes, there would only be small variations, so what taxes would it be?

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Q230 Professor Keating: Adding up all these small taxes, you get small amounts of variation. That generates a certain amount of revenue. Income tax is another one and possibly corporation tax, but of course that is subject to competitive constraints. This is true of independent states. This is true of France versus Germany. You cannot get too far out of line, but nevertheless we do see in Europe significant differences. We see countries that have maintained relatively high taxation levels and also extremely high levels of economic performance because they have spent the taxes on things that enhance economic performance.

Q231 Mr Reid: When you say the existing welfare state, do you mean welfare benefits?

Professor Keating: No. I mean education, health, public expenditure. This is a debate that is being engaged in the UK since the last election: what should the size of the state be? If the decision in Scotland and Wales should be different from England, clearly that has implications for the revenue base. It would imply that they need to raise more taxes in Scotland.

Q232 Mr Reid: How much do you think the Scottish Government could vary income tax without people moving south of the border to escape it? Is there a figure you could put on it?

Professor Keating: Maybe Anton has a figure on that, but I could not. I would just say that the scope for substantially higher taxation is limited by precisely that. But if you look, for example, at Canada—I know Canada is a big country but most people live within 100 kilometres of the border so actually it is a fairly densely populated country—there are all sorts of other things that determine where people will live, mainly where you can get a job and where your family is. This does give scope for a certain amount of variation in taxation without provoking mass migration.

Q233 Chair: We will let you go, Professor Keating. Thank you very much for coming to see us. We hope we have not been too hard on you.

Professor Keating: No, I was expecting a lot worse.

Q234 Chair: I was going to say that if you want to complain, write to the Speaker. I can tell you what he will say. If you feel happy, tell all your friends that it is not too bad coming along here. Thank you very much.

Professor Muscatelli, we have been saving all the hard ones for you. You wanted to come in earlier on a point that was being made to Professor Keating.

Professor Muscatelli: I was just coming in to say that I agree with your statement, Chairman. If these issues around R and D taxes or a tax break for particular sectors are economic development issues, then we have to ask the question, is Scotland a special case or are these UK industries that need to be encouraged? Is the economic development issue an issue for Scotland alone or is it also for Northern Ireland, parts of Wales and parts of the north-west or whatever? If that is the case, we should be looking at tax breaks around corporation tax at local level, perhaps within a UK economic development context. The reason why we

resisted the devolution of corporation tax, or suggested to the Commission that they should not go there, is because we felt that it would lead to tax competition to vary the headline rate for all firms. If corporation taxation is going to be used for economic development issues, we have to ask whether Scotland, like the Basque country, is definitely a special case in terms of de-industrialisation.

I think your point about locality within Scotland is also relevant because why should you stop the devolution there? What about issues of Glasgow versus Edinburgh, for instance? These are important issues.

Q235 Fiona O'Donnell: The Scottish Government, in terms of freezing council tax with local authorities, has set the situation up so that if local authorities choose to raise the council tax they will be penalised in terms of their allocation. Is Scotland at risk with this Bill of similar treatment from the UK Government?

Professor Muscatelli: This is why we have to pin down how the grant deduction formula is going to work so that it does not become a political issue of conflict between the two countries. I think that is important. As Michael pointed out earlier, we have that situation anyway in terms of formula bypass. Political issues arise anyway around what is Barnettable and what is not—whether the Olympic expenditure is or is not Barnettable. It is not as if these issues do not exist at the moment, but that is why it is important that the grant formula should be embedded in such a way that it is understood by all parties.

Q236 Chair: This is the same sort of point that we made to Professor Keating. Upon reflection, given all that has happened and the exchanges that have taken place since you reported, with hindsight, are there any changes that you would make, or issues that we now ought to take into account when considering our report, that you did not consider at the time?

Professor Muscatelli: I would say there are three issues, Chairman, and they are largely areas on which we were silent but with hindsight we can fill in the gaps, if you like. One is on the formula allocation adjustment where, in retrospect, I would recommend a formula adjustment which indexed the grant adjustment to the UK income tax base. Secondly, we were not precise on the issue of borrowing limits. We simply said that they had to be prudential, etc, etc, but both in terms of the borrowing for revenue and capital purposes we could have perhaps spelt out a bit more precisely what those limits were. For instance, around capital borrowing, it is not clear to me that the £2 billion limit is the right limit. Again, in exchanges with the Scotland Bill Committee, probably one way to fix that would be in terms of what is prudential serviceability out of the income tax share of the total departmental expenditure limit for Scotland. Those are the two main areas. The third is possibly issues around thresholds and different tax bands and whether this is a staging post towards a more complex discussion around those issues.

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As you pointed out, the Scotland Bill may simply be a staging post. It may be that in 10 years' time we will see this as one move in the direction of greater fiscal accountability and then we have to revisit it. On the third issue, perhaps, we might have been more precise about the nature of tax devolution, but simplicity was a factor as well.

Q237 Chair: Thank you. I very much got the impression from what you were saying earlier that we should not confuse ourselves about all the furore that has been kicked up by writers about various other

models and statistics and all the rest of it, as there is very little substance in that. The politics of the situation is as described in the Calman report, with minor variations. Is that a fair way of looking at it all?
Professor Muscatelli: Absolutely. I would agree with that, yes. That is our position.

Chair: Does anyone else have any final questions? Thank you very much for coming along. As before, if you have any complaints, send them to the Speaker. Tell your friends that it was not nearly as hard as you expected. Thank you very much.

Examination of Witnesses

Witnesses: **Sarah Walker**, Director PSN, Her Majesty's Revenue and Customs, and **Pamela Mulholland**, Head of Devolved Taxation, Her Majesty's Revenue and Customs, gave evidence.

Q238 Chair: Welcome to the meeting of the Scottish Affairs Committee looking at the Scotland Bill, Calman and related matters. It may be helpful if you could introduce yourselves for the record.

Sarah Walker: Good afternoon. My name is Sarah Walker. I am the Director of Pay As You Earn, Self Assessment and National Insurance in Her Majesty's Revenue and Customs. My colleague is Pamela Mulholland, the Head of Devolved Taxation in HMRC.

Q239 Chair: The general issue relating to the Scotland Bill inasmuch as it affects yourselves is, is it doable and, if so, can you do it? That is what the questions boil down to, is it not? I suspect that a simple yes or no might not be sufficient, but you can maybe give us some background and then we will ask specific questions.

Sarah Walker: That is fine. I think the short answer is yes, it is doable, and, yes, we can do it. The basic design of the income tax¹ is based on the Scottish variable rate which has been in place since the relevant legislation was passed in 1998. That is built into our systems and built into employers' systems. The differences are clearly that the new Scottish tax will apply to all the rates of income tax rather than just the basic rate and that a portion of the revenue from each of those rates will be attributed to Scotland, but that does not affect the mechanics of how it will work for employers. The other thing to say is that the expected date for implementation is 2016, which gives us five years from now to get all the arrangements in place, which is giving us plenty of time to do it. We are not going to be rushed. We are confident that we will be able to deliver.

Q240 Chair: You are the people who administer tax credits, are you not?

Sarah Walker: Yes.

Q241 Chair: Now, I, and almost every other MP, have hosts of people coming to us in a distraught state about tax credits. How can we have any confidence

that the people who gave us tax credits can run this properly?

Sarah Walker: I think this is a different proposition. Clearly, in the early years of tax credits, the Department had difficulty in operating it. I think now it is better than it was. The Scottish rate will be implemented through employers. It will be something that the employers know how to do. We will be responsible for identifying the Scottish taxpayers and telling the employers who to operate the new rates on. It is a well-known process and we are confident that we can do it.

Q242 Chair: I was at a seminar held by accountants and other people the other day and a whole group of anoraks were discussing in enormous detail the complexities of all of this. They seemed to be getting very excited about how difficult it was. Are you satisfied that you can cope with all possible problems that might be flung up?

Sarah Walker: I would be mad if I said that we could cope with every single problem, but clearly we have time to get it right. The sorts of things that are being raised at the moment around the definition of Scottish taxpayers are things that we can very easily address together with the representative bodies. Through good guidance and good consultation between now and the introduction of the scheme, we are confident that we can make that work.

Q243 Lindsay Roy: What are the estimated costs of introducing this new system and over what time scale?

Sarah Walker: The time scale proposed will start in April 2016. The costs—

Q244 Lindsay Roy: Time scale, sorry.

Sarah Walker: I am sorry. I am talking about income tax. Yes.

Q245 Lindsay Roy: In terms of preparation for this.

Sarah Walker: We will start as soon as the Bill is passed and we will have the thing up and running in time for starting in April 2016.

¹ Scottish Rate of Income Tax

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Q246 Lindsay Roy: Do you have a budgetary profile from 2011 through to 2016 as to what the on-costs would be?

Sarah Walker: There are some costs published in the regulatory impact assessment, but the full costs will depend on the detailed design of the system, which is not all in place yet.

Q247 Lindsay Roy: Is there a rough estimate?

Sarah Walker: We are saying that it is something like £40 million to £45 million over the period between now and 2016.² Out of that, roughly £10 million is IT costs, computer costs, and the remainder is the administration of setting the thing up.

Q248 Lindsay Roy: Is the responsibility for that revenue with the UK Government or the Scottish Government?

Sarah Walker: Under the terms of the agreement, I think the Treasury rule is that the Scottish Government would meet those costs.

Q249 Fiona O'Donnell: In terms of how easy the system is going to be to operate, both for you and as someone who has been responsible for payroll in a previous life and had the lovely disks from HMRC that made it all easy, is it going to be easy for you to operate and easy for people working in HR to operate as well.

Sarah Walker: Perhaps I can just explain a little bit about how it is going to work. The way PAYE works—I am sure you know from having operated it—is that you have tax tables and tax codes. The tax tables set out the different rates and allow you to calculate the rates of tax. The codes identify what is different about each employee and tells you what allowances and deductions they are allowed. Before the introduction of the Scottish tax, we will identify from our records all the people we think are Scottish taxpayers. We will write to all of them in order to tell them we think they are a Scottish taxpayer, allow them to dispute it or complain and sort out, as far as we can, those questions. Once we have a list of who is a Scottish taxpayer, we will issue to all employers a different type of tax code with a prefix, an “S” on it, so that it identifies somebody as a Scottish taxpayer.

Q250 Fiona O'Donnell: Given that the definition of a Scottish taxpayer has not been tested in the courts yet, at what stage do you think you will be writing out to say that to people so that we know we have time for court cases?

Pamela Mulholland: The current plan is the year before, but again that depends on the final design of the system. Early indications are that we would probably do that round about the summer of the year before so there is plenty of time.

Q251 Fiona O'Donnell: Is that allowing for time for lengthy legal disputes, going to Europe and all that kind of thing?

Sarah Walker: We are not expecting a lot of difficult cases.

Fiona O'Donnell: There are some thrown Scots out there.

Sarah Walker: I am sure there will be some people who will want to dispute and clearly that is why if we write out in the summer, it gives us nine months or so to the start of the year. Obviously, if there are still disputes going on, during the year or after the year, we can still put the thing right. The intention is that if we do it that way, the vast majority of people will have a very clear idea by the beginning of the tax year whether they are a Scottish taxpayer.

Q252 Fiona O'Donnell: Did you want to add anything, Pamela?

Pamela Mulholland: I was just going to say that for the vast majority of people it is fairly straightforward. Most people know where they live and there will be some complex—

Fiona O'Donnell: I want to come to the subject of MPs and the rest, but I will wait until we get to that question. Thank you.

Q253 Chair: There is no way under any of the rules that you devise that Sean Connery would be classed as a Scottish taxpayer, is there, because he has managed to get himself—

Sarah Walker: I do not think he is a UK resident.

Chair: That is right and, even under the new system, I do not think his commitment to Scotland is such as will result in him wanting to pay tax here. Cathy, you wanted to come in.

Q254 Cathy Jamieson: Could I just explore some of the difficult areas? The Institute of Chartered Accountants of Scotland suggested in its evidence to the Scottish Parliament's Bill Committee that there were a number of anomalies. What I want to try and get at is this. Are they raising serious concerns about a large number of cases or are they just trying to make clever points and show how difficult it all is? For example, they suggest this for some itinerant workers or people who do not have a fixed address: somebody who lives in England but works in Scotland on a day shift would be an English taxpayer, but somebody who lives in England and works a night shift in Scotland would be a Scottish taxpayer. The issue is that if there are those kinds of anomalies, does that undermine the public's confidence that it is a fair system? Are they really just “at it” in terms of highlighting these anomalies or are there serious questions like those to be addressed?

Sarah Walker: In that particular example, if they live in England, then they will not be a Scottish taxpayer because it is about where you live. Whether you work in Scotland on a day shift or a night shift, it will not make a difference. I am not saying that there are not any specific issues that the Institute have raised that clearly need further discussion, but I do not think that is one that is going to cause us any particular problem. The whole basis is where you live. It is being able to determine where somebody lives and that is where their main residence is.

Q255 Cathy Jamieson: Can I follow up with another example that they have suggested? They talk about an

² For the period up to and including 2016–17

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itinerant worker who might have spent 101 days in Scotland, 99 days in England and 165 days working overseas but, in such a case, would be a UK resident and deemed to be a Scottish taxpayer despite the fact that he has spent the majority of his time outside Scotland.

Sarah Walker: The first test is whether they are UK-resident. If they are UK-resident, then the choice is where their home is within the UK. In that case, if they have a clear home either in Scotland or in England, again it will follow that that will be where they are taxed. If they do not have an obvious home in the UK, then you have to start counting the days and that is where that day count comes in. If they have a home and it is clear where they live, then that is where they will be taxed.

Q256 Cathy Jamieson: Can I add a final point? I am going to choose my words very carefully. Not everyone will be as keen to co-operate and make this as simple as possible and be up front in wanting to pay their fair share. Do you think that there are loopholes which need to be addressed around this particular issue?

Sarah Walker: I do not think there are loopholes. It will obviously be important that we do the right sort of compliance, that we check up where people live and it is not just the address they want to give us. We will need to have systems where we can, where necessary, investigate and use whatever evidence we can to check where people really live.

Q257 Chair: Following that up, we do remember the poll tax where there was an incentive to disappear. I appreciate that much of this will be PAYE, will it not, and therefore you have a link with employers, but there are, certainly in areas like mine, quite a substantial number who are not declaring income. There is the black economy and all the rest of it. Will you be able to tackle those sorts of areas adequately?

Sarah Walker: We do a lot of compliance activity in relation to the black economy and people who do not work. The Government have just promised us a lot of extra money to do more of that sort of work. We are quite successful in our compliance. Clearly, the more we do, the more we will collect, but it is not a new problem in terms of identifying people who are not declaring their income.

Q258 Chair: But there is nothing in relation to the Scotland Bill that makes the issues relating to compliance any more or less difficult.

Sarah Walker: Clearly, the new thing is where people live. The Scottish rate will not always be higher than the English or lower than the English, so clearly it will not always be obvious to people where it is in their interests to live. If suddenly there are a lot of people who decide that they will live somewhere else after a different tax rate has been declared, that would ring alarm bells for us. There are things that we can follow up. We think that we will be able to determine, in the huge majority of cases very easily, where people live and, where we cannot, we will develop the compliance activities that will try and track those people down.

Q259 Fiona O'Donnell: This is a very narrow question and I promise that it is not motivated by self-interest. As Cathy was saying, it is not just a question of definitions. It is about fairness and people being able to see that the system is fair. One of the definitions where the Scottish rate would apply would be for individuals if they represent a Scottish constituency in Westminster, Edinburgh or the European Parliament for any part of that year. I am thinking about a Member of Parliament whose main home is in London and whose family is resident there. They are accessing all the services such as the health service and they have children at school. Can it be seen to be fair that they are paying part of their income tax in Scotland but the services that they are predominantly consuming are in England?

Sarah Walker: That is obviously a decision that Ministers have taken, but they have obviously taken it on the grounds that if somebody represents a Scottish constituency, then they have that very close connection, or ought to have a very close connection, to Scotland. Therefore, it makes sense for them to pay the Scottish tax, but, as I say, that is a decision that Ministers have taken.

Fiona O'Donnell: Yes, I am not defending it. I just think that it will be the kind of thing, given the scrutiny, quite rightly, that there is of MPs, that people will pick up on.

Q260 Dr Whiteford: First of all, I would like to follow up the point about the Institute of Chartered Accountants of Scotland evidence given to the Scottish Parliament, to which Cathy has already alluded. One of the things they said in evidence was that they believed the implementation costs could be substantially higher than the £45 million estimate. My concern about that would be, given that it will be the Scottish Parliament which meets the costs of that, what guarantees are there in place to ensure that costs do not spiral, because sometimes in Government Departments costs of implementation of new systems do tend to spiral?

Sarah Walker: I have seen the figure that the Institute quoted; I think it was a figure of £150 million. We simply do not recognise that and do not see any obvious way in which that could happen. The IT component of this is relatively small. As I say, it is £10 million, so obviously it is big, but in relation to the cost of our big tax systems that is a relatively small proportion of the costs. I cannot give any guarantees that that will be precisely right. It is an estimate at the moment and, clearly, as I say, it does depend upon the precise specification of the rules. I would like to say that it is unlikely it will go up hugely unless the system becomes much more complicated. Equally, the cost of implementation is things like mailing out to all the Scottish taxpayers, telling them that we think they are a Scottish taxpayer and dealing with the replies and any inquiries. That is something that we are used to doing so it is relatively easy for us to estimate what that cost would be and the number of people we would need to do that. Obviously, there will be some disputes that will stretch out and cost us money, but we are expecting those to be relatively small. We have reasonable confidence that that is a

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good estimate of the cost, but it will depend. It is five years' time so clearly other things could happen.

Q261 Dr Whiteford: In the evidence session immediately before this, we were hearing that in countries like Canada, which have a very devolved and decentralised fiscal system, they have very effective ways of collecting taxes across different tax rates. I just wondered to what extent you had looked at not just Canada but the other countries in Europe that have quite complex tax arrangements in different parts of the state—Spain, Italy, Germany and there are others. Is that something that you have looked at in terms of building a system that is going to work in the UK?

Sarah Walker: The system we have is the system that was recommended by Calman. Calman recommended that it was based on our national PAYE system. Other countries do have different ways of collecting regional taxes based on their basic income tax system. We have not looked at doing it in a way that is not through PAYE because clearly that was the Calman recommendation, which has been accepted by the Government.

Q262 Dr Whiteford: How responsive do you think the IT system is going to be to changes and fluctuations in the tax rate, if taxes go up or down in Scotland? Are you confident that the technical specifications of that are going to happen?

Sarah Walker: Changing a tax rate in our system is pretty easy. It is not a big rewrite. We put them in every year when the budget changes. We have said, I think, that we would expect the Scottish Parliament to decide on the rate it wants to apply in the autumn before the start of the tax year, and that would allow us to incorporate that in tax tables and tax codes which will be issued around this time of year—January and February—for implementation from the following April.

Q263 Dr Whiteford: This is the last question from me. The Public Accounts Committee report that came out on 1 February highlighted some administrative issues in HMRC. Do you expect that those problems will have some impact on HMRC's ability to implement and administer the Scottish rate of income tax?

Sarah Walker: I cannot say too much about the PAC report because we have not made a formal response to the Committee, but clearly it was around the implementation of our NPS system, the current PAYE system, and we made some comments on the way that project was run. Clearly, we will have lessons to learn from that, and Lesley Strathie, our Permanent Secretary, has made it very clear that we have some lessons to learn.

The changes that we need to put in to implement the Scottish tax are of a much smaller magnitude than the wholesale reform of PAYE which we did under that programme. We think they are much more within our control. We think we have plenty of time to plan. We will clearly learn the lessons from what went wrong before and, yes, we think we can do it.

Q264 Chair: I wonder if I could follow up with a couple of points. I cannot remember whether or not we have had a statement from you indicating just how expensive you think it will be both in capital and revenue terms—your estimates at the moment. If not, I wonder if we could have one, just for the record, indicating how much you think it will all be.

I think we still have this anxiety. I used to be on the Public Accounts Committee and there was a constant litany of grief about IT projects. To be fair, it was not just yourselves, but you were not exempt. There is this anxiety that you will end up not being able to cope with either the time scale or the costs because, in a sense, why should you be different from any other Government IT project which traditionally runs over time and over budget? What assurances can you give us? Is this project particularly simple? Everybody says they have learnt lessons, but it turns out that they have not learnt any lessons. What assurances can you give us that it is not going to blow up in our faces?

Sarah Walker: In terms of the costs, there are figures for the costs in the regulatory impact assessment and that is all we can give you at the moment.

Q265 Chair: And these still apply?

Sarah Walker: They still apply, yes. They accompany the Bill. The only thing I can add in terms of assurances is that we did give the Scottish Government an indication that we would be able to run the Scottish variable rate with effect from 2013 if they wanted to operate it. That gives us two years' notice. That is the vast majority of the IT change that we would need in order to operate the Scottish income tax, which we are aiming another three years beyond that to do. On that basis, if we could do most of it in two years' time but we actually have five years to do it, it seems to me a reasonable expectation that we will be able to deliver it.

Q266 Chair: It certainly sounds reasonable, but then again all the other IT projects sounded reasonable when we were agreeing to them as well.

Can I turn to the question of deadlines? Again, this was a point that I had not thought of until you mentioned it. You seemed to be saying that you would expect the Scottish Parliament to set the rate in the autumn to be implemented from the April. Are we likely to have a cut-off date by which you cannot implement it unless they set a budget by such-and-such a date? You can see in those circumstances how there would be an incentive, depending on what the make-up of the Parliament is, for people to be delaying it beyond in order to block a decision and so on, or is it going to be a slightly movable feast?

Sarah Walker: I think there will be a deadline if they want the new rate to apply from 6 April. I might let Pam explain a bit more.

Pamela Mulholland: This is a matter for the Treasury and the Scottish Government to discuss. We would expect the rate to be signalled in the autumn budgets. What the Bill provides for is that the resolution must be passed before the start of a tax year, so by 5 April. Now, that would be very late in terms of systems, and certainly what we are saying is that if we do not have the rate by December, things start to get very difficult

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for businesses to implement that rate and for HMRC to communicate to make those changes. The further past December it goes, the more difficult it becomes, but there are processes in place to deal with that should it happen. It is just that the burdens become more once you go past December.

Q267 Chair: Can you just clarify for me what these difficulties for businesses are? I am not an accountant. I have never operated a payroll. I just presume that somebody presses a button and one set of figures gets changed for another set of figures and a wee man in a computer changes it all.

Sarah Walker: We issue tax codes to people, which, in a lot of cases, do depend on the tax rates. We do that annually in the period between January and March. We are sending out now PAYE tax codes to people. If we do not know what the tax rates are going to be, some of those will be wrong. Clearly in the past, there have been UK budgets in March which have changed tax rates. What happens then is that you start the year with out of date tax codes—the old tax codes. We then have to reissue tax tables and tax codes to employers after the start of the tax year. That means they have to change everything in their payrolls. They have extra work to do because they have to do the work twice. It is not impossible. We have tried to avoid that in recent years by the Government setting rates and allowances before Christmas rather than in the March Budget. That saves work for employers because they only have to do it once.

Q268 Chair: I just wanted to be clear, though, that we will not find ourselves in a position where the Scottish Government complain that they are unable to change the rate of tax because the Treasury is unable to do the mechanics. Even if they go beyond whatever would be the best date, the desirable date, you could end up issuing sets of tax codes and people's code numbers and then have to change it during the year, if necessary. That is messy and difficult, with additional time and effort and so on, but it still can be done.

Sarah Walker: Yes. As Pamela says, the legislation allows for that resolution to be passed right up until 5 April and, if it is, then we will implement it.

Q269 Chair: There are no circumstances, unless I am mistaken—I want to be absolutely clear about this—where the Scottish Government could turn round and say, “We would like to have made this change, but HM Treasury is saying no, we are too late.”

Sarah Walker: Only if it is after 5 April.

Q270 Chair: Why can you not change it after 5 April, because surely the same thing would happen if you did it on 4 April? You still have the inconvenience of sending out the additional tables, it is messy and all the rest of it. What difference does that particular date make?

Sarah Walker: Clearly it is in the legislation. You have to draw a line at some point. Changing the tax rate in-year is confusing and difficult for all sorts of reasons.

Q271 Chair: Of course it is. I understand that. People who are looking for an argument might very well seek to blame something that they did not want to do on HM Treasury. I just want to be clear that, in fact, it is doable even though it is chaotic and more difficult. It would be the responsibility of the Scottish Parliament for the date on which they set it, but you would still be able to do it even though it is difficult, messy and more expensive.

Sarah Walker: The other problem is that once you pass the start of the tax year and you then change the tax rate, you are having a retrospective effect on actions and decisions that people have made after 6 April. You might choose to employ somebody or take a job on the assumption that your income tax rate was going to be one thing and then retrospectively it would be put into something else.

Q272 Chair: I am not arguing that it should be done. I am just seeking to clarify whether or not you could do it and you would never have a circumstance where you would say, “This actually cannot be done.” It might be undesirable, they might have got themselves into a mess, but you would always be able to do it at the date that they decided. Even if they decided nine months through the year and it would mean all sorts of chaos going backwards, you mechanically would still be able to do it.

Sarah Walker: I think theoretically we could, although there would be lots of other legal reasons why it would be—

Q273 Chair: Absolutely, but that, in a sense, would be the Scottish Parliament's problem. You, as the deliverer, as it were, of this service to them would not be a block on them changing the tax rate at any stage.

Sarah Walker: I do not think so.

Q274 Chair: Fine. Sorry, Ms Mulholland?

Pamela Mulholland: We would not have the legal cover to do it after 6 April, though, because, as Sarah has said, the Bill does say that the resolution has to be passed by 5 April.

Sarah Walker: If the Bill is passed as it is, clearly that is when the cut-off date is.

Q275 Chair: In those circumstances that is a decision of Parliament, but there are no circumstances in which you, as HM Treasury, would be the people who were saying, “This cannot be done because mechanically we cannot do it.”

Sarah Walker: I do not think so, no.

Chair: Fine. You can understand why we want to be clear about this. We want to have somebody else to blame rather than you. I am sure we will have enough to blame you for in due course.

Q276 Lindsay Roy: In this phased preparation, are there likely to be new jobs created and, if so, any in Scotland? You have given us a £45 million estimate. Does that include labour costs or additional labour costs?

Sarah Walker: There will certainly be requirements for people to do the work. Whether they are net new jobs is difficult to say. We have a planned reduction

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in overall staff over the next four years of the spending review period and the costs of any additional staff would clearly have to be taken into account in that.

Q277 Lindsay Roy: So the phased reduction does not take into account this initiative.

Sarah Walker: The staff, I think, would be additional. They would be paid for by the Scottish Government. Am I right?

Pamela Mulholland: Yes.

Q278 Chair: Can I just clarify where they will be?

Sarah Walker: We have not decided yet. It is too soon to say. Clearly, we have quite substantial offices in Scotland. We have call centres in Scotland. It might well make sense for those jobs to be in Scotland, but I cannot say.

Q279 Chair: I think that would be a jolly good idea, don't you? I can see a certain difficulty about creating jobs somewhere else to administer the tax system in Scotland.

Sarah Walker: I understand that.

Q280 Chair: I am sure you understand that point.

Sarah Walker: Very much so.

Q281 Jim McGovern: There are a couple of HMRC offices in Dundee in my constituency.

Sarah Walker: I will make a note. Thank you.

Q282 Jim McGovern: Can I offer them some assurance from you that their jobs are safe?

Sarah Walker: I am sorry, I do not think I can answer that question.

Jim McGovern: So I cannot offer any assurances.

Chair: Good try, Jim.

Jim McGovern: You have to try.

Q283 Lindsay Roy: What kind of consultation will there be in terms of the Scottish rate applying to charities, gift aid and pension contributions?

Sarah Walker: I think Pamela can explain what we are doing.

Pamela Mulholland: We have set up three technical groups: one for income tax in general, one for the pension sector and one for the charitable sector. We have met with the pension and charitable groups twice now to look at the very specific issues affecting those sectors. The charity group, for example, have been looking very closely at the issues surrounding gift aid, in particular, to minimise any burdens there. We are working with them to try and identify the best way to minimise any of the burdens on charities and donors.

Q284 Lindsay Roy: What are the main issues coming up? Are there real problems presenting themselves at the present time?

Pamela Mulholland: With the charitable sector, the charities that receive donations do not know whether somebody would fall within the definition of a Scottish taxpayer or not. What was proposed for the Scottish variable rate therefore was that the charitable relief—the gift aid relief—would be given at the UK

rate to remove those burdens from the charitable sector. We are looking at all of those issues with the sector and, in time, we will put forward the case to Ministers for them to consider.

Q285 Lindsay Roy: But nothing definitive has been agreed so far.

Pamela Mulholland: Absolutely not, no. The charities have issued a paper to various organisations to seek their views and we are waiting for their input and response to that.

Q286 Lindsay Roy: To what extent have you been giving guidance on this?

Pamela Mulholland: Giving guidance? We have been working with them and we are waiting to hear their views. We are very much looking for their insight on the issues that this will raise for them.

Q287 Chair: Can I clarify a little bit on that? If charities apply under gift aid and it is on the UK rate, that is perfectly straightforward. What would be the additional complexities for the charity themselves if somebody was a Scottish taxpayer? What additional work would that mean for them?

Pamela Mulholland: If the relief was given at a UK rate, it would put no extra burden on them at all. If the relief is given at the marginal rate, they would need to know who was a Scottish taxpayer and who was not, and currently their systems would not provide for that. When somebody makes a gift aid declaration, obviously they are not asked whether they are a Scottish taxpayer or not.

Q288 Chair: Would your systems not tell you that automatically?

Pamela Mulholland: No, the systems do not work in that way. The claims to relief are made to us and they do not identify individual addresses. They certainly do not identify at the moment whether somebody is a Scottish taxpayer or not. We will have to look at the issues for the sector but also how HMRC will be able to deal with those.

Q289 Chair: Right, but this is subject to consultation?

Pamela Mulholland: Yes.

Q290 Fiona O'Donnell: We have talked about the set-up costs, but in terms of the year-on-year running costs, have you any idea how many people move from Scotland to other parts of the UK in any given year, or move into Scotland from other parts of the UK?

Pamela Mulholland: We believe the numbers are relatively low, but we are going to be doing some research on that so that we can see the scale of the problem and the proportionate response.

Q291 Mr Reid: The system is dependent on you being able to calculate accurately tax revenues from Scotland, but is that going to be a difficult calculation for you?

Sarah Walker: No. If we have the indication on the individual record that we have designated them as a

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Scottish taxpayer or not, then our systems, through our accounting rules, will automatically add those up. The way the system is expected to work is that the Office for Budget Responsibility will make a forecast at the beginning of the year so that it can give the Scottish Government an idea of how much money they are going to get. There will be a payment on account and then there will be a reconciliation once all our tax has been collected. We think that within a year of the end of the relevant tax year, we have collected over 99% of the tax that we are going to collect. Therefore, that will be corrected at that point.

Q292 Mr Reid: You said that the OBR would make the forecast at the start of the year. Was that January or April?

Sarah Walker: I am not sure if that is decided yet.

Q293 Mr Reid: The reason I am asking is that you have already said that the Scottish Government would ideally have to set its rate in the autumn. Is the Scottish Government going to know the forecast for the following financial year at that point?

Sarah Walker: That is a matter between the Scottish Government and the Treasury, but I am assuming that that would be the case. The OBR would give them a forecast at the point when they were making that decision.

Q294 Mr Reid: Under the present system, every year in the Budget statement, the Chancellor makes an announcement of approximately how much would be raised if a Scottish variable rate was to be implemented. Have you done any studies to find out how accurate these forecasts have been?

Sarah Walker: I am not aware of that, no, but I am sure it could be done. As I say, it is a Treasury and not an HMRC forecast.

Q295 Mr Reid: But are all the figures available so that somebody could go and work that out?

Sarah Walker: If you were asking us to do it now, we do not have a completely up-to-date identification of Scottish taxpayers; we are not doing that on a day-to-day basis now because the SVR is not in operation, but we would be able to do a pretty good estimate, I think.

Q296 Mr Reid: But the Chancellor, in his Budget statement last March, made an estimate. If you do not have those records, how was that estimate made?

Sarah Walker: I am assuming it is based on relative population and the statistics that the Treasury have, but as I say, it is a Treasury forecast rather than an HMRC forecast.

Q297 Mr Reid: Is it the OBR or the Treasury that we should be asking these questions of rather than yourself?

Sarah Walker: Yes, really.

Q298 Jim McGovern: How will HMRC work with the OBR in making the projections that you and Alan have referred to?

Sarah Walker: We already make available to the OBR data on tax receipts for them to use in making their forecast. Clearly we would do that again for this. We would make available data on Scottish taxpayers, what their income was and what tax was paid. The OBR are independent forecasters. They would use that to reach a forecast.

Q299 Jim McGovern: I imagine there would be a subsequent reduction in the block grant for Scotland. What mechanism would calculate that?

Sarah Walker: You would have to ask the Treasury. That is not a matter for HMRC.

Q300 Jim McGovern: Is it not?

Sarah Walker: No.

Q301 Chair: With regard to these figures that you are producing that are going to be fed into the mechanism, I always remember when I was at school that you had to show your workings. One of the issues about all of this is the question of transparency because, believe it or not, there are people of mischievous bent who will want to argue that the wrong figures are being used, that they are being robbed blind and all the rest of it. Is there any reason why your workings should not be shown for these sorts of figures, given that it is all aggregated?

Sarah Walker: As I say, the workings will not be ours. The workings will be the OBR and the model that they use to do forecasts.

Q302 Chair: Or whatever it is that you are providing them with.

Sarah Walker: We already publish data on tax paid by Scottish residents. That is public and that will still be available.

Q303 Chair: I must confess it is not something that I read regularly. This is just a general point. Is there any reason why anything related to any of this should not be transparent and publicly available? I am obviously not asking for things relating to individual taxpayers, but as I said before, over Barnett, for example, we frequently have disputes about the fairness thereof and all the rest of it. If possible, we want to avoid that here by making sure that everything is open so that economists and accountants can have hours of fun disputing whether or not the figures are accurate. Is there any reason—legal or anything else—why aggregated figures should not be available?

Sarah Walker: As I say, the data that would be used by the OBR is already data that we publish. I would not expect any problem in that being available. Clearly, you would need to talk to the Treasury and the OBR about what other data or information they might use to make a forecast.

Q304 Chair: We will speak to them about their bits, but from your bits—

Sarah Walker: Yes.

Chair: Fine. There are no difficulties there. I think those are just about all the points that we have for you. Sorry, Eilidh?

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Q305 Dr Whiteford: I was going to come in on this point about forecasts and the tendency for forecasts, from the Treasury certainly, to overestimate. I am concerned, I suppose, because of the knock-on impact of that on the workings of the Scottish Parliament. If there is a constant overestimate every year, and every year the Scottish Government or Executive or Parliament is having to pay money back because the forecasting has been inaccurate, that is going to cause real cash flow problems and real issues for a subsequent Government over the cycle. What is your own assessment of the accuracy of Treasury reports in your experience and are there steps that can be taken to ameliorate that?

Sarah Walker: I do not think I am really qualified to comment on that. You really should talk to the Treasury.

Q306 Chair: That had the merit of clarity. "It wasnae me. A bad boy did it." To draw matters to a conclusion, we can be assured then, can we, that you can work all this, and there is nothing that we should be worried about. You can resolve all these difficult disputes that have been identified by accountants and the like, and we should go on to bigger things.

Sarah Walker: Yes, I think we are confident that we can do this. We have plenty of time to sort it out. I am not saying that we have all the answers at the moment because we have five years between now and the thing starting, so we clearly have work to do. We clearly have consultations with all these bodies to talk through their issues and to find answers, but nothing that has come up so far looks like something that will prevent us from operating this successfully.

Q307 Fiona O'Donnell: Maybe I could pick up on the recent debate about the variable rate that exists just now in Scotland and the capacity of HMRC to introduce that. Is that system ready to be operated just now should the Scottish Government decide to use its existing powers?

Sarah Walker: Because of what has happened over the last few months, we have said that now it would take us two years to get into a position to do that. It would be April 2013 if the Scottish Government decided that they wanted to put themselves, or their

successors, into a position to implement it. If we were told now, it could be done in 2013.

Q308 Fiona O'Donnell: My understanding is that those costs arose for the Scottish Government because of changes that were being made to the IT system.

Sarah Walker: Yes.

Q309 Fiona O'Donnell: Is it your understanding that if in the future, HMRC changes its systems so that any costs or any changes were needed so that the Scottish system would be able to work, those costs would again be passed on to the Scottish Government?

Sarah Walker: Yes.

Q310 Chair: Just covering that point again, if a new Scottish Government is elected in May and comes in in June, they would not be able to use the power that Parliament gave them to alter the income tax rate immediately. They would have to wait two years. Is that right?

Sarah Walker: That is right.

Q311 Mr Reid: If a new Scottish Government coming in after the election in May decided to ask for the powers, would it be ready for April 2013?

Sarah Walker: Yes.

Q312 Chair: Can I just clarify a final point? If we want to come back to this in five years' time to see if it is working, what are the chances of you still being there? My experience in Public Accounts was that, usually, the people that we were interviewing by the time anything had gone wrong said, "It was nothing to do with me. It was somebody else." Are you likely to be in these jobs at that time or do you get moved around every couple of weeks?

Sarah Walker: It is not quite every couple of weeks, but I cannot give you any guarantees that I will still be in the same job in five years' time.

Q313 Chair: And Pamela?

Pamela Mulholland: A similar answer.

Chair: Fine. On that happy note, thank you very much.

Wednesday 9 February 2011

Members present:

Mr Ian Davidson (Chair)

Fiona Bruce
Mike Freer
David Mowat
Fiona O'Donnell

Mr Alan Reid
Simon Reeve
Lindsay Roy
Dr Eilidh Whiteford

Examination of Witnesses

Witnesses: **Terry Murden**, Business Editor, *The Scotsman* and *Scotland on Sunday*, and **Bill Jamieson**, Executive Editor, *The Scotsman*, gave evidence.

Q314 Chair: Thank you for coming to see us, gentlemen. As you know, this is the Scottish Affairs Committee. We are looking at the Scotland Bill, but in parallel we are also running an investigation into the economy in Scotland and the development of business, so we hope to be able to touch on some of those issues as well. If you read *The Scotsman* at all, you will have seen a recent editorial suggesting that we should not rough up our witnesses. We realise that you are delicate flowers and should not be asked hard things or anything like that by impertinent oiks like ourselves, but if you don't mind, we will try our best to raise some points with you. Mr Jamieson, when I heard you speak on the euro I thought you were a bit soft and insufficiently robust, so hopefully you will be straight to the point today. We are not asking people only from *The Scotsman*; we asked a number of other journalists as well, but they were not able to come.

What we are particularly interested in is hearing your views of the Scotland Bill and how it impacts on business, and since you will meet many more businesses than we will, your view of their view. I wonder whether we could start off by asking you what you believe to be the main strengths and weaknesses of the proposals for strengthening financial autonomy within Scotland, the responsibility within Scotland, and how you think this impacts upon the business sector. Maybe we can start with you, Mr Jamieson, or Ace Enterprises as you described yourself in one of your recent articles.

Bill Jamieson: I did. Thank you very much indeed, Chairman, for inviting us. We do appreciate the opportunity to try and cast some light on the circumstances and the feeling and mood music around the Scotland Bill in Scotland. One thing I would say is that it is primarily a political Bill; in other words, it is designed or intended to improve the transparency or accountability of the Scottish Parliament. It does not claim, and it does not set out to be, a Bill that is an economic tool, or that will affect Scotland's economic performance. It is not a tool for raising the GDP performance of Scotland. It does not set out to do that. I would say that among the business community, apart from one notable exception, there is a great deal of apathy—maybe neutrality is the best way to put it—about the Bill. It has not set the heather on fire among the business community. I would add two points to that on either side. There is a group of business people who are associated with the Campaign for Fiscal Responsibility, led by Ben Thomson, which broadly

supports the Hughes Hallett/SNP position. Are they representative of business? No. On the other side, again on the margin, there is CBI Scotland, which is rather concerned about the amount of time and concentration taken up by the Scotland Bill. It represents a constituency in the business world which is saying, "We have a lot of problems to deal with between now and 2015 or 2016 which we fear have been pushed to the margin with concentration on the Scotland Bill and the debate between the proponents of the Bill and Professors Hughes Hallett and Andrew Scott". So there is a concern within some of the business community that it is taking the eye off the ball of what you can do with the powers that Scotland already has within its gift to improve its economic performance—all the micro things it can do.

Terry Murden: In so far as the business community is engaged in this at all, it is only going to be concerned about whether it increases its costs. As we know, business is going through difficult times at the moment and I think it will take a sceptical view of anything that appears to impose change, because it sees change as being another burden. An income tax cut would be nice and everybody would welcome it, but if anything, most businesses would fear that their costs would rise with any powers given to Parliament to change tax.

Q315 Chair: Would it be fair for us to take the view that, with the caveats you mention, as far as business is concerned, there is no enormous concern about potential threats, or indeed opportunities, flowing from the Bill at all, and—taking Bill's point—that the devolution process being accelerated, and the transfer of powers, will not in itself result in a magical increase in GDP and general happiness and prosperity?

Terry Murden: As far as I can see, there is no evidence to support one argument or the other. Clearly, there are two camps here. One tries to claim that greater fiscal autonomy and lower taxes, which they assume may flow from that, would lead to higher growth, but there is another school of thought that says there is no evidence of that happening. Even in countries like the US, which has cut taxes, there is no hard evidence that it has increased GDP. If we look at this Parliament, we have had a cut in income tax from Westminster, but the economy is hardly booming. You cannot say that one necessarily leads to the other.

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Q316 Fiona O'Donnell: When I met Alfie Allen when he came to give evidence I said how excited I was, so I really feel that I should say to you, Bill, what a thrill it is for earthlings like us to meet stars from the media firmament like yourself. You can tell that I might not be so nice in my next question. In terms of the way the debate is evolving in the media, we have had quite a bit of interest in the Holyrood Committee's scrutiny and your own McGonagallesque, if I may call it that, commentary on things like Scottish citizenship. I did not know whether it was really serious or it was for fun, because it was very clever and witty. Generally, how do you think the debate is evolving? Is it really just a case of journalists having fun with it, or is there some serious debate out there in the media?

Bill Jamieson: The debate about the Scotland Bill is taking place at, if you like, one remove from the immediate problems facing business and the economy in Scotland. It is a very, very tough time. You will know far better than I that the problems being faced in the public sector—redundancies and Government cutbacks—are impacting on many companies that supply goods and services to the Government sector. These are the immediate worry points and concerns. You are asking people to focus on the consequences of a piece of constitutional legislation that will not take effect until, I believe, 2016. Looking through to that, there is a residual concern about exactly how this variable income tax will work. Who will be responsible for determining who is, or is not, a Scottish taxpayer or a Scottish citizen from the point of view of tax? There was a very good paper written by the Institute of Chartered Accountants of Scotland, which I recommend to the Committee.

Fiona O'Donnell: It has given evidence.

Bill Jamieson: Chartered accountants are not, perhaps, the most gripping people on the earth, so I wrote about this in a rather humorous manner in order to engage public attention, but I hope it brought out some of the complexities here about who is and who is not a Scottish citizen for the purposes of income tax. The Institute of Chartered Accountants said you had to have a statutory definition of citizenship. Unless you have that, you are going to put into effect legislation which is open to challenge, and the rulings could prove very arbitrary. Once that starts to happen, public acceptance of a tax change really starts to crumble; people can point to anomalies that were not intended. It is very important to maintain public support for a tax. You may get agreement on the principle but it is very important that you have a piece of legislation that, in practical terms, you are confident will work, and will not send HMRC into a terrible spin with its IT processes, and in which the public have confidence that when they get their tax demand it is broadly the correct sum they are being asked to pay up.

Q317 Fiona O'Donnell: You have said that giving these new financial powers to Holyrood does not in itself boost our economic performance in Scotland. Professor Muscatelli said the same thing. It is about what the Scottish Government does with the powers it has just now, and the powers it gets. Do you think

that is why the debate is focusing on these issues? If councils can deal with who lives in a council area and is liable to pay council tax in that area, is this really such a great challenge for Scotland?

Bill Jamieson: That is a very good point. You might say that one of the things missing from the debate about the Scotland Bill is that you do not detect any strong lobby either side of the power to vary tax. In other words, there is not a strong lobby to say that this is a fantastic means to raise the level of income tax, to put more money into Government services, and to avoid all these cuts. I do not think that lobby is there. Equally, I do not think there is a very strong lobby for bringing down the rate of income tax, particularly in today's climate. I do not detect that as an area where people want to go. It is almost an abstract debate about having a power, like putting a big blunderbuss, a big gun, on a wall in a glass case that says, "Do not break except in emergencies."

Terry Murden: Yes. After all, we have had the power to vary income tax by 3p and it has not been used. There is a suspicion, I suppose, as Bill was saying, that this current plan will not be used, and we are dancing round the subject a little bit.

Q318 Chair: And public opinion in Scotland reflects that view—that this power, being unlikely to be used, is not worth debating that much?

Terry Murden: When you talk about public opinion, public opinion, as far as it is expressed through *The Scotsman* in particular, is focused on this issue about fiscal autonomy. It has been an academic debate, largely, with various parties coming down in favour or against one view or other. To a certain extent, that is drawing away from the main issue of the Bill. The Bill, of course, does not suggest fiscal autonomy, but that is how the debate has moved; it has moved away from what the Bill is proposing. The debate has almost become about what is not in the Bill rather than what is actually in it.

Q319 Chair: You have both mentioned fiscal autonomy on a couple of occasions. I wondered about the extent to which you thought that autonomy was a weasel word for separation or independence, and was being used by people who did not want to use the word "separation" or "independence" but were trying to disguise it behind a different term that is more neutral, as it were, thereby avoiding the opprobrium that "separation" has generally attracted.

Terry Murden: The supporters of it, such as those whose letters we read in the letters pages, have articulated a lot of this. There are those who want the Bill to provide Scotland with more powers over other taxes, such as corporation tax, inheritance tax, property taxes and so on. I suppose eventually you get to the point where you have to ask if this is a kind of independence by stealth. If you keep giving more and more powers, at what point do you declare the country to be independent of Westminster?

Q320 Fiona O'Donnell: Was devolution not always, as people are fond of saying, a process rather than an event?

Terry Murden: It may well be.

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Q321 Fiona O'Donnell: But not necessarily a motorway to independence?

Terry Murden: Yes.

Q322 Lindsay Roy: It is your contention, from what I can gather, that the business community is largely apathetic to this because it has more immediate interests and pressing priorities, and the population at large are not really engaged—it is a bit of a diversion for them—so really it is political anoraks and economists who are involved in this. Would you agree, however, that it is imperative that we do our very best to get it right?

Bill Jamieson: Yes.

Q323 Lindsay Roy: And that the focus should be on accountability?

Bill Jamieson: Correct, because there is no doubt that there is an asymmetry at the moment. In Scotland we have a Holyrood Parliament that has powers to spend but no powers to vary tax significantly. That leads to a situation where all the debate in Scotland and in the Scottish Parliament is about spending money with none of the responsibility of having to raise it significantly. The result is that there seems to be, if you like, a compression and a concentration and squeezing of as much money as we possibly can out of the Barnett formula and the Barnett consequentials, whereas there is a very strong case for Parliament to have more responsibility and more accountability to voters through the tax system. To that extent there is a very powerful argument for this Bill.

Q324 Lindsay Roy: Therefore, do you think that as we approach the Scottish parliamentary elections this will have a higher profile?

Bill Jamieson: Yes.

Q325 Lindsay Roy: It has not been particularly prominent in the media, apart from one or two aspects.

Bill Jamieson: Yes, correct.

Q326 Chair: Terry, do you have anything to add to that?

Terry Murden: I think that is a fair comment. Trying to engage with the general public is going to be quite a task. At the moment it is focused more on whether or not the powers that it is proposing would help to boost economic growth although, as Bill says, that is not the fundamental purpose of it. Even from the point of view of the general business community, there is—it is probably wrong to say that it is a lethargy; probably they have not quite understood what is happening. When you dig lower than the main lobby groups like the CBI and the IOD and so on, people are so busy getting on with just trying to stay in business and keeping the wolf from the door that things like this seem to be rather hypothetical. They have not realised that this change may well come about.

Also, there is an argument put around that business will not be able to cope with the proposed tax changes and that it will be too costly and difficult administratively. My view is that that is rather overplayed. Companies are quite capable of dealing

with different tax codes and jurisdictions. Anyone who has operations overseas has to deal with this kind of thing. That is probably a little overplayed. But I do think there is going to be a concern that there will be some form of added cost and until people explain to businesses what this is about and what they can get out of it—what the benefits might be—they will be sceptical at best and just kept in the dark at the moment about exactly what it all entails.

Q327 Lindsay Roy: In essence, there are quite a few hares running and part of the role of the press is to inquire, and to see what evidence there is to support the views that are being put forward.

Chair: Part of the role of the press is to start hares running.

Bill Jamieson: No, we don't do that. But one significant factor here is that we have passed through, if you like, two time periods for this legislation. The Calman Commission was set up in the world of sunshine and idyllic economic growth in 2005 and 2006. All the figures and all the projections that are laid out in the Calman Report relate to a world that no longer exists, or has changed fundamentally with the financial débâcle, the recession and everything that has happened since. My perception is that the political momentum behind the Calman Commission and the Scotland Bill has run into the changed circumstances that Scotland is now in. I would say that there is a mood of much more caution and conservatism about undertaking constitutional change. The impetus, if you like, is not quite what it was in 2005 and 2006 when Calman was being conceived. It is not as if public opinion was at this stage in 2006 and has strengthened throughout the process. No, I do not think so.

Q328 Dr Whiteford: If I may, I would like to pick up the issue of asymmetry that you alluded to earlier when you were talking about the accountability question of money raised in Scotland and the money spent in Scotland. There have been some real discrepancies in the estimates of the impact of this Bill. The Government's figures estimate that we will move up to about 35% of the money. I know that some of the other evidence we have received has suggested that it could be as low as 26%. I just wondered whether you had a view on that, if you had an opinion in terms of the assessments that have been made.

I was also quite keen to know, picking up on what you have just been saying about the Calman Commission proposals, if you would have liked to have seen the commission, or perhaps, in our current context, the Bill, go much further in picking up on drivers of GDP, as you said right at the start.

Bill Jamieson: If I may take the second part of the question first—I cannot answer the first part—just to position ourselves here, *The Scotsman*, as a paper, very much favours going further than the Scotland Bill. We see an intellectual rationale for including corporation tax as part of the legislative change. We believe that because we are very concerned about the state of the Scottish economy and the imperative need for drivers of growth to get us out of this rut that we are in and this period in which the Scottish economy

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has consistently been under-performing, compared to the rest of the UK. That is where we are in broad principle. That is not to say that we are not attentive to the points I was making earlier about making sure that the detail and the practicality—the engine underneath the bonnet of the legislation—works.

On the first part of the question about the differences in the estimates of how much tax Scotland would have under its power in the legislation, we really are in the hands of expert witnesses and, one hopes, very sharp estimates from the Treasury and the Office for Budget Responsibility, because there is this gap between the estimate of how much tax we raise and how much tax actually comes in.

Q329 Dr Whiteford: That is very helpful. Referring to the first part of your answer, I wonder to what extent you see the Bill as a genuine step forward.

Bill Jamieson: I pause because there is a sense that it is an opportunity missed. There is a very powerful argument for having a much stronger, greater and more serious debate about what Scotland has to do and where Scotland has to go. We have hesitations about whether this legislation is sufficiently powerful of itself to generate and catalyse the debate that has to happen in Scotland. We are not there yet.

Q330 Dr Whiteford: Do you have anything to add to that?

Terry Murden: We are getting into the realms of the issue that I mentioned earlier—into whether this is a drift towards independence. You are getting very heavily into the political debate rather than the economic or the business debate, which is where we came in. One thing that I see is that, whereas the Union parties are behind the Calman Commission pushing a greater transfer of tax powers, when we had an opportunity, as in the large retailers' levy, which was very controversial recently, they all opposed it. On the one hand, there is this push to try to give the Parliament more tax-raising power, but when push comes to shove they all seem to hesitate and not want to go forward with it. I do wonder whether this Scotland Bill might eventually get pushed into the long grass. We may get all of these powers but never actually implement them and the debate will simply rumble on until such time as someone decides whether or not to pull the lever on full independence. How you achieve that is another matter.

Q331 Chair: Obviously, that pleased Eilidh, but could I pick up the point about this being an opportunity missed to have a debate about what happens in Scotland? I think we are allowed to criticise *The Scotsman*, aren't we? Is that okay? You are not going to report me to your editor, are you?

Bill Jamieson: Feel free.

Q332 Chair: Good. I see that you have a reporter here as well to back you up. You are absolutely right that opportunities have been missed, in terms of having the debate about the future of Scotland, Scotland's business and so on. *The Scotsman*, along with a number of others, has been guilty of conflating that debate with the constitutional debate and

assuming that one is the same as the other. The other day we had before us a representative of the Federation of Small Businesses. He told us that one of the major difficulties that his members have experienced in employing people is of kids being illiterate, innumerate, unable to work in a normal society and all the rest of it. They were insufficiently socialised. The Scottish Parliament has had powers over all these things for some considerable time and they have not been addressed. I wonder about the extent to which *The Scotsman* is guilty of sloppy thinking in assuming that it is only by the constitutional route that these things are resolved. It is a bit like the Hughes Hallett and Scott view that if you transfer economic powers, growth will come—if you build it, they will come—whereas there is a whole number of areas where the Scottish Parliament has had powers and has not done anything with them. It is grossly negligent.

Terry Murden: If you look at the example of Parliament itself and the trams and other things that it has had the ability to influence, they have hardly been—

Q333 Chair: How can you say that this Bill is a missed opportunity when you are then using as evidence for that the fact that there has not been this general economic debate about whether Scotland? Explain that.

Bill Jamieson: I think your criticism is most unfair, Chairman.

Q334 Chair: And that will be reflected in tomorrow's editorial.

Bill Jamieson: Most unfair. Almost every day we write about all the micro-measures we have to take to improve productivity, output and certainly skills training. Skills are a very big issue, and not just in Scotland, but right across Europe and the advanced economies, as Eilidh will have heard.

Dr Whiteford: Yes.

Bill Jamieson: I do not think that this Administration in Scotland has been remiss in its attention to skills training, because it seems to attract an awful lot of money and attention, but there is no doubt that the report from the FSB that you heard is echoed by other institutions and other parts of civic Scotland that are picking up on this, so please do not think it is just the FSB. That is a big problem.

As for saying that we conflate issues, we certainly do not believe that constitutional change is the key that will magically unlock and bring about a transformation, but we have a very serious concern, particularly as we approach the Holyrood elections in May, that we are hearing from the parties in Scotland very little in the way of innovative thinking about how things can be improved. This is quite depressing.

Q335 Chair: Terry, do you want to add to that at all?

Terry Murden: I think that that is a reasonable summary. Bill talked about this Bill as being the first step—a stepping stone for where we end up. I am not quite sure what journey we are on with this process. I am not sure whether the Scotland Bill is an attempt to grant more power or to try to restrain the Parliament

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in some way by not giving it exactly what it wants. We certainly will not get a settled will from this, I am sure, and there will be pressure for more change.

Chair: I think we have already talked about this being a process. There are those who assume it is a one-way process. The rest of us see it as being an iterative process, in the way that some powers are being transferred back to Westminster and others are being transferred to Holyrood. Therefore, there will be a constant exchange as people examine these things. Fiona, you wanted to come in.

Q336 Fiona O'Donnell: Yes. Thinking back over the questions that Ian, Lindsay, myself and Eilidh have asked, a lot of them talked about the scope of the debate. In terms of the inquiry we have had at Holyrood, and Eilidh was talking about the claim that the powers would allow the Scottish Parliament to control only 26%, I wonder if you feel that the scrutiny at Holyrood has elevated the debate. I know the paper has been critical of the treatment of some witnesses. You then get Professor Scott saying in his evidence to Holyrood, "We can get close to 20 per cent, if not 25 per cent, but we cannot get 35 per cent. However, we are happy to accept that that might relate to the data set on which we are working, which is disputed." Even if the only conclusion you come to is that if you laid all the economists in the world end to end they would not reach a conclusion, we need this kind of scrutiny and level of debate to ascertain what the opportunities and risks are in this Bill.

Bill Jamieson: I could not agree more. I have to say, as a point of clarification, yes, *The Scotsman* did express some concern about, if you like, the manners of the Scotland Bill Committee. On the substance, on the interrogation of Hughes Hallett, we thought it was absolutely admirable, and that these points should have been brought out. It was very interesting that when the questions drilled down into the academics that were cited by Professor Hughes Hallett, like Lars Feld, for example, and got into his paper and what he was saying, it was found that he was much more ambiguous about this issue as to whether fiscal decentralisation brings economic growth. He was much more ambiguous about it. It also picked up on other parts of Hughes Hallett's evidence which had been very partial with one economist; he had taken only a partial piece of his research which was drawn from experience of devolution in China and was based on Chinese statistics. Thank goodness we had some forensic analysis of that paper.

Q337 Fiona O'Donnell: So it was the sneering, rather than the substance, that perhaps left a bad taste in the mouth?

Bill Jamieson: Yes, quite.

Fiona O'Donnell: That is very helpful. Thank you.

Chair: So far, you are not complaining about us either, as I understand it.

Bill Jamieson: I don't want to.

Dr Whiteford: You are all smiles.

Chair: So far. The night is yet young.

Q338 David Mowat: Mr Murden, I am interested in your view in terms of the business community. Do

you think there is an issue with the level of scrutiny round the settlement that has been arrived at so far, in terms of the Barnett formula, which is thought by many to mean that the settlement that Scotland receives is higher than that in other parts of the UK, which could potentially institutionalise a larger public sector north of the Border and may not be positive to GDP growth as a whole? Is that an issue you have come across?

Terry Murden: The short answer is "not very much". I do not think your average businessman worries about that kind of thing. I do not think it keeps him awake at night.

Q339 David Mowat: That is not an issue you consider, from the point of view of *The Scotsman*, either?

Terry Murden: It is not an issue that I would get particularly engaged in, no.

Bill Jamieson: I would respectfully disagree. I think that among some of the more thoughtful businessmen there is a worry that over-dependence on—

Terry Murden: I did say "the average businessman".

Chair: So the average businessman is not thoughtful? Right, we have got that.

Bill Jamieson: There is an over-concentration on Barnett, absolutely, and on spending decisions to the neglect of the whole economy. Sometimes I listen to debates in the Holyrood Parliament and I get the sense that they feel that the economy is the Government sector, the public sector.

Terry Murden: But, with respect to you, Bill, this is not exclusive to Scotland. There are other parts of the UK where there is a large preponderance of public sector activity and these issues are of equal concern. We have this imbalance that the coalition is allegedly trying to correct.

Bill Jamieson: Yes, but there is an imbalance.

Terry Murden: Undoubtedly there is an imbalance.

Q340 David Mowat: It is true of other sectors of the UK. The premise of my question, though, was that the settlement, if you like, as a result of a higher level of expenditure in Scotland, may have a displacement in other types of economic activity. But thank you for your answer.

I would like to go back to your point on residency, Mr Jamieson, which you have written about, and your concerns about the way that it is all going to work in terms of how many nights you spend and all the rest of it. I understand that, but what do you see as the alternative?

Bill Jamieson: The alternative is to have very good, watertight legislation and a statutory definition of who a Scottish taxpayer is for the purposes of tax collection and tax assessment. One of the things that the ICAS report picked up, which is quite relevant, is that you cannot split a tax year. In other words, you could spend quite a lot of time working outwith Scotland, but as far as HMRC is concerned, you may be taxed as if you spent all your time in Scotland. Many people would feel that to be inequitable. The whole purpose of having a tax assessment is to arrive at a fair and just assessment of the tax that people

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owe, and people will pay if they share the feeling that it is a fair and just assessment.

Another issue is to whom the Scottish part of HMRC is accountable. As I understand it, it is going to be like a unitary tax here, which will bring together Holyrood and Westminster tax in one unit. There will not be two separate tax bodies. But I suspect there may be a lot of pressure for the Scottish HMRC end to be accountable to the Scottish Parliament. We are not quite sure to whom this enlarged HMRC would be accountable.

Q341 David Mowat: In terms of your first point, you say there is a need to look for equity and justice, and that is right, but there is always a balance between equity and justice and ease of legislation, in a sense. I can imagine that if you had a statutory definition of a Scottish taxpayer there would be issues around that as well because they are going to move. If it is not based on residency, how would you come up with some kind of statutory definition of a Scottish taxpayer? It seems to me that what is being proposed in the Bill is reasonably pragmatic.

Bill Jamieson: I think that the Institute of Chartered Accountants of Scotland would beg to differ and say that if you proceed down those lines you are in danger of putting into legislation an Act that is open to all sorts of ambiguities and arbitrary routes.

Q342 David Mowat: Ambiguity is relevant to what you have said about the residency days and all the rest of it, but I am having difficulty seeing what an alternative might be or how that could work; that was all.

Bill Jamieson: Surely that is in your hands, because you are the legislators.

Chair: But we seek to be guided.

Q343 David Mowat: Was your second point about reconciliation between the Revenues?

Bill Jamieson: Yes.

David Mowat: I am not sure I wholly understood that. Again, I think how this would work is that an employer would account for the revenue. He will have two boxes on PAYE and one would go to Scotland and one to England and it would be added up and sorted out. I am not quite sure I follow the point that you are making.

Bill Jamieson: I was wondering about the accountability of the HMRC itself. Is it answerable to Westminster or answerable wholly or partly to the Scottish Parliament?

Q344 Fiona O'Donnell: Chair, can I say I see an issue there, given that the Scottish Government is going to pay the bill?

Bill Jamieson: Yes.

Fiona O'Donnell: You would think that if you pay the bill for HMRC's services, there would be some accountability.

Bill Jamieson: Yes. This bill has been estimated at between £45 million and a top figure of about £150 million.

Q345 David Mowat: I think that number is without any impact on business; that is the central number.

Bill Jamieson: One hopes so, yes.

Q346 Fiona Bruce: Good afternoon, gentlemen. I want to go back to creating the right environment for business people to feel confident to do business—to be entrepreneurial and to take risks. You said that you can see benefits or merit in there being greater fiscal devolution, but that is not happening at the moment to the extent of, perhaps, including corporation tax. You said that other things could be done, such as concentrating on skills development, and said that the CBI felt that the Government had taken its eye off the ball in connection with all the micro things that could be done. I would like you to develop that. What else would you like to see happen to give business confidence again?

Bill Jamieson: Gosh. If you look at some of the submissions that have been put in from bodies like the FSB, which you mentioned, the chambers of commerce and CBI Scotland, you will get quite a long list of very familiar things. Just as they present to the UK Parliament, I am sure they raise the same issues with the Scottish Parliament. For example, one issue is on planning and how helpful and useful the system is to the entrepreneur. There has been progress in introducing pre-planning assessments in Scotland to try to speed up what has been a chronically slow system.

If you read today's *Scotsman*, Mr Chairman, in case you missed it—I hope you did not—you have the example of Penelope Keith; it took her six years to get planning permission for a café. Come on; why does it take so long? It is an extreme example, but there are problems with the planning system and how to make the planning system more efficient and responsive and to speed up the appeals process. That is a big, big issue with business.

There have also been concerns about the Holyrood Administration's changes to the system of non-domestic business rates, which have hit the hotel and leisure sector particularly hard, and there was the recent attempt to introduce an out-of-town superstore tax to raise £30 million for the Scottish Government. It has been called all sorts of things. We even called it a tax on food. The concern of the business community was that, had that gone through, it would have established a precedent for picking off other sectors in just as arbitrary a manner.

Terry Murden: If I could pick up on that, it comes back to what I saying about the Bill; it seems to allude to the opportunity for the Government to bring in new unspecified taxes, as I understand it. There was talk of an aggregates tax, aviation tax and these kinds of things. Those have been suspended for the time being, but the idea of new taxes, which seems to be undefined, will bother businesses because they do not like this kind of uncertainty. They want to know precisely what they will be able to do.

Business, fundamentally, needs to be able to get its goods to market as quickly and cheaply as possible. Anything the Government can do to help it achieve that aim has to be positive. I would add transport to the list of things that Bill mentioned. The transport

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network is creaking, not just in Scotland but around the country. As a regular commuter on the M8, I know that it can take me two and a half hours to travel 65 miles door to door. It should not take that long. And we still have problems with the rail network. All of that ties in again with the planning system, which is ridiculously slow. The whole process of Government is slow.

Business gets concerned about too much government—being over-governed and having too many processes of decision making. They want things to happen quickly and to get their products to market quickly and not be impeded by bureaucracy, added cost, added taxes and inconveniences that seem to be put in their way at every step. All of these act as a disincentive to invest and develop new businesses. Wealth creation is a big factor that should underpin everything we are trying to do. There is a concern that the powers of tax and so on included in the Scotland Bill will be used by parliamentarians to fund their pet projects and that it will not be for the benefit of the country as a whole, let alone the economy. They will seize on this opportunity, having been given the keys to the candy store, to go and help themselves. We have to make sure there is proper accountability and responsibility among parliamentarians that helps to finance growth correctly. I am not quite sure that the Bill really specifies how it intends to achieve that.

Q347 Fiona Bruce: Thank you. You said that the Scottish economy has consistently been under-performing with regard to the rest of the UK. I would be interested in your analysis of that and also your sense of what I would call the morale of the business sector, which is a very fragile thing. Business people can be cautiously optimistic or, if you like, almost frozen in terms of not wanting to take on any staff. I know that when the recession began the mindset was, “Let’s just see if we can survive”, and there was absolutely no expansion within that mindset. Where do you think the morale and mindset is now in the Scottish business sector?

Terry Murden: To pick up the “under-performing” bit, Scotland’s economy has under-performed compared with the rest of the UK for a good many years. No one seems to be able to break that cycle. There have been odd occasions when GDP growth has been above average, but it tends to be temporary. No one has really found the answer despite all the money thrown at organisations such as Scottish Enterprise and all the other schemes and initiatives we have, and have had over the years. I think it also adds to the scepticism and perhaps impacts on morale among the business community that what we will get as a result of this Bill are yet more initiatives and schemes that will just go round in circles, and that once again it will be back to base.

Q348 Mike Freer: Taking those things in reverse order, if you have an unwieldy public sector, it never grows its productivity to the same degree as the private sector. We have seen that over the last 30 years. If the public sector is too large in Scotland, then clearly it will always under-perform the parts of the UK that have a more balanced economy.

Going back to the almost doomsday scenario you were painting about tax autonomy—businesses closing down because they are over-taxed, over-regulated and over-burdened—I find that quite exciting, because if those people who are paying the bills start to see the consequences of the bills, they might start to challenge those who are levying taxes that are too high. It goes back to what Mr Jamieson was saying: that the debate is imbalanced because the debate is all about spending.

Terry Murden: We have mentioned one example—this large retailers’ levy. Once the Parliament has been given an opportunity to raise tax, there is an outcry.

Q349 Mike Freer: Or they could cut it.

Terry Murden: They could cut it, but business tends to believe that they will not.

Q350 Mike Freer: Is that not a good thing?

Terry Murden: Of course it is a good thing. It is a good thing if it does not mean that something is impacted adversely as a result of it.

Q351 Mike Freer: But as the taxpayers start to see businesses closing down and fleeing Scotland because it is a high-tax zone, as we have seen in the federal economies of the States—

Terry Murden: And, with respect, we are seeing it here in this city, where some companies have gone abroad because of high taxes.

Mike Freer: They relocate to a lower-tax area.

Terry Murden: Yes.

Q352 Mike Freer: I appreciate that it could be a doomsday scenario, but the upside is that if the voters of Scotland start to see that the high tax policies of their Parliament are destroying jobs, they might start to challenge their politicians a bit more. Is that not a good thing?

Terry Murden: It is, but then they only have a chance to change it every four or five years. A lot of damage can be done in that time.

Q353 Mike Freer: I understand the doomsday scenario, but I rather see it as an opportunity to challenge the politicians to rein in taxation.

Terry Murden: There is a link between changing the amount of money raised from tax and the revenue risk that you get from that, if you like. As the one goes up and down, there is an impact on the amount you get. I suppose there would be concern that if you cut taxes, where will the revenue come from?

Q354 Mike Freer: The argument is that growth accelerates, so the total tax take increases.

Terry Murden: It is unproven.

Bill Jamieson: Quite right. The balance of opinion in Scotland currently—this may depress you even further—is that it is Government and public spending that generate economic growth, so there is another dimension here of argument to open up, but it is getting off the point. But many people do believe that.

Q355 Lindsay Roy: Is it not also the case that we need to promote social wealth? In particular, I am

looking here at cultural change in our education system so there is a much stronger promotion of enterprise initiative within our schools, so that there can be further encouragement to start up businesses. From my experience as a former head teacher, more of that needs to be done.

Bill Jamieson: What you say is absolutely right. However, that does not alter the fact that when people leave school and have the choice, or had the choice up until very recently, of going into business or starting up on their own and going into the Government sector in one form or another the odds are stacked so heavily in favour of taking the Government job route. There is job security, better pay, pensions—everything. The whole thing is just so skewered.

Terry Murden: And once they are in the public sector they are not persuaded to leave it and go into business because it is too much of a risk.

Q356 Lindsay Roy: That is why I mentioned cultural change. An attitudinal change and change in mindset is vital.

Terry Murden: In my view, it is the single biggest reason why we have a low rate of entrepreneurial activity. Certainly, up to now there have been too many people in well-paid jobs—there probably will not be in future—who may have made very good entrepreneurs and might have run very successful businesses, but they are in a comfort zone that they do not want to leave.

Q357 David Mowat: The point I was making earlier when I asked the question was just that. The consequence of the way the settlement works at the moment has precisely the effect on Scotland that you have just set out, which is a displacement effect.

Bill Jamieson: Yes.

David Mowat: It was portrayed as being perhaps a very good thing for Scotland to have a relatively generous settlement—I know that not everyone agrees on this—under the Barnett formula. It causes the impact you describe, which, over time institutionalises a mindset which says that the Government produces economic activity. Actually they are right; in a sense it does, because that is how it works at the moment, and it is very dangerous.

Q358 Chair: To put a slightly different view on it—again, it is always difficult to build points from personal examples—I think of my own children, who worked for a while in the private sector, in the hospitality industry in Scotland. Having been there for a while on the minimum wage, being treated appallingly, they decided, “I’m not staying in that any longer than I can possibly avoid.” I can understand why a lot of people get out of the private sector and into the public sector where generally they are treated much better, like human beings, and are not exploited in the way some people are in the private sector. I think there is a balance to be struck. But I come back to the question of corporation tax. I presume that *The Scotsman* is not campaigning for the Scottish Parliament to get powers over corporation tax in order to increase it.

Terry Murden: No.

Q359 Chair: You are assuming that if the Scottish Government get power over corporation tax they will reduce it. We have had evidence from a number of witnesses who have said that the evidence for saying that immediate cuts in corporation tax will grow the economy is not proven over the short term, and the real danger of devolving corporation tax in Scotland was that Scotland would seek to cannibalise corporation tax revenues across the United Kingdom as a whole, which of course would be better for Scotland. If you are a Nationalist you can understand why you would want to do that, because in those circumstances you would not care about a decrease in corporation tax in England, Wales and the rest of the United Kingdom. Are you not guilty of a bit of superficial thinking here? That is a trite solution, is it not? I understand that you want corporation tax cut, but surely the objective could equally be met by corporation tax from the United Kingdom and it would be much more honest if you just campaigned for a cut in corporation tax rather than say that you want to have the powers transferred.

Bill Jamieson: That is a very good point. You will know better than I the sort of ferment on what it is that should be done to help revive and rejuvenate areas of the economy outside the south-east. It is by no means a Scottish-only problem, as you will well know. All sorts of quite radical ideas are being revisited here about what we can do about the regions to stimulate business activity in the regions. In principle, we are in favour of a reduction in corporation tax for two reasons. First, we think that tax competition in principle is a very good thing. I would imagine that if we ever came close to a situation where there was a Scottish Government that had power to alter business tax or corporation tax, that would be watched very closely across the other nations and regions of the UK and it would encourage tax competition downwards, particularly for the business sector here. That is one argument.

You are right to point out that there is a not proven verdict on the economic evidence for cutting corporation tax. Does it lead to economic growth? It is very difficult to isolate cuts in corporation tax in themselves as generators of growth. The other complicating factor is that in many countries in Europe, particularly Eastern Europe, where there is a flat rate of corporation tax, other taxes are quite high. In terms of the inward investor, there is not a great deal of benefit simply because the corporation tax looks to be at a lower rate when you find that your other taxes are higher. What we would hope is that what comes with the philosophy, if you like, of lower business tax is a lot of other things that are pro-business, pro-entrepreneur and pro-enterprise and that begin to kick-start the culture change you identify.

Terry Murden: Our view on that is that a package of measures, rather than one single measure, is needed. For instance, if you take the situation in Ireland which, as we all know, has had a very low rate of corporation tax, that must have contributed to the growth of the Irish economy. As we know, the Irish economy is now in a mess, but that is not related to the fact that it has

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a lower rate of tax; it is because of other things that went wrong in the Irish economy. There is a danger of seeing one tax being used in isolation from all the other economic tools that exist. To come back to the Bill, if one of its purposes is to help the economy it has to look at a range of things. For instance, on Sunday we wrote about the fact that a campaign was running to reintroduce enterprise zones, which I understand George Osborne is looking at ahead of the Budget. There is going to be some rivalry about where these new zones may be. You have to look at all the business rates packages.

The differences among the business community on this are notable as well, because the CBI in Scotland does not support changes to corporation tax; it wants a uniform single market for the UK, yet the CBI in Northern Ireland is campaigning for a cut in corporation tax, so even the business organisations themselves are not united on this. As to the entrepreneurs, Jim McColl has singularly been calling for a range of what he calls incentivising taxes or other measures that would help the economy. My view is that, yes, a cut in corporation tax is bound to be a stimulus, but I do not think that in itself it would necessarily help. If you cut corporation tax here and raise the cost of something else here, you merely eliminate the advantage immediately. In the case of Ireland they cut corporation taxes and then recklessly lent money, so they lost those advantages.

Q360 Chair: Your case is slightly more sophisticated, but as I took the position you put forward, Mr Jamieson, you were saying that it was not proven that cutting corporation tax would increase economic growth, but you want it devolved anyway. I do worry—and we are quite entitled to worry—about this question of cannibalisation from the rest of the United Kingdom. You will never be able to beat Bermuda or the Cayman Islands, if it comes to a question of tax competition and where plants will be. I am not sure that that route of competition downwards leads anywhere but madness.

Bill Jamieson: It is very difficult from an academic point of view. If you are an academic and you have been set the test of identifying the factors that stimulate economic growth, it is very difficult to isolate a lower rate of corporation tax in itself as the catalyst. But you will find that in many countries that have reduced corporation tax there is also a set of other business-friendly measures. That is the point.

Q361 Chair: To be fair, that is different, isn't it? We are running another inquiry in parallel with this one. It started before the Scotland Bill inquiry and will run after it, because this is more time-restricted. It may very well be that if we have not upset you too much, we will ask to see you again to try to pursue these sorts of issues.

Bill Jamieson: Yes. You raise another interesting point: the extent to which the debate that we are having here about the Scotland Bill has resonance in other areas of the UK which have very serious economic problems: the north-east, north-west, west midlands and the west of England. They must listen to this debate with a great deal of interest and

apprehension, and may well feel, "Why does Scotland get all this attention and focus? Our problems are equally severe and deserving of attention."

Fiona Bruce: Clearly, your politicians are shouting about it.

Chair: Those areas do not have *The Scotsman*.

Q362 Dr Whiteford: I represent a part of the country where there is absolutely no shortage of entrepreneurial spirit and entrepreneurs. I think we have the highest proportion of self-employed people in the whole of the UK. One of the very real challenges they face is the distance from market. That is one of the biggest barriers to economic growth in my part of the world. I see that day in, day out, with local companies. That has added-on taxation in fuel costs and the massive fuel taxation that goes forward. In a debate about corporation tax, is there a degree of unidentified taxation that we need to offset to create a more level playing field across the UK as a whole? I wonder what your thoughts are on that.

Terry Murden: This is not just a matter of tax. If you are talking about bringing advantage to other deprived areas of the country—

Q363 Dr Whiteford: It is remote, not deprived.

Terry Murden: Remote, okay. Just recently I heard the argument that a six-lane motorway connecting the Highlands with the central belt would unite the country significantly, bring the whole of the north into the central belt, help the growth of that area and unite a country which is quite separated in that respect. This is nothing to do with tax. It is simply the ability to get about easily and the ability to get goods to market more easily. Anyone who wants to take the A9 route and take their life in their hands knows what is involved.

Q364 Dr Whiteford: In that respect, do you think the borrowing powers in the Scotland Bill are adequate?

Terry Murden: I understand that most of what they are being allowed to borrow goes on the new bridge, and there is another £500 million left in the pot, which goes against the National Loans Fund. Whether that is enough, I am not in a position to say. But my point is that you cannot look at just corporation tax or even taxes generally as the only stimulus for the economy. If you look at any of the emerging nations, and even the wealthy areas of the world like the Middle East, China and places like that, what do they do? They build an enormous international airport and power stations, one a week in the case of China, and put in all the infrastructure—road networks—and make sure everybody can get about properly and get to international markets easily, and have the energy that they need. If they do not have enough energy, they go out and buy it from somebody else. They put all their ducks in a row, to use a business expression, to make sure they can get on with the job. It is no good saying, "We'll spend six months talking about changing this little tax here," or "We might put in a bit of dual carriageway over here"; that is just tinkering around. We will not see any step change in the economy if we continue on that path. That is the basic history of the country.

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Bill Jamieson: We also have a very rudimentary planning system. I do not think they have the equivalent of Historic Scotland on their back, do they?

Q365 Chair: No, but to be fair, when we are discussing the question of changes in the Scotland Bill, you mentioned earlier delays on the M8. That has been devolved for ages; the same is true of the question of the A9. All of that has been devolved for ages. As to power stations, there is devolved power over planning, yet we have stations being blocked. It is not, in a sense, a constitutional settlement that is required to deal with these issues, is it? This is a question of a wider debate about Scotland that has been, as it were, overwhelmed by a debate about constitutional tinkering.

Terry Murden: Exactly, but if you go right back to the beginning of this conversation, in my view businesses will be more concerned to see the M8 turn into a six-lane motorway than about the academic arguments about certain issues in this Bill. Fiscal autonomy may be somewhere out there. For a start, they are not quite sure what it is, but what they do know is that when they are stuck in a traffic jam, that causes them a problem in getting their business done.

Q366 Mr Reid: There are two other taxes that have been devolved in the Bill, landfill tax and stamp duty. Has the business community said anything about that? Is it worried about it? Does it think it is a good idea, or is it apathetic?

Terry Murden: Only inasmuch as those are things that the ones who want to see a greater range of taxes devolved have included on that list.

Q367 Mr Reid: Is the feeling that there should be more taxes?

Terry Murden: No. There is no consensus. If you speak to Iain McMillan at the CBI, he will say that he is delighted that there are no plans to move corporation tax, employment law, company law and all that kind of thing and that they will continue to be reserved matters.

Q368 Fiona O'Donnell: One thing that sometimes gets missed is that the Bill proposes the Scottish Parliament can raise new taxes. Only two out of the four made it into the Bill. Is there concern about that?

Terry Murden: Yes. As I said earlier, this imponderable power to create new and unspecified taxes leaves people feeling slightly uncertain about what they might be. The worry among business people is that as soon as the politicians, with all due respect, get a chance to exercise power over tax, they may well raise those taxes.

Q369 Fiona O'Donnell: That is after 11 years of the Scottish Parliament having the power to vary income tax, and it never has done.

Terry Murden: Exactly. They have not used it.

Fiona O'Donnell: They are still concerned?

Terry Murden: And the powers they have had have been used in such a way that people feel there is no tremendous track record. We have seen £500 million poured into the Edinburgh trams, which is deemed to be a waste of money. There is a concern that if they are given power over even more expenditure, they will waste it likewise.

Q370 Fiona O'Donnell: Is there something essentially different about politicians in the Scottish Parliament? I am not quite sure where this argument goes. Is it just "Do not let politicians deal with taxation," or is there a particular distrust of the Scottish Parliament?

Terry Murden: You have to look at the track record of the Parliament; it has not exactly covered itself in glory with these things, has it?

Q371 Fiona O'Donnell: With things like the trams, specifically?

Bill Jamieson: It may come back to the fundamental argument for having the Scotland Bill. If you give the Scottish Parliament the responsibility for having to raise 26% or 35% of the revenue in taxation, the theory is that there will be a better, more informed debate about public choices on spending and taxation. I do not know whether the tram system fits into that, because long after the thing went through and was approved all sorts of problems were discovered with utilities that nobody anticipated. Basically, the argument is: you will get a better debate, a more informed Parliament and a better quality of decision making.

Q372 Fiona O'Donnell: Do you think that the supermarket tax is an example of an informed debate and Government listening?

Terry Murden: I think it is, yes.

Bill Jamieson: It was a very well informed debate, because the tax was defeated.

Terry Murden: It is curious that the parties that propose transferring more power and responsibility are the ones who opposed the large retailers' levy. We have a slightly odd situation there.

Q373 Chair: Are there any points that you want to leave with us, or answers that you have prepared to questions we have not asked? Do you want to attack us on anything? Have we treated you outrageously, or are you entirely happy? So the editorials tomorrow and at the weekend will not reflect badly on us, and my mother will not feel any obligation to disown me or anything like that? Is that true?

Terry Murden: We will have a meeting outside to debate that.

Bill Jamieson: Feisty but fair is our initial summation.

Chair: Fine. On that happy note, thank you very much.

Bill Jamieson: And if you want to get a letter into *The Scotsman*, just give me a ring and I will do my very best.

Chair: Indeed. Thank you.

Examination of Witnesses

Witnesses: **Dave Moxham**, Deputy General Secretary, Scottish Trades Union Congress, and **Andy Wightman** gave evidence.

Q374 Chair: Maybe we could make a start. I had intended to start this session by asking Mr Wightman to sign a copy of his book. I went out this morning to try to get one. Did you know that there is not one to be got within walking distance of here? Waterstones told me that there was not a copy available in any of their stores south of York, which is obviously something you need to pick up with your marketing manager. Given that general introduction, you can tell that you will not get a particularly hard time from me or any of my colleagues, I think. We are generally supportive. However, we will start off with Dave, if you don't mind. What is the line of the STUC on the Scotland Bill? Is it a unanimous line? If there are divisions, what is the nature of them?

Dave Moxham: As you would expect, the position of the trade union movement is finessed by the STUC and amalgamated. As you know, we have 30-plus different organisations and slightly different perspectives. It is pretty fair to say that the position I represent today is the quite strong consensus that the Calman recommendations are ones that we broadly support, but along the lines of the kind of vision that we have for a funding settlement for Scotland, the Scotland Bill does not do a bad job of attempting to translate that into legislation. I feel fairly confident in saying that that is a consensus position, although you will be able to find a union here or there that disagrees with particular aspects of our submission either on Calman or the Scotland Bill.

Q375 Chair: Are there any particular areas where you identify weaknesses, particularly in relation to accountability?

Dave Moxham: Our position on tax had been that between the level we are at, which I tend to think is more like 25% or 26% than 35%, and an upper level of anywhere up to about 50% of Scottish spend—of the 60% that is spent in Scotland—was a reasonable amount of money to look at in broad terms to maximise accountability while maintaining some of the single market social solidarity, broadly speaking, and the single welfare system that we advocate. We support the move on income tax. We would have been reasonably happy to see the assigning of some other taxation, as Calman suggested in his report might happen in future, but if that does not happen we do not see it as a kind of deal-breaker. That is our general view on taxation.

We believe that, on borrowing, Calman could have gone further, and probably the Bill could go further in a number of areas. Notwithstanding some of the difficulties that will probably be experienced, we favour the ability of the Scottish Government to raise bonds. I am just skimming over these on the basis that Members will probably come back if they have a particular interest in one of those areas. On the issue of welfare, where we would include council tax benefit and housing benefit, as well as potentially some limited areas of broader welfare policy, we see arguments in favour of devolution of those, or at least new arrangements to deal with them. They do not

seem to be adequately covered just now in the Command Paper. That is a quick run-through of the areas. Members may want to pick me up on those or ask me about different matters.

Q376 Fiona O'Donnell: It is good to have someone here talking about the Bill in relation to ordinary working people in Scotland. You have probably answered the question I was going to ask. Is there anything that you are disappointed not to see in the Bill? Is there anything else you want to add that STUC would like to have seen in the Bill?

Dave Moxham: Something may come back to me in the next 20 minutes or so.

Q377 Fiona O'Donnell: Feel free to stop me. I want to talk about jobs and unemployment in Scotland. Scotland has rising unemployment. There are different predictions of how many jobs will go as a result of cuts in public expenditure. Certainly, the situation is less healthy in Scotland. From the point of view of tax, are you concerned that revenue in Scotland from income tax will fall disproportionately to that in England? Do you think that there are provisions in the Bill that will protect Scotland from that?

Dave Moxham: I think it is unlikely in the next period that income tax will necessarily fall more quickly in Scotland, in particular in relation to income tax compared with the overall spend comparison that people have talked about. In a sense, I think we are looking at a situation where over the past eight or nine years receipts have been significantly smaller compared with overall spend. That might flip in the next period, partially as a consequence of the recession and attendant difficulties. I do not see that as a problem, although I see unemployment as a significant problem, and there are things that I think we could do to deal with that.

Q378 Fiona O'Donnell: By the time we get to these proposals kicking in, hopefully Scotland will be heading in the right direction. Do you see any opportunities in the Bill to create employment in Scotland? I am thinking particularly of the construction sector, where there are probably the best opportunities for growth.

Dave Moxham: There are two things. One is the specific matter to which you allude. We would generally be looking for those borrowing limits in relation to capital spend from the loan funds to be up a bit. Maybe we could get a west coast project like the rail link out of it, as well as some east coast project. More generally, I think there is some value to be had in looking at the correlation between public spend in Scotland and how it can intervene in relation to employment. I think of areas like the Future Jobs Fund, which obviously was a scheme we supported; it ran up until June and was then discontinued. Certainly, the Labour party in Scotland, and possibly the SNP as well, are looking at schemes whereby the Scottish Government might intervene essentially to create six-month jobs. It seems to me that at the

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moment there are difficulties in respect of both the current arrangements and possibly in relation to the arrangements that the Scotland Bill proposes because, essentially, it is a kind of no-win situation. You spend quite a lot of your skills money or health money, or a combination of both of them, essentially to create short-term jobs to boost some skills and get some employment going, and all the immediate financial benefits accrue to the Treasury and DWP. There is something to be looked at in employment terms about how the Bill might better reward or find better mechanisms to deal with those decisions that a devolved Government might take to invest in order to meet unemployment.

Fiona O'Donnell: You will be pleased to hear that yesterday we did press the point with HMRC that if jobs were to be saved or created as a result of the tax proposals, those jobs should be in Scotland, so the headline will be "Scotland Bill saves HMRC jobs."

Q379 David Mowat: Overall, does your organisation support the direction of the proposals on income tax?
Dave Moxham: Yes.

Q380 David Mowat: So there is no ambiguity around that?

Dave Moxham: There is no ambiguity about our support for it. We could think of ways of improving it. We have certainly read of ways of improving it, but if you are talking of the overall direction of travel, we are content with it.

Q381 David Mowat: Are you concerned about the boundary issues, in terms of differential tax rates between England and Scotland, and how it is implemented?

Dave Moxham: If you are talking about the identification of the Scottish taxpayer, as identified in the Command Paper and various other things I have read, there are likely to be complications. That is likely to be a bumpy process. It does not seem to us—I apologise for not having the level of expertise that you will have heard from HMRC, accountants and others—to be so large a problem as to persuade us that the devolution of the tax itself is a bad idea.

Q382 David Mowat: As you said earlier, you are concerned about job creation. One point we talked about earlier was the fact that Scotland had a larger public sector as a proportion of its total economy than nearly all other parts of the UK. There is nothing in this Bill that will stop that continuing; indeed, it may be institutionalised. Do you see that as an issue at all?

Dave Moxham: Maybe you will explain to me how that will necessarily be institutionalised. I am not sure I understand how that would be the case. There was quite a lot of discussion in the previous session about the size of the public sector and its perceived effect on productivity. To be frank, the literature does not back up these suppositions in any case whatsoever. The bible as far as we are concerned is Lindert's "Growing Public", volumes 1 and 2, which I am prepared to sign, even though I did not write them, because I have read them so much. Essentially, the literature suggests that there is no direct correlation

whatsoever between public spending and growth either way. That is to say, you can find plenty of international examples of countries with high levels of public spending that have done well economically, and the opposite has been true. The Scandinavian examples roll off the tongue, if they need to be cited. The point Lindert and other studies I have read make is that there is something about how public spending is exerted, and how you spend; spending on measures that will get larger participation from women in the labour market tends to be good for productivity. Having to spend all your money dealing with crime tends to be bad for productivity. It seems to me that there is a clear argument for making sure that the Scottish Government spends its money on the most productive areas. That is a far more important argument than the relative size of the public sector. To give one final example, we had a five-minute debate here about the difficulties in relation to the planning system in Scotland. By all means we should definitely employ more local authority planners, as far as I am concerned. Were that the case, they would help to drive forward productivity. There are clear examples where the public sector is capable of driving productivity, rather than being a drag on it.

Q383 David Mowat: So your point, to summarise, is that it is not a public sector and private sector argument, but a productivity argument, and it would be perfectly feasible for Scotland to be as productive as similar economies if public spending was much higher?

Dave Moxham: Absolutely. The key economic dynamic to be addressed in the UK, if we are looking at all of these fiscal issues and sector sizes, is the relative prosperity of the south-east and London, notwithstanding pockets of extreme deprivation in London itself, and the rest of the country. Too much time is spent on the supposition that somehow Scotland is different from all the rest of the UK, rather than that very specifically a large number of areas are different economically from the south-east and London.

Q384 David Mowat: It is different potentially from other areas of the UK with levels of deprivation equal to Scotland because of the way the Barnett formula works, in that the level of spending is higher. But your point is that the public sector per se is not necessarily a bad thing, and the corollary, I suppose, is that you would think that you are equally likely to get productivity growth in the public sector as the private sector?

Dave Moxham: Indeed.

Q385 Lindsay Roy: Are there any other taxes you would like to see devolved?

Dave Moxham: I mentioned earlier the potential assignment of a somewhat larger basket. I am happy to talk about corporation tax, although the Chair made the points that I very much would have made on that. We did not identify any other tax that we thought should be devolved for the purposes of variation, as opposed to assignment. Obviously, income tax is assigned and variable. I have not looked in detail at

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the decision in the Command Paper on the Scotland Bill not to assign the savings element of income tax. I understand the argument is that that would be overly-complicated and there would be too much transaction cost. We would be prepared to look at that, but originally we had been in favour of the devolution of that tax, too. Equally, I am not sure that the arguments in relation to the decision on an aggregates tax and air tax necessarily stand up. I understand that they are both going through two different forms of process just now. I am not sure that it is not possible for those to be devolved to the Scottish Government and then for it to take its view on whether it also needs to make changes, pursuant to court action or other considerations.

Q386 Lindsay Roy: But there is nothing other than that?

Dave Moxham: There is nothing other than that. There are no biggies, if you like.

Q387 Lindsay Roy: You would accept, as Calman himself said, that this is a process rather than an event, so indeed in due course other things may well come up?

Dave Moxham: Yes. We heard reference at least to the block grant. I do not think that the issue of the Barnett formula has gone away for ever. It will return and when it does—there should not be any rush to do that—its replacement should be on a needs formula basis, but it might be necessary to look at that with a slightly wider basket of taxes at that stage. But I stress that we consider ourselves to be distinctly not in the camp of full fiscal autonomy. We do not believe that Scotland taxes and then buys services back. We are definitely not in that camp.

Q388 Mike Freer: We had a reasonably spirited debate about tax raising. Clearly, the guys from *The Scotsman* thought that politicians would only ever put taxes up. Do you share the view that tax raising inevitably leads to higher taxes and, therefore, leads to competitive disadvantage?

Dave Moxham: Essentially, there are two devolved taxes in the Scottish Government's ambit just now, council tax and business rates. The small business bonus scheme is part of that. Both have been frozen or reduced by the Scottish Government in the last period. We disagreed with those decisions, but it seems to me self-evident that the direction of taxes is not just up when they are devolved. If anything, the voice in favour of the devolution of more taxes is being expressed more loudly by those who would lower them than those who would raise them.

Q389 Dr Whiteford: I would like to go back to those items of Calman which got left out of the Bill. I think about 35 of the 63 Calman recommendations have made it into the Bill. One of them that has appeared in a very watered-down form is the Crown Estate recommendations. Has the STUC taken a position on the Crown Estate and, if so, why?

Dave Moxham: Only very recently, by which I mean about yesterday afternoon, at the point of waiting to give evidence to the Committee of the Scottish

Parliament, which we both did yesterday, I was very quickly briefed on the importance of the delivery of that service as close as possible to Scotland and was relatively quickly convinced that the best way to do that was in the way Calman had recommended rather than in the way the Scotland Bill does. If I had not been sitting next to Andrew at the time, I would have had to confess that we had not taken a view. We now have, and I am fairly confident that I can get the backing of my general council for that aspect.

Q390 Dr Whiteford: At the outset of your remarks you also talked about welfare and housing benefit, and council tax benefit in particular. I would be really interested to hear a bit more about that, not least because social landlords in Scotland are concerned that this Bill is pushing in the opposite direction and re-reserving powers that would have some significant implications for housing.

Dave Moxham: I am aware of the specific re-reservation relating to insolvency about which housing associations are concerned. Calman says that both housing benefit and council tax benefit are difficult because essentially they are passport benefits and you cannot necessarily see them out of the round, at the same time recognising that they have a clear relationship to policy setting in Scotland. Particularly in the context of the UK coalition Government looking to take forward the welfare challenges, I recognise that to an extent that relates to housing benefit, given that the UK Government are now saying that housing benefit will be grouped within the single benefit that they propose, the details of which we have not yet seen.

I was always slightly mystified about council tax benefit. I always thought, and still do, that council tax benefit is a kind of end calculation. Basically, you wait until everything else is calculated and then you find out whether or not you are eligible for council tax benefit and it does not play back into eligibility for other benefits. There was always a mechanism but it was suspended, slightly strangely, four or five years ago—I say “strangely” in the sense that there was no fanfare—whereby if the Scottish Government raised or lowered council tax it was recognised that that had a potential effect on the DWP and, if it was out of kilter with expectation, adjustments would be made to the block grant. That disappeared and I am not quite sure why. I think people began to touch on that argument when the Scottish Government put forward their proposal, which we opposed, for local income tax. But it is a good argument. If you chose, as I would advocate, at the very least to broaden the bands of the current council tax—it is not by any means a perfectly progressive tax but it has progressive elements—you would change its progressivity and the extent to which people on that band would then go knocking on the door of the DWP for their rebate. Not to have any relationship between that either by devolving it or coming up with a suitable mechanism to recognise the mutual effect on pots of money that those decisions have seems to me to be wrong and should be dealt with. I could go further and say that there may be areas in relation to the wider welfare budget itself to which that might refer, but I will stick there just now.

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Q391 Chair: Perhaps I may follow up the point about consequentiality. There is already a provision in the Bill saying that in the event of Westminster deciding to alter tax bands, which would impact on the Scottish Parliament's take from whatever it had from income tax levels, there will be a consequential payment, so they would not be adversely affected. There is the question of whether or not that would apply the other way round, if you transferred powers over rating valuations. The impact on the benefits budget is an interesting issue that may need to be explored as the next part of the process. I think you heard us indicate earlier that we would take the view that this is not static. It is not necessarily a one-way slide. It is an iterative process and some things will move backwards and forwards. Maybe we can come back to that.

Are there any other points we want to raise with the STUC? Most of us are pretty well aware of your positions, a lot of which are accommodated within Calman and then in the Bill. In a sense you are one of the groups that perhaps feel happiest about the progress already made on these matters. Do colleagues have any other points? As we said to the previous witnesses, are there any answers that you had ready to questions we have not asked you?

Dave Moxham: No, but I had hoped that, even if my answer was not perfect, I would at least be taken up on the issuing of bonds. While there are potential difficulties in respect of the underwriting and where the risks lie for those bonds, we have been very upset for a long period of time about the nature of the private financial initiative, the PPP and its successor. We are not particularly impressed by the Scottish Futures Trust as is. It is singularly non-transparent. In many cases they are just bad schemes. Even when the schemes have not been that bad, they have been hard to explain and understand, and hard for people to relate to. None of those are good things. We are therefore disappointed that, along with the other borrowing powers, there is not a specific suggestion that the Scottish Government should be able to issue bonds. I felt it important to raise that.

Q392 Chair: We had evidence from Professor Muscatelli and others yesterday. We have seen so many people that I am trying to remember who said what, but certainly people recommended to us that the borrowing powers should be increased. Are you drawing a distinction between additional borrowing powers—the ability to access more money—on the one hand and specifically bonds on the other?

Dave Moxham: Yes. I am saying I agree with Professor Muscatelli, or whoever else gave that evidence, that the width of borrowing power available under the National Loans Fund could do with a bit of an increase, but that the issuing of bonds, which is on a slightly different basis and essentially is similar to the sale of gilts, is a separate borrowing mechanism I would also support. All of these things would need to be prudential. We are not arguing that any of these things should be unsupportable on the evidence of the Scottish tax base, but as far as I am aware the issuing of bonds is different from availing yourself of certain financial loans.

Q393 Chair: I still do not understand this, and I think it is quite important. You have this position about bonds. Is that a way round what was seen to be a restriction on the amount that could be borrowed, and is the real issue for you that you want the Scottish Parliament to be able to fund more capital projects by getting access to more borrowed money, and you thought that if there was a restriction on their borrowing powers, bonds was a way round it?

Dave Moxham: Assuming the Scotland Bill or Command Paper as written passes into law, then within Scotland there will be three or four different borrowing powers. There will be the ones to which we have been referring. Local authorities will still be able to run bond issues as potential borrowing. In a sense, all we are saying is that with all those mechanisms which will be available in Scotland, that mechanism that is available in Scotland to other Scottish bodies should also be available to the Scottish Parliament.

Q394 Fiona O'Donnell: I read Professor McLean's evidence to Holyrood on this. Why do you think local authorities in Scotland do not use bonds more?

Dave Moxham: My understanding is that it is largely because they still have to make a calculation based on the prudential code as to whether the issue can be supported by tax revenues or is the best way to go about funding a project and all the rest of it. There is still a load of restrictions. I do not argue that by passing over to the Scottish Parliament the power to issue bonds there would necessarily be a sudden rush to do it, because I think that in some circumstances it is quite likely you would pay slightly higher rates on borrowing than you would on other loans. It is a kind of additionality that has to be judged on the basis of the prudential code and therefore may not be used as much as it sounds, but is a power that Parliament should have available to it.

Q395 Fiona O'Donnell: Concerns were raised in Holyrood that less competitive rates might be achieved by the Scottish Parliament with these bonds. Is that a concern?

Dave Moxham: It is possible that those bonds would not be at quite as competitive a rate as some other forms of borrowing. I am not an expert on that; that is just from reading I have done. In a sense, that is a commercial and fiscal decision that has to be made.

Q396 Mike Freer: Is not the problem that any borrowing by the Scottish Parliament is ultimately underwritten by HMG and therefore is on the PSBR? That has always been a fundamental problem with local authorities, certainly in England, being able to issue bonds. The Treasury has always said no, because it breaches all their taboos.

Dave Moxham: I should add that that would still have to be subject to certain conventions and arrangements that allow the Treasury to take a view on the overall impact of borrowing.

Q397 Chair: That is right, which is why I did not quite understand—I confess I still do not entirely understand—whether or not there was any distinction

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between getting more money by issuing bonds and borrowing by other routes, because both of them would come under the national deficit figures. If there is something I am missing and there is an advantage in doing it by the bonds route rather than the loans board route, no doubt the staff will tell me by the next meeting and I will share this with all of you.

Maybe we can now turn to Mr Wightman. I apologise for keeping you so long. The whole question of the Crown Estate Commission in Scotland is an issue that has arisen fairly late in the day as far as we are concerned. We did not realise that it had behind it the steam that clearly it has. We therefore apologise for giving you relatively short notice in inviting you down. Indeed, if you had known that there were no copies of your book available south of York, you could have brought some with you on your way down. Will you start off by telling us a little about the work of the Crown Estate Commission in Scotland and why the existing system does not work properly?

Andy Wightman: Thank you for the invitation, Chairman. As I laid out in my written evidence, there is a wide variety of Crown property rights in Scotland. For historical reasons, some are still administered by the Crown Office in Edinburgh, as they always have been since the monarchy of 1,000 years ago. Others, principally the Crown Estate, went south from the Baron Court of the Exchequer in 1832 and have remained there. At one level what we are talking about is a bundle of property rights, some of which are of quite significant economic importance, like the rights over the seabed and the foreshore, where essentially the argument is about governance and accountability. At the moment the Scottish Parliament has all the powers of planning, environmental regulation, et cetera, over these areas but does not administer the property rights itself.

I would also clarify the fact that the property rights themselves are devolved. In 2000 we abolished the Crown's paramount superior which was parts of the Scots law of property then. So the Scottish Parliament could actually legislate over these Crown rights if it wished. The concern over a long period of time—and I think you have heard evidence from a number of witnesses—is that the impact of the way these rights have been administered has been a bit haphazard and that people who want to do fairly modest things on the foreshore, or a small harbour that wished to extend a breakwater, find themselves in a very tangled process. They talk to the local authority about planning and things, they talk to other Government agencies about environmental controls and then the Crown Estate Commissioners come along and say, "We administer the rights over the seabed and we want to charge x, y and z." They come in at the last minute and it is a bit of a surprise. There are governance issues around harbours, for example. It seems strange that a harbour should not have complete control over the seabed of that harbour. I think the issue is about governance and accountability, and always has been. The Scotland Bill presents the opportunity to improve the governance and accountability, principally through, in my view, the removal of the Crown Estate Commissioners from their current role in administering these rights.

Q398 Chair: I can see the point about accountability, but you suggest that the existing system does not work adequately. If the existing system works fine and there is really no problem, then accountability would just be a nebulous concept for anoraks and the like. Maybe you can give us a few more examples of why something needs to be done.

Andy Wightman: I will give you a couple of examples. Back in 1999 just at the dawn of devolution the Scottish Law Commission initiated a report into the law of the seabed and foreshore. It published a report in 2003. Nothing has ever happened to that report, but it identified conflicts, for example, between the Crown's role as proprietor of the foreshore and the Crown Estate Commissioners' role in administering those rights and, on the other hand, the Crown's role as the guardian of the public rights over the foreshore. There was a potential conflict between these two different sets of rights. At the moment that is resolved by a group of unelected commissioners sitting in London. There are other examples.

Q399 Chair: To be fair, that is accountability and I can understand that, but in practice are there things that would have happened that have not happened as a result of that process and structure?

Andy Wightman: Yes, there are.

Q400 Chair: That is really what we are after, in a sense. I can see the flaws in the system, but if it is working fine to everybody's satisfaction there is no need to do anything. Clarify for us what is wrong.

Andy Wightman: For example, there was one island community in the Orkneys that wanted to put in a tidal barrage or whatever. The costs involved, just in terms of renting the seabed, were disproportionate to any benefits they would receive. There have been issues about laying a subsea cable from the Northern Isles, Orkney and Shetland, to the mainland. Again, the Crown Estate Commissioners have come in and said they want their pound of flesh, which makes the economics of the whole thing crazy. We are talking about property rights that are a fundamental part of the infrastructure of the country. You have people whose principal concern seems to be to maximise revenue generation even though that is not their statutory purpose. You have another set of people in local authorities and private businesses who want to get on and develop their economy and businesses and find stumbling blocks.

Q401 Chair: I want to ask you about a couple of things in your evidence that I do not understand. The third sentence of paragraph 4 on the first page reads: "Responsibility for the property rights themselves is devolved and it is within the competence of the Scottish Parliament to legislate to amend or abolish any of them." Surely, in that case the Scottish Parliament already has the power to deal with all of this. If we take the example of renting the seabed for the Orkney breakwater, can the Scottish Parliament not deal with this by legislation?

Andy Wightman: The Scottish Parliament has the power in the sense that schedule 5, paragraph 3(1) to the Scotland Act does not reserve property rights of

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the Crown. In theory, the Scottish Parliament could, if it wished, abolish the Crown's right to all naturally occurring oysters tomorrow. That would be unproblematic. When you get into things like the seabed, actually doing that becomes a bit problematical. There are various issues involved.

Q402 Chair: Why? If you are right and they have the power to do that, why do they not just do it?

Andy Wightman: Because that is far, far too complicated and that is not really the issue. The issue is not whether or not these are Crown rights; let's just leave them alone. The question is: who is administering them and benefiting from the revenues?

Fiona O'Donnell: That was what I wondered.

Q403 Chair: I think we need to be satisfied—I am not at the moment—that this is the only way to deal with it. I want to clarify whether or not the Scottish Parliament already has sufficient power to deal with this matter by another route.

Andy Wightman: I do not think so because, for example, there is a view within the Scottish Government, which has not been made available to me because it is in the nature of legal advice, that being able to use those powers over the property rights could be problematic. The simplest thing to do to improve accountability and governance is to bring back the administration.

Q404 Chair: I understand that point. You say “could be problematic”; that sounds like lawyers—

Andy Wightman: Forgive me, I am not a legislator. I am told that if you want to legislate over the Crown rights to the foreshore it is a complicated legislative thing to do because you are dealing with archaic rights. We actually do not know the extent of the foreshore that is Crown foreshore as opposed to private foreshore. You get into all sorts of issues which we do not have the time or will to get into. The key thing is: who is administering that foreshore and how accountable are they? Let's leave the rights as they are, unless we want to abolish naturally occurring oysters or whatever. These are modest things.

Q405 Chair: I understand your point about “devolving”. I just want to be clear: if the powers are devolved, how do you know what powers they would be devolving when ownership is unclear?

Andy Wightman: There are arguments all the time. This is one of the reasons why I think the Crown Estate Commissioners should be removed from the picture. For example, in Selkirk and the Borders the salmon fisheries were always regarded as the property of the borough, as part of the common good of the borough of Selkirk. The Crown Estate Commissioners' view was, “Well, you prove it.” That tends to be their view on all sorts of issues to do with property rights, for example, on the foreshore. The burden of proof is on the landowner or community to show that these are not their rights.

Q406 Chair: I see. The assumption is that everything belongs to the Crown Estate unless somebody can prove otherwise.

Andy Wightman: Yes, and that has caused huge problems.

Q407 Chair: That is perfectly clear. Is it within the powers of the Scottish Parliament to have said, “No, we are changing that so that all of it is somebody else's—ours—unless it is proven otherwise?” That would allow the whole thing to be dealt with in another way.

Andy Wightman: The Scottish Parliament could theoretically legislate over these property rights. Yesterday Wendy Alexander of the Scotland Bill Committee asked me to put firmly in the record my authority for that and I cited the schedule to the Scotland Act. I also cited the Scottish Law Commission's report on the law of the seabed and foreshore. She observed that they had contrary legal advice. In other words, there are lots of issues about legislating over the property rights. I merely raise the issue because one should be clear about what one is talking about. For example, the other day the chief executive of the Crown Estate Commissioners in the Scotland Bill Committee claimed that the commissioners were the landowner. They are not. The Crown Estate Commissioners own some paperclips and bits of paper and desks. They own nothing and merely administer Crown property rights, which in Scotland are distinct from England. There are Crown property rights in Scotland like salmon fisheries that do not exist in England because the two monarchies developed in parallel for a long, long time.

Q408 Fiona O'Donnell: Where does the money go?

Andy Wightman: Currently, the surplus revenues are handed over to the Treasury and the Crown Estate Commissioners under the 1961 Act are accountable to the Treasury.

Q409 Fiona O'Donnell: So it just goes into the general pot?

Andy Wightman: Yes.

Q410 Chair: To be clear, everything the Crown Estate Commissioners have throughout the whole of the UK goes by the same route and then disappears into the Treasury pot.

Andy Wightman: Yes.

Chair: Presumably, it is counted as part of the income which is then disbursed through Barnett in proportions with which David might disagree. We just want to be clear about that.

Q411 Dr Whiteford: Obviously, these are issues close to my heart representing, as I do, a very long stretch of coastline. I know from my own experience that this not only holds back development all around the coast but causes damage to our cultural heritage where harbours have been abandoned to rack and ruin, as in Crovie, for example, because of the Crown Estate's intransigence on these issues. My question to you would be: is the Scottish Government the best place to deal with this? Can you say a bit more about why you think devolving it, in essence, would be the best way forward? Maybe you would pick up Ian's

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point. In your view, is the Scotland Bill the easiest way to get round this problem?

Andy Wightman: The strongest argument for devolving this is that at the moment all Scottish Crown property rights are administered by different bodies. The Scottish Government and the Crown Office, acting as partners, administer some. The Crown Estate Commissioners in London administer others. I think it would be very beneficial if we brought all property rights together in Scotland to be administered by whatever body is deemed the most appropriate.

The second reason is that the Scottish Parliament already has all the powers for planning, marine planning and environmental controls, et cetera. In other words, it has all the responsibilities and the costs of administering the planning regime and the environmental regulation regime at sea, but does not get any of the revenues because another body comes and takes those. I also think there is an issue about potential discordance between the Scottish Government and Scottish parliamentary objectives in relation to the Crown Estate and the objectives of the Crown Estate Commissioners. Again, the chief executive the other week said that at the moment their objectives and the Scottish Government's were happily aligned, but, as the representative of Orkney Islands Council said in evidence yesterday, that will not always be the case. For example, if the Crown Estate Commissioners wanted to slow down renewables to maximise revenue by controlling the market and access and the Scottish Government wanted to speed it up to boost its carbon-saving targets there would be a huge discordance between those two. That is why I think it is best to bring them together.

The reason why I think the Scotland Bill is the best way to deal with it is that the Crown Estate Commission is a reserved matter. The 1961 Act that gives them the powers is a reserved matter. If one felt it was appropriate to devolve the administration of these rights, it would be a very straightforward thing to do by a one-line amendment of the 1961 Act. I think the Scottish Government has come forward with a proposal to remove a couple of the schedules of the Scotland Bill, so it is a fairly straightforward thing to do. There are also other options. A former Member of this House, Calum MacDonald, has put forward a model on the lines of the Forestry Commission. Calman made recommendations on the power of direction that have not been taken up here. That could be handed over to Scottish Ministers to exercise the power of direction. Even Professor Calman and his adviser, Professor Gallagher, last week, I think, mentioned to you the proposal for a Scottish commissioner, which really does not take us very far forward. I would observe that since 1962, every single chairman of the Crown Estate Commissioners has been a Scot. Last year is the first year since 1962 that we have not had a Scottish chairman, so it is and always has been a very Scottish body. The idea that this just becomes put on a statutory footing really changes nothing, unless a Scottish commissioner has statutory powers and obligations to represent the

Scottish interest, as opposed to just being somebody who knows the conditions in Scotland.

Q412 Dr Whiteford: I was going to ask whether you thought the proposals in the Bill as it stands would make any difference at all, but I think you have just answered that.

Andy Wightman: With all respect, Professor Calman and Jim Gallagher themselves have said they do not think there would be much difference, and that there was a debate to be had and we should have more time to explore this.

Q413 Chair: That is right. That is the other issue I want to pick up with you. I was speaking to one of my colleagues who is a strong supporter of the coalition and who indicated that a lot of this in the Scotland Bill was a done deal and it was highly unlikely that they would unpick any substantial elements of it. I wonder whether or not Calum MacDonald's proposal, or anything similar, offers a half-way house, given that this is an incremental move in relation to the Crown Estate Commissioners and is not something that has been high on the political agenda and there is not much of a head of steam behind it. I understand where you want to be eventually. Obviously, it is for the Committee to decide, but I am looking to see whether or not when we make recommendations something moves us in that direction that might be acceptable. One thing that strikes me is that simply transferring powers to the Scottish Parliament—Brian Wilson makes this point—does not overcome the difficulty of wanting to involve local authorities or communities in it. I wondered whether or not it would be a step forward, if not everything that you seek to achieve, if we looked at some fallback whereby the Crown Estate Commissioners had to produce a yearly report to us or somebody similar and have a memorandum of understanding which meant they had to outline how they were linking with local communities and so on. Is there something like that by which we can take things forward? Is there something like that through which we can take things forward? I fear that if we start to try to unpick the Scotland Bill altogether, those outwith the Committee will just say, "No. We're rolling forward nonetheless." Our degree of flexibility is limited. What could we do that would be helpful within the constraints?

Andy Wightman: That is a good question. As I have just indicated, there are a number of options which would improve accountability. I think that accountability and governance is the key issue because it is about aligning public policy in Scotland with regard to development of the marine areas, the foreshore and all the rest of it—all those policies are made in the Scottish Parliament and exercised by Scottish Ministers—with the administration of the property rights that enable those goals to be achieved. Anything that can improve that will be a step forward. Calum MacDonald's suggestion of a Scottish commissioner chairing a national committee would be extremely helpful. The contrast between that position and the Forestry Commission, of which he has experience, is that of course forestry policy is

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devolved, so the Scottish Parliament can pass a Forestry Act. It cannot pass an Act on the Crown Estate. The fact is that the Forestry Commission, although it is a hybrid, cross-border body and still a GB body, is directly accountable to Scottish Ministers for all its operations in Scotland. You could put in a clause to suggest that the Crown Estate Commissioners should follow the lead of the Forestry Commissioners and be accountable for all their activities directly to Scottish Ministers.

We could put in proposals about the power of direction which, as Michael Moore said the other day, has never been used and is rather a nuclear option, which begs the question: why have it in the first place? Nevertheless, that could be exercised by Scottish Ministers or the national committee of Calum MacDonald. Anything that would improve accountability and allow people to have a place where they could have discussions about how the Crown Estate is being administered and what the future holds would be far, far better, because, at the moment, that is not happening at all. One thing that would help would be a formal review. There has not been a formal review of the Crown Estate Commissioners' functions and duties since 1961, and that is an awfully long time ago.

Q414 Chair: In Scotland?

Andy Wightman: In the UK.

Q415 Chair: I thought the Treasury Committee produced something last year.

Andy Wightman: They had an inquiry. It was not a formal review. They produced a very good report in a very short space of time but it was not a formal review.

Q416 Chair: What would a formal review include that the inquiry did not?

Andy Wightman: It would have much, much greater depth.

Q417 Chair: The difficulty for us is that life is short and there are lots of things to do. There is a limit to the amount of time we can get for any parliamentary body to undertake a review, unless we got somebody like the National Audit Office to do it or something like that. I am just struggling to think of ways in which we could move this forward. Before finishing that point—I will move to another one in a moment—on the whole question of land reform, about which you have written in your book that is not available south of York, the Scottish Government have power to do lots of things relating to land reform that have not been taken up at the moment. Is that correct?

Andy Wightman: The current Scottish Government have not done a great deal.

Q418 Chair: If the current Scottish Government have not done a great deal, which is what I thought, how do you know that transferring accountability to the Scottish Parliament will make much difference in real terms?

Andy Wightman: Because the harbour in Dr Whiteford's constituency, the fish farmer in Skye and

the Kirkwall Harbour Board, instead of dealing with an unaccountable body of commissioners in London can speak directly with a Minister in Edinburgh.

Q419 Chair: What is the advantage of being ignored by somebody close to you as distinct from being ignored by somebody far away?

Andy Wightman: That is practice. If Ministers in Edinburgh choose to ignore them, that's fine. The point is that it is much more likely that issues will be resolved if they are resolved in a place that has proper accountability.

Q420 Chair: You told us earlier that the powers of the Scottish Parliament over land reform have not been used.

Andy Wightman: I do not think that has anything to do with it.

Q421 Chair: I do see some similarities between land reform and the Crown Estate Commission. If it is not on the agenda and the powers they already have on land reform have not been used, how do you know that if they got the Crown Estate Commission powers they would use them adequately? That is why I am also thinking about what other things we can do to take this forward, like the question of asking them to produce an annual report which would then be the subject of questioning and so on.

Andy Wightman: Take my small fish farmer or crofter in Skye. They just want to do something pretty simple on the foreshore. In many cases that becomes an insurmountable hurdle because of the way the rights are currently administered. A crofter in Skye should be able to go to his local authority and get a letter of consent in a matter of weeks. It is about efficient public administration of these public rights and that will yield economic benefits.

Q422 Chair: That is an argument for devolving it to local authorities.

Andy Wightman: We should devolve it beyond Edinburgh, but I think it would be beyond the scope of the Scotland Bill to come forward with a programme of how that might work, because that gets us into all kinds of further details. My proposal is that we simply remove the Crown Estate Commissioners as a reserved power so that it becomes devolved. We then have a debate in Scotland as to how these rights should be administered in Scotland. In some cases we will probably just abolish the mussels and oysters. The rural estates could probably go to the agriculture Department, or the tenant farmers might want to buy them. The foreshore and seabed could go to Marine Scotland with limited autonomy for local authorities, et cetera.

Q423 Chair: That brings me back to the very first point I made to you. I thought you were saying that the Scottish Government had powers over these things anyway.

Andy Wightman: The Scotland Act does not reserve Crown property rights, so the Scottish Parliament could, if it wished, legislate on those rights. It has chosen not to do so but it could do if it wished. The

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Westminster Parliament can legislate over the Crown Estate Commissioners, the people who administer these rights. All I am talking about is bringing the administration of those rights closer to home.

Q424 Chair: Maybe I am slightly confused about the distinction, which seems to me to be artificial, between the property rights and the administration thereof. If the Scottish Parliament could have the power to say that the property rights of oysters would be transferred to the Scottish Ministry of agriculture, then presumably that is the matter dealt with.

Andy Wightman: The problem behind all this is the fact that the issue about the Crown Estate Commissioners has been one of long-standing concern in many parts of Scotland, principally in the north.

Q425 Chair: I understand that.

Andy Wightman: It is not so much the question of the property rights and all the rest of it. One can debate that another day. The issue has always been one of accountability and who is responsible for this. As Calum MacDonald makes clear in his evidence, it was always very difficult to find a Minister who would take responsibility for this. Therefore, all sorts of things that could go on in his constituency that he wanted to see happen were not happening.

Chair: We are going round in circles. I think we will have to try to identify whether or not there is another way of skinning the same cat, as it were. I do have some doubts as to whether or not the Minister will be minded to unpick part of the legislation when a coalition of interest has been assembled on the basis of what we have there. That was why I was particularly keen to see whether or not there was another route by which the same objectives could be achieved. Maybe we will consult with you privately and so on to see whether or not there are other things we can do. Maybe we will also speak to the Minister when he comes before us to see what his inclination is.

Q426 Mr Reid: Thank you for coming along. We have covered a lot of areas, but I have just a couple of points that I want to bring up. One of Calman's reasons for not recommending the devolution of the Crown Estate Commissioners was that only 5% of the Crown Estate's income UK-wide was generated in Scotland, but Scotland's share of UK public expenditure was higher than that. Therefore, if we take the whole of the Crown Estate's money that comes in UK-wide and work out the proportion of that spent in Scotland, getting only 5% seems a bad deal. I wonder whether you have any response to that.

Andy Wightman: I am sorry. You say "getting only 5%".

Mr Reid: Calman makes the point that only 5% of the Crown Estate's profits UK-wide come from Scotland, but that Scotland's share of UK public expenditure is higher than 5%. It would seem that if Scotland is to get only 5% of the Crown Estate's profits rather than what we get through Barnett it seems a rather bad deal for Scotland.

Andy Wightman: I have not done the arithmetic, but over the past 10 years or so the average net revenues

from Scotland run into about £10 million a year, so we are talking about a differential of 2%, perhaps £200,000.

Q427 Mr Reid: For Scotland it is £10 million?

Andy Wightman: Last year it was £9.1 million.

Q428 Mr Reid: David probably has the exact figure, but if we say that Barnett, in round terms, is 10%, then 5% of £10 million would be £500,000.

Andy Wightman: Which is insignificant in the bigger scheme of things, frankly, with a block grant of £32 billion or whatever it is. That is an argument that the Crown Estate Commissioners have used politically to head off reform. My argument, fundamentally, is that if you bring the administration of these rights closer to the people whose livelihoods depend on them—I am talking beyond the Edinburgh Parliament and down to local authorities—they will make decisions more efficiently, quickly and in a more integrated manner with other public policies. Therefore, you will get much greater benefit out of the Crown Estate than you do at the moment where, by and large, the Crown Estate Commissioners ignore vast areas of the estate and are not responsive to its development at all.

Q429 Mr Reid: Do you feel that is worth £500,000?

Andy Wightman: Hugely. Take my admittedly speculative and hypothetical example where the Crown Estate Commissioners want to go at a certain pace on offshore renewable development and the Scottish Government want to go at a faster pace, which included a lot of community organisations that wanted to get involved in it and could earn substantial amounts of money. The difference between the Barnett consequentials and the net revenues that come from Scotland will be minuscule in comparison with the economic advantages that would accrue from having greater control of the resource and being able to develop it in ways that better match public policy.

Q430 Mr Reid: In that particular situation, under existing legislation could the community right to buy be invoked?

Andy Wightman: The community right to buy is in part 2 of the Land Reform (Scotland) Act which allows communities to register an interest in land and acquire it if and when it comes on the market, so it is not practical, in the sense that the Crown Estate Commissioners, although they have the power to alienate the seabed and foreshore, are very unlikely ever to do so. The community in Orkney that I mentioned which wanted to develop a tidal barrage with a very fast-flowing but narrow tidal stream between it and the mainland of Orkney could not do it through that measure because Scottish Government officials said that the community right to buy did not apply to the seabed.

Q431 Mr Reid: But could the Scottish Parliament legislate to transfer that land to the local community?

Andy Wightman: No, they could not, because at the moment the Crown Estate Commissioners are the people charged with the administration of Crown property rights. They are the ones who buy, sell, lease

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and all the rest of it. Scottish Ministers cannot do any trading in Crown property rights by way of lease, sale or anything like that.

Q432 Chair: I thought the exact wording of your evidence was contrary to that. You were referring to the responsibility for the property rights themselves and so on.

Andy Wightman: The legislative responsibility for the property rights is devolved, so the Scottish Parliament can legislate over the nature and extent of these rights in terms of property law.

Q433 Chair: Presumably, they can abolish them.

Andy Wightman: It could, in theory, abolish them, but Mr Reid's point is whether they can trade them and act as the landowner. They cannot because at the moment those rights are administered by the Crown Estate Commissioners under the 1961 Act. If I were a trustee of my grandchildren's trust, for example—I am not—I would be acting on their behalf and I could buy and sell shares, land, et cetera with a view to maximising their estate, but I could not do anything with respect to trust law. I could not change trust law. It would be up to Parliament to do that.

Q434 Mr Reid: To take a simpler example, if someone wants a fish farm, under the present devolution settlement can the Scottish Parliament pass legislation that says he can have that fish farm?

Andy Wightman: No, because the property rights are administered by a reserved body. The only body that can grant a licence or lease over part of the foreshore or seabed is the Crown Estate Commissioners. Nobody else can execute that transaction.

Q435 Chair: Abolishing the monarchy and then abolishing the Crown Estate Commissioners would seem to be the only way.

Andy Wightman: I have said nothing about abolishing the monarchy.

Q436 Mr Reid: Another argument that Calman gave, in 5.116, for not devolving the Crown Estate is that the Crown Estate has flexibility to make investments in Scotland using capital raised from assets outside Scotland, which has been a key enabler, for instance, in its ability to work in partnership with the Scottish Government in the development of offshore renewable energy. Do you agree with Calman's statement?

Andy Wightman: No, I do not agree with Calman's statement on that. With respect, the Crown Estate Commissioners did quite a fine job in influencing the outcome of Calman. They were perfectly entitled to do that but, as a consequence, some statements like that came out. Over the past 10 years, since devolution, the total net revenues from the Crown Estate in Scotland are of the order of £100 million, which is £10 million a year. Last year, or the year before, Princes Exchange in Edinburgh, which is a big commercial property, was sold for £60 million. So about £160 million of revenue is coming from Scotland. In the past five years—this is from the Crown Estate Commissioners' own background

briefing in one of the recent agendas on the Scotland Bill in Holyrood—its total investment had been £16 million. They are not investing anything like the kinds of proportions that they suggest they either have or might do in the future, because their function under the Crown Estate Act is to manage and turn to account land and other property rights and interests, et cetera, and hand over the net revenues to the Treasury. They have been a key enabler because they have had monopoly control over the seabed. Nobody else has been in a position to be an enabler because it is a monopoly position.

It is interesting that a lot of the offshore renewable industry is quite unhappy with the Crown Estate Commissioners, but none is willing to put their head above the parapet. This is a serious problem, because they are all dependent on it. There is no alternative landowner of the seabed. If the seabed was parcelled up like Scotland and England in the UK, among many, many landowners people could say, "Well, I'll come to you and you get me a better deal", or whatever. It is not like that; it is a complete monopoly, which is why it is even more important that it comes under a much more inspired and accountable regime.

Q437 Mr Reid: And you feel that is Scottish Ministers.

Andy Wightman: Yes, the Scottish Parliament and Scottish Ministers, very much like the Forestry Commissioners. The Forestry Commissioners are accountable to Scottish Ministers for the management of the national forestry estate in Scotland, which is owned by Scottish Ministers, and the Parliament has legislative authority over forestry as a devolved matter.

Q438 Mr Reid: But would you prefer it to be under the control of local communities?

Andy Wightman: Yes, I prefer that. My small chap in Skye who just wants to put in a little breakwater for a local shrimp operation or whatever would do it tomorrow if he could.

Q439 Mr Reid: Your objective is that the seabed should be under the control of local authorities and communities. Am I right in saying that you see devolving it to Scottish Ministers as only the first step and you would hope that the Scottish Parliament would then further devolve it?

Andy Wightman: That would be my goal, yes.

Q440 Chair: We would see it as a process really, with the devolution of powers from Westminster to the Scottish Parliament and then down to local authorities, rather than just stopping half-way through.

Andy Wightman: Absolutely.

Q441 Chair: I am not sure I entirely understand what you are saying to me about the distinction between property ownership and property rights. No doubt those on the staff who do understand these things will come back and inform us. This has been very helpful to us. We are approaching this entirely cold. Eilidh raised it in the first instance, and a number of people have submitted evidence. Obviously, we will speak to

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Government Ministers and others and see whether or not there is much scope for changing the nature of the Bill. However, if we get signals that that would not be likely, there is little point in our making a recommendation that will crash to glorious defeat. In these circumstances we may come back to you and ask you whether or not there is anything that could be an improvement on what is being proposed in the Bill that we might find is acceptable to the Minister and coalition.

Andy Wightman: I do not quite understand that. Do you mean you would leave the Scotland Bill as it is?

Q442 Chair: If Ministers are not willing to accept a change rather than simply accepting what they have, are there other things we could do? For example, I raised the question of asking the Crown Estate Commissioners to produce an annual report indicating what they have done in Scotland, so that if we cannot manage accountability through one route we try to manage it through some other.

Andy Wightman: Through policy and practice.

Q443 Chair: Absolutely. I am not entirely clear what the alternative might be. I accept, as I think most of my colleagues do, that we would not want the status quo to continue. The Government are making a proposal that, unless I am mistaken, quite a lot of people feel is inadequate. If, however, they are not prepared to budge from that, are there other things that they might be prepared to accept? We might want to explore those.

Andy Wightman: If I may make an observation on that, I think it is unlikely because this issue is governed by statute, by reservations in the Scotland Act, the Crown Estate Act and all the rest of it. Outwith that legislative framework, there is very little room for manoeuvre. The Crown Estate Commissioners have already said they will come to

the Scottish Parliament and produce reports and all the rest of it. That is all very well. That's fine. They could resurrect the Scotland Office and have separate sets of accounts.

There is no doubt that all of that would be very helpful, but it would not take us a great deal further forward.

Chair: I understand that. We are in the market at the moment for something that is helpful on the understanding that what is decided in this round of legislation is not the end of the road for ever. It is a question of taking steps. Until a relatively short time ago most of the Members of the Committee were not aware this was an issue. I still think that for the vast majority of MPs out there days, weeks and years will pass without any consideration of the Crown Estate Commissioners. Therefore, the prospects of bringing about a big change are not high. The opportunity to turn over the Government is not great, in my view, and it is a question of whether or not we can identify other things, like the question of reports and so on, that might take us some way down a road that would build up a greater head of steam to have changes made at a later stage. Eilidh, you brought this up. Maybe you will not get the whole biscuit, as it were, and it is a question of whether or not we can achieve anything at all.

Dr Whiteford: I suppose I concur with what Mr Wightman says in the sense that tinkering around the edges of this does not alter the fundamental issue. There is a real opportunity in the Scotland Bill to improve it by devolving this properly and it would be a shame to miss it.

Chair: I think we need to be clearer about the position of the Secretary of State and Government, if only we had somebody who can speak for them. *[Interruption.]* On that note, there is a vote in the Commons. My timing is perfect. Thank you very much for coming to see us.

Wednesday 16 February 2011

Members present:

Mr Ian Davidson (Chair)

Fiona Bruce
Cathy Jamieson
David Mowat
Fiona O'Donnell

Mr Alan Reid
Lindsay Roy
Dr Eilidh Whiteford

Examination of Witnesses

Witnesses: **Alan Trench**, Honorary Senior Research Fellow, The Constitution Unit, University College London, **Professor Iain McLean**, **Professor Drew Scott**, and **Professor Andrew Hughes Hallett**, gave evidence.

Q444 Chair: I welcome you to this meeting of the Scottish Affairs Committee. As you may be aware, we are much more genteel than those in the Scottish Parliament—no ruffians here. Not only are we intent on treating you well, but we have been warned by *The Scotsman*, no less, that we have to be on our best behaviour. Since my father used to read *The Scotsman* regularly, mainly for the rugby reports, we obviously want to pay attention to that warning.

I want to start with Mr Trench. You produced on your blog a report that gave the Bill 44%—a third. What do you need to get a second?

Alan Trench: 50%.

Q445 Chair: So it is six marks short at the moment. I was saying earlier that the only person I ever knew who got a third had an exceptionally rich and varied social life, so it is not necessarily a bad thing in the circumstances.

Will you take us through some sections of your blog? In the first section, the Scottish revenue is “4½ marks out of 5”; in the second section about calculating discount that will be applied to the block grant as a result of the new Scottish rate of income tax, the position is a cop-out with only “1½ points out of 5”. Will you clarify what you think is wrong with the existing system and say what can be done to improve it?

Alan Trench: I am just getting hold of my blog post to remind myself of what I said. You are talking about the question of a discount, which is the second key issue that I identified in that post. The key thing is simply to identify a method. The Committee would then be in a position to consider whether that method is appropriate, and wider public opinion in Scotland would be able to assess the impact of the Bill in the light of a clear indicator of its impact and the proposed income tax mechanism on aggregate public spending in Scotland. That is an understandable prime concern of the public, politicians in Scotland and, indeed, my colleagues on this panel. I think that that absence is one of the most glaring failings of the Bill and the Command Paper that was published alongside it, *Strengthening Scotland's Future*.

I looked at that document again a little while ago, and I reminded myself that the Calman Commission took 15 months to grind through an awful lot of material and to produce a long and detailed report, which commanded the unanimous support of its very diverse range of commissioners. The UK Government

subsequently had 18 months to review the work of the Calman Commission. The Command Paper and the Bill that have been put forward are very largely copy-outs of the Calman recommendations, with a few subtractions and additions that we can discuss further. It is a very substantial implementation of Calman—straight, rather than Calman-minus or Calman-plus, but this is the biggest single gap in the provisions that were set out in the Calman report. It has still not been filled.

It gets worse, despite the UK Government having had longer than the whole Calman Commission process to fill this one specific gap. They have had the benefit of some very thoughtful and detailed work that was carried out in relation to Wales by the Holtham Commission. That work laid out four options and tried to assess the implications for each of those, particularly for where risk should be allocated. It is right in its approach: if you are going to work out the reduction in the block grant, one of the key factors that has to be taken into account is whether the Government who then get the taxing power bear the risks associated with that taxing power. The UK Government have had 18 months, the benefit of the Holtham report and one big issue to fill, and they haven't filled it.

Q446 Chair: Have you any reason to believe that the Government do not accept the logic that was in Calman? Why do you believe that they haven't put something in?

Alan Trench: I have no idea. You must ask the Secretary of State that, and you have an opportunity to do so later.

Q447 Chair: We are seeing him after you. I just wondered, with your knowledge, whether you were aware of any reason.

Alan Trench: It is telling that no reason for that has been proffered. One of the interesting things about the narrative explanation of the UK Government's position, which is set out in *Strengthening Scotland's Future*, is that, in a number of cases, they simply announced that they have decided to do certain things without any rationale being given. This is one of them.

Q448 Chair: May we look at the next one, where the Government get “2 out of 5”? That is on the question of institutional structures to regulate the new arrangements. One of the things about devolution, in

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Professor Andrew Hughes Hallett

my experience, is that it has generally tried to work with good will on all sides, without necessarily establishing enormous complex structures. Are you not on the suspicious end of the spectrum when you discuss the relationship between different levels of government?

Alan Trench: I think I am, and I have consistently said, since I have been working on this, that I would prefer a somewhat more formal relationship, as opposed to the informal relationship that we have at present. That is not to say that I want formal proceedings and votes on absolutely everything, but I think that there should be a more formal framework set to the structure, within which good will and individual relationships can function much more effectively, and one that can cope with the fact that, on occasion, relationships may become much scratchier. I suspect that we are unlikely to see that in the course of the next few weeks, given the disclosures made in the past week or so by the Scottish Government about correspondence relating to both Lockerbie and the drafting of the Bill. As you are an assiduous reader on devolution matters, I'm sure that you've already seen the post that I put up about that yesterday.

Q449 Chair: I personally missed that particular intervention, but can I be clear? You seem very keen on establishing structure at all times and tying things in. Going back to your written evidence to the Committee, one thing that was most noticeable to me was in point 7, under "Institutional arrangements", where you say that there "needs to be some mechanism for the Scottish Government to be involved actively and at an early stage in such decisions." That was to do with reserved powers on questions of tax allowances and reliefs, the rates of tax, and tax banding structures. We are taking the view that there are some powers devolved and some powers reserved. Giving the Scottish Government a say in reserved decisions of such a detailed nature seems to encapsulate your approach, in a sense, of wanting structures formally established for absolutely everything. It strikes me that a lot of what you have here is written as a bureaucrat, rather than as someone who is involved in day-to-day political discussions.

Alan Trench: It may be written as if by a bureaucrat. I am not, of course, a bureaucrat, but I talk a good deal to bureaucrats—

Chair: You can dream.

Alan Trench: And it is bureaucrats who will have to give effect to this. It is bureaucrats, rather than politicians, who will have to make the system work on a day-to-day level. I am sure that you will raise this issue, possibly with me but certainly with my colleagues, later this afternoon, but if we are to have a system in which a substantial slice of Scottish revenues—public spending—are dependent on tax revenues generated by the Scottish Government or under the control of the Scottish Government, you need to ensure that they have, if not full, then very substantial control over the factors that relate to them. Things such as tax allowances are exactly what do that. It is quite easy to have a dramatic effect on tax income if—

Q450 Chair: We understand that, but there are compensating mechanisms to deal with that. Given that the power on allowances is explicitly reserved, why is it necessary for the Scottish Government to be involved in those decisions? I do not quite understand.

Alan Trench: I can give a number of answers to that, but the one that may most directly appeal is that it is in the UK Government's best interests. If you accept the principle that underlies Calman of delivering a measure of fiscal accountability to the Scottish Parliament and Government to match their accountability through the ballot box, then you have to ensure that that accountability is real. If it is dependent in part on decisions that the UK Government can take unilaterally, you are steering into not merely potentially choppy waters but waters that undermine the political benefit. If you have blurred accountability of that sort, you are inviting blame shifting. Every time the Scottish Government are unable to fund something, they will say, "We don't have the revenue to do that because we don't have control of our income."

Q451 Chair: I understand the argument, and you made it in your paper, but surely you are more likely to have blurred accountability with the Scottish Government sitting, as you suggest, on a committee that establishes tax bands and so on, but not having any say on them. It is clearly a reserved power. It is not a shared power in any way whatever. I cannot quite see why having them involved in that decision does anything other than blur responsibility.

Alan Trench: That's certainly true, but it also makes it much harder for the Scottish Government to criticise a decision to which they have been party.

Q452 Chair: No it doesn't. In the real world, if you are sitting on a joint board or joint committee and are beaten in the vote, you come out and say, "It was him what did it, and not me." It doesn't involve them at all. That is the politics of it, particularly for divergent parties. I can't see that it makes any difference whatever.

Alan Trench: I don't accept that, I—

Q453 Chair: You beg to differ? Okay.

In your evidence, you mention that you don't trust the impartiality of HMRC, that there are doubts over the NAO and the Office for Budget Responsibility, and that, because they are based in Westminster, none of them can be trusted to do the figures.

Alan Trench: I didn't say that at all.

Q454 Chair: That's the impression I got from your paper.

Alan Trench: In that case, I'm afraid you gained an erroneous impression.

Q455 Chair: An erroneous impression perhaps has been created, but you wanted to see the creation of a genuinely impartial body. In your own notes, to which we are referring, you indicate that the involvement of the NAO is encouraging, but it begs questions about impartiality because it is technically part of

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Parliament. You mention the Treasury and HMRC being controlled by Westminster. You see that as a problem and you suggest having the Scottish Government nominate a member of the HMRC board as a solution. The parallel for that is having a Scottish Government representative with the Crown Estates Commissioners, which most people have seen as completely inadequate. Do you still stick by your view?

Alan Trench: What we have to decide is which specific institution we are talking about in this context. If it is the National Audit Office, my concern is not about its impartiality or its affiliation with the UK level—although there is an issue that relates to that. My concern about the NAO is that, on reading the Command Paper, it appeared to me that the UK Government had simply said, “We need an auditor. We’ll use the NAO, because they audit us.”

Of course, the NAO is actually part of Parliament; it is not part of Government. It is for Parliament to determine what happens. It is for Government to propose, but it is for this place, rather than Ministers, to determine what functions the NAO has. I would urge you to decide whether that is appropriate.

Q456 Chair: I think that is angels dancing on the head of a pin, quite frankly.

Alan Trench: I am sure that your colleagues on the Public Accounts Committee would take a different view.

Q457 Chair: I was on the Public Accounts Committee for some 10 or 12 years, or so, and I am aware of what it thinks possibly more closely than your good self. Leaving that aside, on borrowing powers—

Alan Trench: I am sorry, that was the NAO. Do you want to talk about the other institutions that you asked me to talk about? If we are talking about the Office for Budget Responsibility, there is the extent to which it is independent of the Treasury—and there has been a huge amount of debate as to how independent of the Treasury it is. The problem, however, that the Treasury and the OBR have is that they are part of the UK Government, and they cannot be expected to be impartial actors or determiners of finances, particularly if your objective is to create a degree of fiscal accountability and autonomy for the Scottish Government.

Q458 Chair: I am sorry. Are you saying that no Westminster agency—

Alan Trench: I am not saying that.

Chair: Let me finish my point. Are you saying that no Westminster agency can be expected to deal fairly with any devolved agencies because, being based in Westminster, it would have an inherent bias against them?

Alan Trench: No, I am saying that they cannot be seen to do that.

Q459 Chair: All right, fine. That can be dealt with by other issues of transparency.

Alan Trench: Possibly so, but turning to HMRC, the point about securing a commissioner of HMRC who is appointed by the Scottish Government is that although it is an inadequate step, it helps to act as a safeguard for that sort of transparency in respect of the appearance of being able to act in relation to multiple Governments. HMRC can function perfectly well because it is a creature of UK Government and it pays its money to them. That money goes into the UK Exchequer, and the Exchequer then disburses that as it sees fit, which is very straightforward, and that’s fine. We are talking about a system where, in relation to Scotland, HMRC will also be paying revenue to the Scottish Government and into the Scottish Consolidated Fund. If that is going to happen, the Scottish Government have to be able to have confidence that that system, as a whole, is working properly. We may also, I have to say, not simply be talking about—

Q460 Chair: Are you suggesting that the Scottish Government would believe that HMRC were robbing them blind, unless they actually had a member of the board?

Alan Trench: What other safeguard can you think of that would confirm to them that the operational policies and practices of HMRC were impartial?

Q461 Fiona O’Donnell: I was wondering about the Scottish variable rate, Alan. Presumably that understanding exists already with HMRC.

Alan Trench: We appear to have discovered in the past few weeks that there are some serious problems with the operation of the Scottish variable rate.

Q462 Fiona O’Donnell: But that wasn’t about transparency or confidence in delivery.

Alan Trench: To a degree it is. The Scottish variable rate is, and always has been, a rather imperfect instrument. It, of course, has never been used and I was told by one Minister involved in the framing of it that it was designed never to be used. It was designed to answer an argument that they could foresee would be raised by the Scottish Executive, as it was, about the amounts of funding that were available to them.

What I find interesting, looking at what has emerged over the course of the past few months, is that for all that the variable rate has been on the statute book and has been available to be used, operationalising that has actually been very problematic, even on the 10-month basis that was intended. There have been recurrent issues about the adequacy of the list of registered Scottish taxpayers. If you look at how the definitions of Scottish taxpayers are framed in the 1998 Act—

Q463 Fiona O’Donnell: We are straying into a different area now. We were talking about that fundamental relationship, trust and transparency, but we’re getting into a different area here.

Alan Trench: The capsule or summary answer, because you probably don’t want me to go into the detail, is that nobody ever expected it to be used; it

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probably wasn't workable anyway. It is unclear how closely the SVR would have produced—

Q464 Fiona O'Donnell: No one ever expected it to be used? Does that come from one Minister who you say has told you? It seems to me that we are taking giant steps here—

Alan Trench: That comes from many people I have spoken to about it.

Q465 Chair: Let me just try to draw this particular section to a close, and then we have a list of questioners. We have your final points, which are about borrowing powers and income tax revenues and so on. We have other questions on them. At the end I will come back to you and ask whether, given what you've heard, you are prepared to change your mark. May I just clarify how you reached 44%?

Alan Trench: A simple arithmetical exercise. Have I got my arithmetic wrong?

Q466 Chair: Yes, I believe so. Could you just clarify this and check it for me? This was actually taken seriously by people when you reported that you'd given them 44%—

Alan Trench: I am rather surprised to come before a Committee of Parliament and, instead of being questioned about a memorandum of evidence that I prepared for that Committee and submitted to it in good faith, I am subjected instead to such a grilling about a blogpost that was prepared in considerable haste some time ago—and without any advance warning.

Chair: I think that it is on the same subject, and therefore we are entitled to review the evidence we have in front of us.

Alan Trench: You are quite entitled, but if you wanted to conduct this in a more serious manner, we could have been talking about my memorandum.

Chair: I think we are discussing it in a serious manner.

Lindsay Roy: We are conducting this in a serious manner.

Chair: We're perfectly serious, actually.

Q467 David Mowat: On the point you made about HMRC and the control over it, given that it is going to be accountable to the Scottish Parliament for some of the money, you are suggesting that putting a board member on might help. It seems to me that this allocation post—if it is going to go wrong—is going to go wrong at a systems level, not at the board level. In a sense, having a board member isn't going to be an effective mechanism and you need to have, if you were really worried about that, some kind of audit power.

Alan Trench: If you look at my memorandum, you will see that it discusses that.

Q468 David Mowat: A board member cannot know whether there are thousands of codings being done systematically wrongly due to some error, while the only chance you have at establishing that is some kind of systems audit, isn't it?

Alan Trench: I am not saying for one moment that the idea of appointing a member of the board—a commissioner of the revenue—is a panacea that will solve every problem. Quite the opposite. The issue here—the reason I would advocate that—is that these things start at the top and work their way down. They have to be worked from the bottom as well, but unless you have a clear channel at the top, you will have problems.

If we take a different example, one of my abiding concerns was the fact that the joint ministerial committee stopped meeting in plenary session after 2002—a very clear signal of disinterest on the part of the UK Prime Minister on how devolution worked. That then had a profound effect on Whitehall very generally. It has taken quite a lot of work since 2008 to restore that and create some sort of sense that devolution actually matters at the centre of government. You have to have something at the top to make sure that people further down the chain will take it seriously.

Q469 David Mowat: I suppose what I am saying is that I don't think having someone at the top does give you that assurance where you have a very complex process, being done by many people, whereas I think perhaps some kind of audit function might.

Alan Trench: These are all part of the same process.

Q470 Chair: May I clarify why I thought it was appropriate to look at the question of your blog? I took the bother to read your evidence to the Scottish Parliament. In the second paragraph of my print-out, you refer to your blog, and to the fact that the total score was 44%. In those circumstances, given that you had specifically drawn the attention of the Scottish Parliament to your blog, I thought it was not unreasonable for us to look at it. Particularly given that I think there is a mathematical mistake—you have allocated 12 marks out of 25, which I make 48%—it is not unreasonable for us to draw attention to that, and also given that you mentioned 44% and that it was widely reported in the press that you had done so. In that case, if we can move you slightly by half a mark, we almost get a second-class Bill, which would be an improvement from our perspective.

Alan Trench: You have an advantage over me, having seen press reports that I have not seen. It does not alter the material fact that, if we are talking about 48%, this is still a third-class Bill.

Chair: Indeed; we will have to consider that.

Q471 Dr Whiteford: I would like to address all of you, rather than just Mr Trench—he has been put through his paces in the last few minutes. We have heard a lot over the last few weeks about the importance of fiscal and economic drivers to the Scottish economy. I would like to ask you whether you think that the proposals in the Scotland Bill will support economic growth in Scotland, and if you think there are ways that they could be strengthened or improved.

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Chair: When we were discussing these questions beforehand, Eilidh, we agreed that we would discuss matters with Mr Trench first and then come to this, because I think you were discussing only the economic matters.

Dr Whiteford: I am sorry if I misunderstood.

Chair: You were focusing mainly on the economic issues, rather than the constitutional ones. I think Mr Trench was dealing with the wider issues, so we wanted to pick up those first and then come on to the other witnesses, if that was acceptable. This section is focused on Mr Trench. If any of the others want to touch on these issues, I am happy to let them do so.

Alan Trench: Do you want me to answer that question?

Chair: Yes, please.

Alan Trench: I don't know that I can answer that question if my colleagues are not going to answer it from their differing perspectives straight away. Maybe we can defer that until the end of the session. I think it would be better if we discussed that issue and then came back to other constitutional issues.

My own position on that issue is an agnostic one, in the sense that the purpose of the Calman Commission was never particularly to examine levers for economic policy, and the Bill does not do so or purport to do so. Indeed, there has been an interesting development in the terminology in Scotland to do with how we describe these various issues. So we have fiscal accountability as the hallmark of the Calman Commission and the Command Paper and Bill now in front of you.

We have fiscal autonomy or full fiscal autonomy as the demand of the Scottish Government, and we have fiscal responsibility as a campaign, with which two of my colleagues have particularly associated themselves, as something that appears to be somewhere in the middle, though I have to admit personally to not being entirely clear where that is. The Bill is not about conferring fiscal powers, as levers to secure economic growth. That is a debate that the Calman Commission appears to have had internally and to have dealt with relatively curtly in its report. It therefore does not figure in the Bill or the White Paper. Of course, it does not figure in the constitutional design of devolution put in place in 1998.

It is a separate question. We are concerned here with fiscal powers, primarily as sources of revenue to fund public services and, as a result of that, as mechanisms for securing a degree of fiscal accountability.

Q472 Chair: Let us open it all out. Professor McLean first.

Professor McLean: If we are going to Dr Whiteford's first question, which is sensible, my view is as set out in the memorandum that I sent and also in my oral evidence at Holyrood. There are good, theoretical reasons for expecting the effects that Professor Scott and Professor Hughes Hallett have postulated. Devolution in and of itself might promote economic growth, but trying to find these effects according to my written evidence is like searching for the Higgs boson. It hasn't been found yet. It might be found one

of these days. I think that Alan just said that he was sceptical. I side with him on that.

Q473 Chair: I am not sure whether I should ask one of you to speak on that, since I am assuming you are still linked.

Professor Hughes Hallett: I will speak on this one. I do not think that it does have any—

Q474 Chair: You will have to speak up a bit. People cannot hear you.

Professor Hughes Hallett: I do not think that there are levers for promoting growth in the Bill as it stands. I make a distinction between accountability and responsibility in this case. It is a way of playing with words—accountability in a book-keeping sense as opposed to responsibility in trying to improve the economic performance of the economy.

Economists are generally agreed that income tax, in this case less than half of income tax, is one of the most ineffective instruments for boosting economic performance and growth, which is why so few countries use it for that purpose. They might use it for other purposes, but not for that purpose. That is the only change that is essentially proposed, because the other two taxes are very small.

Q475 Chair: Can I come on to an introductory question for yourselves? I again refer to your letter in *The Scotsman* in reference to something said by David McLetchie, stating: "We can assure Mr McLetchie that the only 'hole' we are concerned about is that into which the Scottish economy is likely to plummet if the provisions of this bill become law." That seems a trifle melodramatic. Will you explain that comment, and it will perhaps lead us into some wider economic issues?

Professor Scott: It was melodramatic at the time. Things were quite melodramatic all round at the time. It goes to the nub of one of the issues that our concerns surround, which is what is called a deflationary bias. It is a complex subject, and I do not mean that in any sort of weird sense. There are a number of elements to it. One, of course, is the historical trend that we know—at least insofar as we can believe the figures that we read—that the growth of public spending in the UK has exceeded the growth of tax revenue.

If that trend continues—a matter that we shall come back to in due course, I suspect—the amount that the own tax resource is replacing from the Barnett formula will grow more slowly than the full unadjusted Barnett formula would have grown, and that implies either a reduction in Scottish public spending or an increase in the income tax segment of Scotland, neither of which is particularly helpful in economic terms. That is one element, and I agree that there are debates about the size of that gap. The Scottish Government's estimate is of £8 billion until 2010–11, I think, and it is versus that of the Scotland Office. There are good reasons why they are different estimates.

I want to add three other issues to that general point. One is the tax base. There are real concerns in

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Scotland, largely because the economy is more driven by the public sector, relatively speaking. Given the cuts that we will see in the public sector, we share the concern that unemployment in Scotland could rise significantly over the next five years. That then diminishes the tax base. Therefore, the number of taxpayers funding this own source of income will have diminished, perhaps proportionately more than in the rest of the UK because of those characteristics. That, again, leads to a possibility—indeed, a likelihood if the figures from the forecasting organisations are to be believed—that there could be a shortfall of public spending, comparatively in relation to the status quo ante.

The third problem is the distribution of taxpayers. We know from the GERS data that Scotland has a disproportionate share of low-tax payers, low-income earners. That means, by definition, that the tax yield will be growing more slowly. Given the composition of ours in the UK, it will be growing and, as spending is linked to tax revenues, that also implies something about spending.

More worrying was the report in the *Financial Times* on Saturday that suggested that a quarter of all income tax would be paid by those in the new 50% bracket, and Scotland is way under-represented. According to the *Financial Times* figures, and I cannot vouch for those figures, it has less than 4% of the UK population of 50p taxpayers. That augments the second general point about what happens to the tax base and the way taxpayers are distributed across the country.

I agree that “black hole” is melodramatic language, but there are very real reasons for concern that, come 2015, 2016 or 2017 when the new system kicks in, it could actually kick in at potentially the worst moment. If these expectations are realised, it would lead if not to a sharp fall in public spending, certainly a gradual decline. Our concerns are buttressed by the fact that we simply do not have any serious piece of work done by the Treasury to tell us what it expects will happen to the variables, which will collectively determine tax revenues in the new segment that is being identified as a Scottish own resource.

I agree that “black hole” is perhaps too dramatic, but that’s where this concern comes from.

Q476 Chair: If we lay aside “black hole” for a moment, what about “plummet”? You said a “gradual decline”. Words have a certain meaning. People plummet off roofs and ospreys plummet and so on. Are you saying a “gradual decline”?

Professor Scott: I do not think that we know. It could be a significant sharp fall. It really depends on what happens to the tax base and public spending in the meantime. We are in the realm of unknowns, but I think they are known unknowns. If we did some diligent research, I think we could find this out, but we are not in a position to do that.

Q477 Chair: Before I bring in other people, I want to start off by having Professor McLean say whether, as one of those responsible for all of this, he is guilty of getting us into a situation where the Scottish economy is going to crash and burn.

Professor McLean: I plead not guilty, Chair.

Q478 Chair: What’s your defence?

Professor McLean: My defence is that the options on the table are to devolve less than the Bill proposes, to devolve the same amount or to devolve more. The only public spokesman that I’ve heard in favour of devolving less is Lord Forsyth, as I mentioned in my written evidence, who would like the Bill to be rejected. If the Bill were to be rejected, it would leave the Government of the day entirely free to say that Holtham, which Alan mentioned a moment ago, “has come up with a cleverly worked-out idea for a needs assessment, so let’s have a needs assessment for the four territories of the UK.” Then you would certainly have a plummet. I don’t think that any of my colleagues would dispute that, because public spending in Scotland is surprisingly high in relation to Scottish GDP.

Q479 David Mowat: That needs assessment would cost Scotland something in the order of £4 billion. That is the implication of Holtham.

Professor McLean: I can’t corroborate that particular number, but, clearly, if a Holtham-style scheme were introduced, the block grant to Scotland would indeed plummet.

On the other hand, you have the possibility of more devolution, of which Drew and Andy are among the proponents, and my argument against their position is that supposing that what they have just said is true—for the sake of argument, I am happy to concede that Scotland would have got less than it has had this regime been in place for 10 years—then a move further away from the block grant makes the situation worse. That is because tax proceeds are correlated. In particular, if you look at the other big taxes, national insurance tax varies absolutely step in step with income tax. None of us is proposing the devolution of VAT within the Union, because the EU says that you can’t do that. I think that devolving corporation tax is a terrible idea for reasons that we can go into.

Chair: We will go into that in a moment.

Professor McLean: And of the big taxes, that only leaves North sea oil, which might indeed move in a different direction to income tax, as Drew and Andrew said in their evidence in Holyrood, but to rely on that for funding revenue services would be completely disastrous. So my grounds for pleading not guilty are that this is the safest option for Scotland.

Chair: That has been very helpful in spelling out the different perspectives.

Q480 Dr Whiteford: I just wanted to come back to Professor Scott’s comments about jobs, because I know that there has been a lot of concern across the whole UK about the impact of public spending cuts on jobs over the next four years. Are you, however, saying that the proposals in the Scotland Bill will exacerbate the pressure on jobs in Scotland? What kind of scale of job losses would we be looking at?

Professor Scott: No, we have to be clear about what we are saying. The job losses are what others are predicting. We haven’t done a forecast of job losses,

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but look at PricewaterhouseCoopers' estimate of, I think, 95,000. There are other estimates of 100,000. For the public sector alone, there was one figure of 30,000 jobs. People are predicting job losses. That in itself is caused not by the Bill, but by Government decisions on the profile of spending cuts versus tax to solve the debt problem. We are saying that that will have a consequence for the tax base in Scotland, which will possibly have a knock-on effect on spending.

The question then is how severe is the knock-on effect? The unknowable thing is what happens to the private sector in the meantime. We simply do not know whether the private sector in Scotland will rise like a phoenix from the ashes and become the driver of the economy; we all hope it does. There is no historical precedent for that, but it might happen.

Our concern is not that the Bill itself will cause unemployment between now and 2015; it will not, because it will not be implemented until beyond that. When we get to 2015–16—our concern is that no one has seriously asked this question about these proposals—what is a good case scenario, a bad case scenario and a worst case scenario? My concern is that, in a sense, this is “it’ll be all right on the night” economics. We assume that these effects will not happen—and if they do happen, we assume that some adjustment will be made to the proposed financing mechanism to ensure that they are limited.

My impression is that there is a general comfort blanket in the associated literature that says, “We will look at this, and if it starts to go horribly wrong, we might revisit it.” I am not sure whether one can criticise or applaud that, but it is more or less what is being said.

Q481 Fiona O'Donnell: This is getting quite complicated because we have three debates running at the same time. We are talking about the connection between fiscal devolution, decentralisation and economic growth. We are talking about whether there is a deflationary bias in these proposals and whether we should have a basket of taxes instead of what should be in those baskets.

I shall start with the first. Alan, you said that you don't think there are any new economic levers in the Scotland Bill. At best, from the evidence we have taken so far, we can say that there is no proven link between fiscal decentralisation and economic growth. Indeed, the expert group advising Calman does not agree that there is. That is the first thing on which I would like you to respond. I accept that two economists can be right at the same time, but we are getting conflicting evidence.

On the deflationary bias, in his evidence Professor Holtham talked about the 2010 model of an £8 billion shortfall: “You are looking at an historical period in which expenditure on health and education—the two devolved areas—grew faster than British Government expenditure in general, and in which we were building up a lot of debt so expenditure grew faster than taxation in general. If you think that that will happen in future you can worry, but it is certain to be the case

that taxes will grow faster than expenditure over the next 10 years because we are paying back the debt.” The professor also predicted that under these proposals we would get more from Barnett in the next 10 years. Do you accept his analysis that £8 billion is an extreme situation for the tax base and expenditure, and that it will change over the period ahead?

Professor Hughes Hallett: I'm not sure which question you want me to answer.

Fiona O'Donnell: I'm sorry. Could you start with the link between fiscal devolution, decentralisation and economic growth?

Professor Hughes Hallett: We get asked that question a lot. We have made it clear that, for a good reason, the empirical evidence is inconclusive on the question of whether it does or doesn't lead to an increase in the growth rate systematically. Some studies say yes, and some studies say no. The reason is that you can't seriously claim that it is going to increase—note this—the rate of growth systematically; it will raise performance defined as GDP per head or income per head.

If you're going to step up at the same growth rates, you will be permanently richer for ever more. I'm sorry for using an analogy that some of you may have read before, but if you got a pay award, it would make you richer for ever more because they won't take the pay award back—but the pay doesn't grow faster after that. So what you get is a short period of growth, because to get from a lower level to a higher level the economy has to expand, and then you go back to the long-term growth rate that you had before.

That is what you actually get. If you look at the economic research literature, you will find that everybody uses the same language. An OECD study came out last week in *The Economic Journal*, which is the premier British journal for this sort of thing, and it used exactly the same language. There is a growth ranking of different options, in this case for altering tax structures, and the long-term outcome.

The answer to your question is that you don't get systematic growth in the long term, but you get some in the short term. Any growth model, as well as the empirical evidence, will tell you that is what you should expect. What you do with the extra money that you create in that step up is, of course, a matter of importance. If you use it to boost health, education and other things that typically improve the economy, you may create for yourself an increase in the growth rate, which would result from having used that money wisely. But the decentralisation itself wouldn't necessarily do it, hence the muddle over what we are talking about.

Q482 Fiona O'Donnell: The point that many of us have raised is that it is not about the powers, but about what Government do with those powers.

Professor Hughes Hallett: Sure, but that is also true of the Bill. If it is being done by people who are not terribly competent, it is not going to do you very much good, either. That is a perfectly normal state of affairs. So that is the position, but you do get richer—that is our point—and it is systematic.

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Q483 Chair: Sorry, I don't entirely understand your point and I want to be clear about it. Why is there an initial jump without there being more money? If there is more money coming in, I could see that there would be an additional jump. Unless it actually raises more money, why does granting more powers cause an increase in growth?

Professor Hughes Hallett: Because, having been granted the powers, you are able to use your tax powers to create greater incentives and/or to tailor your tax policies to alter the relative costs of different activities. You can favour certain industries and you can persuade people to move into higher-value-added jobs.

Q484 Chair: Is it not the case that there is the opportunity to create? That goes back to it being about not what you've got, but what you do with it. Simply giving more powers surely does not in itself cause a jump.

Professor Hughes Hallett: We started by talking about the empirical evidence, and this is what has been found in all the countries that are in this business.

Professor Scott: I think you're right. That actual act of giving a power does not in itself create a bonus. That would be a silly proposition and it is not one to which we hold.

Q485 Chair: I thought that was what you were advancing, and I am glad to have it clarified.

So, going back to Fiona's point, simply granting more powers does not in and of itself cause any increase—it is a question of whether they are used properly?

Professor Scott: Yes.

Professor Hughes Hallett: Yes.

Q486 Fiona O'Donnell: You were not at the same table, so could you respond to Professor Holtham's concerns about a deflationary bias?

Professor Scott: I find it difficult to respond to a statement that says, "Over a long period of time, this will happen." I understand the basis for his argument, but if the economy grows very quickly, as we are sure it will, that period of time could be quite short. The statement you read implies that it will happen over 10 years, but I really don't know, because we don't forecast such a profile.

Q487 Fiona O'Donnell: The £8 billion shortfall was also over a period of 10 years.

Professor Scott: I beg your pardon. You are absolutely right. That was a period of very high spending growth. The Scottish Government figures state that arithmetically, had this provision been in place for the past 10 years, it would have been the outcome. I don't know whether that would have been the case, because there is some debate about the baseline adjustment.

Regardless of what the baseline adjustment is, and the Command Paper makes this very clear, once you have made that baseline adjustment those two variables—the environment element and the tax element—will grow at the rate they grow at. You don't then jump in and rearrange it again. Given what the Scottish

Government economist assumed about the ratio of Scottish tax take in respect of total UK tax take—of course, I guess they had to make some assumption because we don't have the data—that would have been the outturn, whatever the baseline adjustment was in 1999 when it started. Moving that forward to a period beyond 2011 to 2014–2015—getting close to the end of that period—the data then show that taxes will be rising more quickly than spending, so you get an offset or a viewpoint about your taxes, which are growing more rapidly than spending, so you would expect the Calman approach to give you either a reduction on your loss or, if you start from 2014, it would give you more than you would otherwise have got.

The question then becomes what happens thereafter, because the rate of growth of taxes is not immaterial to the rate of growth of spending, and the rate of growth of spending is related to the rate of growth of taxes. I go back to the point I made earlier: if you look at an economy that is perhaps more proportionally dependent on public spending—everybody would accept that Scottish public spending is relatively high, thus the predictions of a means test—and if spending is such an important driver of the economy in Scotland and yet spending is staying low, the question for Scotland is what happens to that part of the block grant that is determined by the tax revenue, which is raised partly under spending and partly under other variables, so it is a complex picture. I cannot cast any light on what will happen in 10 years' time, but that simple—or broad—statement has to be looked at much more closely. I think we are capable of doing that. There is no reason we can't do that, given that we know a lot about the Scottish economy. We could actually begin to examine that type of statement to see what the implications would be for Scotland, so in a sense our appeal in the paper isn't to throw out the Bill; it's to say, "Please start to look at some of these variables, because we've got concerns that these outcomes could be much less beneficial."

I have one final point. I don't know about the alternatives. With no disrespect to Iain McLean, I don't know about the idea that if the Scotland Bill was not here, we would go straight to a means test.

Q488 Chair: Let's be clear. There are forces of darkness that would use an opportunity such as the rejection of the Scotland Bill to demand the recalculation of the Barnett formula. Indeed, we have at least one of them with us today—he's been perfectly clear in that. Professor McLean, do you want to add anything to the points that have been made in response to Fiona's questions?

Professor McLean: I do not think we should dwell for too long on whether fiscal decentralisation in and of itself increases growth. I think there is no evidence. I have just heard Andrew and Drew say that they agree with that. I observe that this is not what they seem to have said in their paper, which I quote in my evidence, and which was then taken out of context by the First Minister. They must not be held responsible for what the First Minister has said. They seem to

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have changed the claim that they have made. I would like to leave it at that.

Q489 Chair: I see you grimacing or smiling. It's only fair to allow you to respond.

Professor Scott: We put it on the record to show that we had done something, because Professor McLean said that we had done it. That's all.

Professor McLean: I must not prolong this, but the version of your paper that I have seen states: "a 1% point increase in fiscal devolution...generates additions of between 0.16% and 0.32% to growth rates". That is what you were saying last June. What I have just heard is something different.

Professor Hughes Hallett: When you read it, it says "1.3% after five years". It doesn't say "growth rate". It doesn't say what happens in year 6. It's just that uplift we were talking about.

Q490 Fiona O'Donnell: The chief economic adviser to the Scottish Government has refused to endorse that. Is that something you would still hold to?

Professor Hughes Hallett: Yes.

Professor Scott: The chief economic adviser, when asked, declined to comment on the advice he gave Ministers. To be fair, I do not think he refused to endorse it.

Q491 Chair: I must confess that I do not entirely understand this. I thought at one point you were agreeing that in and of itself there was not an increase as a result of fiscal decentralisation, but it is a question of what you do with it, yet you seem there to be saying that there is.

Professor Hughes Hallett: I am quoting a calculation about what certain empirical evidence shows, and that was an uplift and not a permanent increase in the growth rate. It is explained on page 39.

Q492 Chair: This is coming back to your point, which I think I understood, that evidence shows that when additional powers have been given, they have been used in such a way that resulted in an uplift, but that does not in and of itself result in an uplift.

Professor Hughes Hallett: If you grant the powers and don't use them, it won't.

Q493 Chair: We are just simple folk. We just want to understand. We are simply seeking illumination from you.

Alan Trench: I would make one general observation. You have already talked about the basis of the Barnett formula, the block grant and what will happen to that. Looking to the future, it is inevitable that the Barnett formula will have to be changed. The question is how that happens, the time scale in which those changes come in and the broader machinery they form part of. The Barnett formula at the moment is extremely simple to administer. That is its principal, if not only, virtue. It does not relate to any UK-wide conception of equity and, because of the way it works, it entangles devolved Governments in the UK's public finance system and to a substantial degree, I would argue, into following the policy choices made at

Westminster. Indeed, if you look at my memorandum, I give the example in paragraph 18 of higher education funding and the way in which choices that are made purely for England end up having a profound impact on the choices that are available for devolved Governments as well. I raise this issue not because I want to scare people, or to give comfort to those whom you call forces of darkness, but because, if you are being realistic, you have to accept that this is going to happen. You then need to ask yourselves whether the mechanism set out in the Scotland Bill provides a long-term solution to providing the sorts of public services that people in Scotland want, if those are the financial systems you have. My answer to that question would be no.

I therefore say very strongly that one has to look at the Bill as the first step along a path, rather than as an end point in itself. Indeed, I would argue further that, for various reasons, there are a number of shortcomings, some of which have been talked about by my colleague, some of which I touched on in my evidence, and some of which have been raised elsewhere. I suspect that we may be taking one very slow step down that path now, and it has taken 12 or 13 years since devolution for us to get this far. I suspect that our pace down the path will be rather faster in the future than it has been in the past.

Q494 Chair: This is an interesting piece of evidence that a number of us have commented on. We generally accept that devolution is a process rather than an event, but it is not necessarily a process with a predetermined outcome. I remember the nationalists saying to me that devolution was independence for slow learners. I do not quite take that view that the result is inevitable; it is an iterative process, so things will go back and forward.

Since you are on paragraph 18, I shall pick up paragraph 17, part of which seemed to me to be complete and utter nonsense, if I may say so. You say, "It is consequently harder for the devolved parts of the UK to strike out in substantially different directions in public policy". I would have thought that, given that the money comes in a lump, the operation of the Barnett formula does not in itself determine the spending pattern; it is a matter of political choices, as we have seen in Scotland with care for the elderly and a number of other areas, such as the smoking ban. We heard from a number of witnesses who were extremely unhappy about the lack of education and the education system in the sense that, since youngsters were still coming out of school in Scotland illiterate and innumerate, despite education having been devolved, it was a question of the policy formulations that had been adopted in Scotland. To blame this simply on Barnett does not seem to be entirely fair.

Alan Trench: I think you've misunderstood what I was saying. I would argue as an academic that one of the reasons why the smoking ban was a policy that could happen in Scotland was not simply due to health lobbies and concerns about the implications and impacts of smoking, but because, as a regulatory policy, it was free. It cost the Government very little

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to introduce it. It has a cost impact, obviously, on businesses. It produces a small direct charge, because you've got to enforce it, but it is actually a very cheap policy. It is not a policy that involves spending a lot of money in the way in which, for example, years of education for children in school does.

It would be open for the Scottish Government, or the Scottish Parliament, to have a policy, for example, which would save them money—indeed, it is being considered, I gather, by quite a number of local authorities—to have children start their primary education at an age higher than five. You would start them at six or seven, as happens in various Scandinavian countries. That choice would be open, but because the block grant is calculated on the basis that children in England start at five, a certain amount of money flows through. Equally, if the choice were to be made by the UK Government that children in England were now to start at six rather than at five, that would produce a negative consequential. It would reduce the amount of money that would flow into the Scottish block. The Scottish Government would have to make a choice at that point as to what to do about that: are we going to cut some other area of policy or are we going to have our education start at six as well? It is their choice, but they are being forced into the position of having to make that choice because they are tied to the basic pattern of public service.

Q495 Chair: Similarly, when money was exploding during the early years of devolution, they had a whole number of choices. They were not obliged to decide a particular direction rather than any other. They weren't obliged to replicate the English and Welsh patterns of spending; they had complete freedom.

Alan Trench: Indeed, although, as a matter of fact, they very largely did. Good evidence was collected by one of your earlier witnesses, Jim Gallagher.

Q496 Chair: But that was a question of choice.

Alan Trench: His academic work at Glasgow showed that practically all health consequentials flow directly into health spending. It's a matter of choice. Of course, when there was a Labour Government at Westminster and a Labour-dominated Government at St Andrew's House, it was understandable that they had a very similar approach.

Q497 Chair: That is right, but that is not an issue arising from the methodology of the Barnett formula; that is a function of political decisions based on the amount of money available.

Alan Trench: Well, as I have said—and as I stated in paragraph 18 of my memorandum—higher education is the best example that we have had so far. There is a better one, but as yet it is only hypothetical. It is quite difficult for the devolved Governments to do something that is fundamentally and structurally different from what happens in England because of the way Barnett works.

Q498 Fiona O'Donnell: Is not that the nature of all intergovernmental relationships?

Alan Trench: No, it—

Q499 Fiona O'Donnell: Can I just finish? The example of the relationship with local government is that the Scottish Government tell councils, "You have to freeze council tax and then this is the reward you will get, and these are the single outcome agreements that we want to see you achieve." Isn't that the nature of the relationship and of devolution?

Alan Trench: First, devolution is not supposed to be about the sort of hierarchical relationship that is implicit in something like a single outcome agreement. A single outcome agreement is where the Government who are the source of money say, "We want you to deliver x; go away and work out how you do it." That is a fundamentally hierarchical relationship. As I understand it, devolution is not supposed to work in that sort of way.

Q500 Fiona O'Donnell: I am not suggesting that; I am just saying there are differences.

Alan Trench: That is one point. The way that Barnett works is quite different. The Chair is quite right to put his finger on the freedom to allocate money that the block grant is supposed to provide. The problem that arises with it is two forms of asymmetry, in effect: one is the asymmetry of the size of England in relation to the size of Scotland, Wales and Northern Ireland, making up 85% of the whole of the United Kingdom or thereabouts; and the other is the fact that devolution is also asymmetric, so it is the UK Government in their capacity as the Government for England who determine what gets spent on the so-called comparable functions under the Barnett formula, and the allocations of funding then flow from that. The system was designed to treat Scotland, Wales and Northern Ireland fundamentally as appendages that could be expected more or less to follow what was going on in England, which is how things worked before 1999 under administrative devolution, when a single Government under single political control were responsible for the whole of the United Kingdom. With devolution, we had a shift away from that.

Chair: We are not going to agree on this. Barnett is perhaps a little wide—I have let that run, but we are wandering a bit wide. Alan, do you want to pick up a question related to income tax?

Q501 Mr Reid: Yes, just on income tax, Professor Scott said that 2017 was possibly the worst time for the tax system to come into full effect. Could you perhaps expand on why you think that?

Professor Scott: The point that we are making is that the income tax base in Scotland may have been severely adversely affected. If unemployment has been disproportionately higher in Scotland than in the UK generally, it could lead to a slower rate of growth in income tax in Scotland, from a very low base. That would be insufficient to substitute for the chunk of Barnett that has been taken out.

Q502 Mr Reid: Am I right in saying that the evidence so far has been that in the past 10 years, because public spending in England has been rising higher than tax revenues, Scotland has lost out under

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the system, but in the next five or six years, Scotland would gain because the opposite would be true?

Professor Scott: I am not sure when that gain kicks in.

Mr Reid: But it will kick in at some point.

Professor Scott: There is an estimate of around 2013–14. I am not sure; I could not specify that. It would be somewhere about there.

Q503 Mr Reid: So are you suggesting that when the economy is performing well, this would be a bad system for Scotland, but in times when the economy is performing badly, it would be a good system?

Professor Scott: No.

Q504 Mr Reid: The basic thing that we are all agreed on is that if public spending in England is rising higher than tax revenues in Scotland, this would be bad and, if it was the other way round, it would be good. Is that correct?

Professor Scott: I think it is what is falling fastest, rather than what is rising.

Mr Reid: It is a balance between the two.

Professor Scott: Spending and tax are both going to fall—we know that. Spending in the first few years will fall very quickly. The prediction is that spending will fall more quickly than tax. The question is then, as both begin to turn—as both inevitably will turn—where we are at that point and what begins to grow faster or slower. My concern is that although the rate of decline of tax will stretch to about 2015–16, the very sharp decline in the growth of spending will come in much quicker. When those two variables start to rise, how fast will they rise? That is the question.

Professor Hughes Hallett: The tax will rise later. There is a lag. It will reverse itself.

Q505 David Mowat: Why will tax fall if the economy is growing?

Professor Scott: When the economy kicks into growth, tax will rise, if employment rises in Scotland.

Q506 David Mowat: I understand that point. This is an arithmetic exercise. It is a question of whether public spending goes up quicker than income tax.

Professor Scott: Or falls more quickly.

Q507 David Mowat: You assume that income tax will decline and I would have thought that would have been linked to GDP. Maybe I am not understanding it. No one is assuming that GDP will decline.

Professor Scott: If the predictions for unemployment in Scotland are correct, jobs will be lost between now and 2015.

Q508 David Mowat: So your view is that Scotland's level of employment will decline as it increases in the rest of the UK.

Professor Scott: No, I am not making a prediction on employment.

Q509 David Mowat: But you just implied that there was an assumption that income tax would decline because employment would fall in Scotland.

Professor Scott: Yes. That's the assumption that PricewaterhouseCoopers made. That's its forecast.

Q510 David Mowat: I thought that that was public sector.

Professor Scott: No, PricewaterhouseCoopers—for Unison, I think—predicts 95,000 job losses in the spending review period. That was the forecast made for Unison some months ago.

Q511 David Mowat: How does that stack up with the OBR forecast?

Professor Scott: I don't know, frankly.

Q512 David Mowat: You may be right, and in point of fact, we can check, but I'm surprised that anybody's assuming that unemployment is going to rise as the economy is growing.

Professor Scott: I think the question is how fast the economy is going to grow. I don't think that the OBR forecasts for Scotland. I certainly don't understand that it needs to provide a separate forecast.

Q513 David Mowat: That's a point—the separate forecast—that we're going to have to check. That would be an extraordinary outcome.

Professor Scott: I think the only forecasts of unemployment for Scotland are produced by private forecasters.

Chair: Clearly, a lot of the issues will depend on the base point used, to a great extent. Some of the figures are hypothetical. Can I return to the question of income tax and income tax bands? Do you want to pick that up, Alan?

Q514 Mr Reid: Professors Scott and Hughes Hallett, you've said in your paper that having the income tax change by the same amount in all the different tax bands is regressive. Could you perhaps explain your reasoning?

Professor Scott: Well, a progressive tax system taxes, at the margin, those on higher incomes at a higher rate. If you tax 1p or 2p at all rates, proportionately, according to income, the lower-income taxpayers are paying a higher proportion of their income in new taxes than richer citizens.

Q515 Mr Reid: But at the UK level, the UK part will have the same differential as it would even if this system wasn't put into effect. If the Scottish part is equal across all tax bands, surely the differential between the tax bands remains the same.

Professor Scott: It is the impact of the additional tax. If the rate of tax in Scotland rose by 1p for the Scottish segment—

Mr Reid: So if the Scottish segment went to 11p—

Professor Scott: Yes. That affects every taxpayer the same, identically.

Q516 Mr Reid: Are you not just assuming, then, that tax will only go one way, and that's up? If the Scottish Government decided to level the tax at, say, 9p, would that then be progressive?

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Professor Scott: Essentially, this is like value added tax. Value added tax is recognised as being a regressive tax. When it goes up, it bears more heavily on people with low incomes than on people with high incomes, because it's charged at the same rate regardless of income. That is the definition of regressive tax. You're right: if the tax comes down, that regressivity goes into reverse, but the definition of a regressive tax is one where, as income rises, the tax burden diminishes. Low-income people pay relatively more. That is the definition of a regressive tax in this subject.

What we say is that if the Scottish Government—I have quite a deep ambivalence about this, which we can come back to—are constrained to levy 1p regardless of the level of income you're earning, that is equivalent to a flat tax, essentially, and its effect is regressive, because it diminishes the higher the income you earn.

Q517 Chair: Can I ask a question about tax? You favoured giving the Scottish Parliament powers over all tax bands. That's correct, isn't it? Can you just clarify that argument for us? Why do you believe that?

Professor Hughes Hallett: It gives it more flexibility to use the tax instrument. In particular—it's one of the facts from the data—it appears that the growth in revenues comes from the higher bands. If income is increased, most of the revenue comes from increases in higher bands. If it wanted to use the tax instrument for something, it is more effective if it is able to use the higher bands more as its instrument, if you understand me.

Q518 Chair: Professor McLean, you considered this and rejected it, did you? Can you clarify why?

Professor McLean: Well, the ultimate rejection was done by the commission, of which I was not a member, rather than by the expert group.

Q519 Chair: What did the expert group recommend?

Professor McLean: As far as I can recall—if my recollection is wrong, I'll write to you—the expert group did not discuss varying the different bands at different rates. I think we would disagree with what Drew has just said. Leaving it as a flat rate on all bands—a number of tax points vacated, as the Canadians would say, which is the best way to put it—is neither progressive nor regressive. It is flat, as Drew has said. I would not have any problem were Parliament to decide to allow that power to vary at all tax bands. I speak for myself, not for the expert group, but I would be happy with that. To the best of my recollection, the expert group did not discuss that particular point. If my recollection turns out to be wrong, I will write to the Clerks.

Alan Trench: If I might add one thing, that issue was considered by the Holtham commission in Wales, which took a somewhat different approach, although in many ways it has followed the recommendations of the Calman commission. Its suggestion was to allow there to be deviation in setting of the devolved rate from being one single rate, but to limit that to being by three points. I am slightly dubious about the

economic need, as I understand the economics, for imposing such a limit, but I could understand there to be plenty of political and administrative reasons to do so.

Q520 Chair: Can I be clear? Political reasons are up to people to decide, but what are the administrative reasons for reducing it and limiting it to three pence as distinct from ten pence?

Alan Trench: Convenience for the administration.

Q521 Chair: Surely the same administration is the same if it is one, two, three or four pence.

Alan Trench: Yes, but the differences become greater, the greater the deviation.

Q522 Chair: Why?

Alan Trench: Go and ask HM Revenue, but that is the position as I understand it.

Q523 Fiona O'Donnell: We did not see that in our evidence.

Alan Trench: I am not conscious of their having said that.

Q524 Lindsay Roy: There is a great expression in Fife, which encapsulates complexity: "My head's nipping." I want to move on to something that is, hopefully, a bit more straightforward. Professor McLean, you state that devolution of corporation tax would be a terrible idea. Why have you formed that view? After, may I ask your colleagues to give their views on the matter?

Professor McLean: I formed that view because of general thoughts about what happens if you change the tax rate on a highly mobile tax base—people will move to where the tax is lowest. If they move between countries, you could say, "Well, that's life. It's okay for countries to engage in tax competition." But within a union, which is the context of the Bill, if corporations simply move their incorporation to the part of the UK at which the corporation tax rate is lowest, you get a deadweight loss—you get a loss to the UK, and no gain, in effect, to anybody.

That is not only theoretical; the evidence shows that that happened in Northern Ireland, in the old Stormont regime from 1920–72, and I present some evidence in my notes. The most notorious offender in that case was the Vestey corporation, which is a matter of public record. Those are my general and specific reasons for saying that devolving corporation tax within a union is a terrible idea.

Q525 Lindsay Roy: That is very clear. How about your colleagues?

Professor Hughes Hallett: It is certainly true that the heart of the matter is whether you like tax competition or not. There are plenty of countries that have variable corporation taxes within them—Switzerland is a case in point. It does not seem to damage that country greatly, and there are many others. It has advantages for raising revenues, depending on how far you go—obviously, if you go all the way to zero, you don't get any.

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The numbers for Ireland are interesting: 12.5% corporation tax—3% of GDP is raised that way. Germany has variable corporation taxes city by city, and with corporation taxes at three times as much—between 30% and 33%—raises 1% of GDP. So if you are interested in raising revenues, that is going to be helpful.

The data that we have from, again, academic research show that it tends to improve investment; it improves growth—I use the word in the sense that I meant earlier; and it raises company registrations, which for Scotland would be very valuable, because they are running at half the rate of the rest of the UK, so it has advantages from that point of view. There are ways of raising corporation tax on a jurisdiction-by-jurisdiction basis without getting the brass plaque problem. You can do it through exemptions. If you have exemptions that are time dependent, you don't want to move necessarily because of the benefit you are getting in lower de facto paid corporation taxes for that shorter duration.

Q526 Lindsay Roy: When you say “raising”, do you mean varying?

Professor Hughes Hallett: The exemptions are that you don't pay—there are certain allowances. Holtham has a proposition to do with the deviation of income levels, in his case in Wales vis-à-vis the UK, so that if an increase in growth is produced and the economy came back to parity, then the advantage would disappear. The US uses it, and does it by employment, so in this context, if you want to get the lower corporation tax, you would have to get people working in your plants who are registered as Scots taxpayers. That is another way of doing it.

Q527 Fiona O'Donnell: May I just pick up on corporation tax and what Holtham said? Your concern was that it is also a cyclical tax. The risk, if you head into recession, is that you get everyone racing to the bottom to compete. As you said, whether to support it might be a political rather than an economic decision. Taking the example of Switzerland, Muscatelli said that what we saw there is that, where levels of corporation tax were lowered, it then led to a shift to personal income tax—that is where the tax burden shifted—so I think these are sometimes political decisions. Is that the direction you want Scotland to head? Look at the Irish example and what happened there.

Professor Scott: May I make a short comment, although not directly on that? Let's not assume that income earners are not mobile. There is a real concern here, given the kind of information that we now know about the distribution of income earners across the UK. If you are going to be charged 50p or 51p, you might decide to relocate. High-paid individuals are very mobile. The only point that I am making is, please don't assume that tax competition doesn't affect income tax. Of course it does.

Q528 Fiona O'Donnell: But in Canada, that hasn't been the case, has it? The difference in rates has been

as much as 10 cents, and yet people have not moved—although that might be about the size of the country.

Professor Scott: We are back to the mixed evidence problem. You choose an example that suits your claim.

The other point I really want to impress is on the devolution of taxes generally. I disagree with Iain about the risk element—even when you have got highly correlated returns, you can still diminish risk, and portfolio theory proves this. Ideally, you want assets to move in different ways—they offset the risk—but even when they are closely correlated assets, you can't increase the risk. You might not be spreading the risk if they are perfectly correlated, but you are not actually increasing the risk. You want things that are not correlated.

The point here is that one doesn't have to assume that giving any country, region or Parliament the competence means that they won't follow a scorched-earth policy. You are absolutely right, a race to the bottom affects all players, therefore there is an inbuilt presumption, which is political as much as anything, on behalf of the citizens who are voting for a Government: “What is your policy on spending?” ergo, “What is your policy on taxation?” I think, with no disrespect, that the automatic trip from having a competence to use to a scorched-earth-policy race to the bottom, is a kind of dramatic one.

Q529 Chair: But surely that is almost exactly what happened with Ireland? It has gone downwards, below the United Kingdom, specifically in order to poach business from the UK and elsewhere. That benefits Ireland.

Professor Scott: And very successfully.

Chair: That's right. I would quite like to have tax-free status for Govan and Pollok, but I can see that there would be an adverse impact on the rest of Scotland and the UK if that happened. It is a question of cannibalisation. There might, at the margins, be a case for saying that, yes, if you really reduce corporation tax, there might be some additional growth, but the main affect would be transfer—people moving—as we have seen in the Irish example.

Professor Scott: That is an assertion that I think would be interesting.

Q530 Chair: What do you mean it would be interesting? It is interesting.

Professor Scott: Sorry, the point that I am trying to get to is that, for example, research and development in Scotland is notoriously problematic. Can we develop tax policies—those would be corporation-tax related—that would encourage or incentivise more research and development in Scotland? That doesn't necessarily mean a shift in research and development functions from another part of this jurisdiction or indeed, from another country in the EU and beyond. Can we grow the tax base more effectively by using subtle instruments that will benefit particular activities? For example, the Irish do it with their cultural activities, and all the rest, and we have had debates about Dundee and the computer games sector. Can we find nudge factors that actually achieve these

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outcomes? What I am trying to get to is that I don't think we need to enter into the melodramatic language of a race to the bottom, when in fact we could conceive of a whole series of policy measures that are nudging, rather than—

Q531 Chair: I remember that the SDA or Scottish Enterprise were able to fund certain things, so they were providing financial support to business. That was not through the corporation tax route, but they were providing assistance, training, research, and so on.

Professor Scott: We know that the birth rate and survival rate of firms in Scotland is terrible. Scottish Enterprise has been working on that—this is certainly not a criticism of Scottish Enterprise, by the way, but we detected these problems in 1981–82, which is when the literature began. I was part of studies at the time looking at small high-tech firms in California, and in Scotland, and at what was going wrong. The answer to that problem still eludes us.

Q532 Chair: That's right, so, corporation tax was not necessarily the answer.

Professor Scott: Well, we haven't tried that particular instrument. You're absolutely right: we have tried many instruments in Scotland to encourage the growth of small firms. 70% of jobs in Germany are in firms of fewer than 100 persons, so getting Motorola back to Scotland isn't the answer. Getting indigenous entrepreneurs moving is.

Chair: Fiona has to leave soon, and there are some particular points that she wanted to raise.

Q533 Fiona Bruce: I wanted to return to the discussion we had earlier with the other Fiona. You quoted some specific figures: you said a 1% point increase in fiscal devolution might be expected to raise GDP by 1.3% after five years, above what might otherwise have been the case. I am interested to know what empirical evidence you have to substantiate those figures.

Professor Hughes Hallett: That's from one particular study, and there are many others. That was put in there just as a way of an illustration, so it is sort of orders of magnitude. We can go through the many others at length, if you like.

One has nothing to do with academic research. It looks at the outcomes, and this is a famous example from Spain, where you have two autonomous regions and the rest of Spain, which is not. If you take the Basques—and I will give you the numbers afterwards if you are interested—from what I remember, it was over a 14-year period where nothing changed. That was before the recession, but nothing changed except for the introduction of that devolution. It works out as almost exactly 1% a year, which was the increase.

You can compute these numbers yourself, because I had to, after the last little roasting in the Scottish Parliament. By doing an analysis of the IMF's numbers, you come up with a relationship there on the 2010 numbers—you can do it for any year—for a set of countries. You find the relationship there would imply, again, 0.91% as it happens, so, around a 1%

increase in devolution. There are a lot of studies that give you such numbers.

Q534 Fiona Bruce: I am very interested in that. Obviously, this work has been quoted widely, including by representatives of the Scottish Parliament, as you have mentioned. I wonder if it would be helpful for me to know what your involvement with the Scottish Government is.

Professor Hughes Hallett: Well, I make a distinction here, because the Scottish Government didn't actually come to me. They went to Drew when the paper came out and said, "Can you help us walk through the paper?"

Q535 Chair: Can you speak up a bit? It may just be that microphone, but we are having difficulty hearing what you're saying.

Professor Hughes Hallett: There were some discussions when the paper came out nearly a year ago.

Q536 Fiona Bruce: This is your paper, "Scotland: A New Fiscal Settlement."

Professor Hughes Hallett: Yes, so there were some discussions at that point. We have had no discussions with Scottish Ministers on this matter, so I do not know their thinking behind various statements. I would say that the statements are a legitimate interpretation of what's been put out, but I have no idea what their thinking behind it is.

Q537 Fiona Bruce: We heard earlier that you have sought to correct some statements.

Professor Hughes Hallett: No.

Fiona Bruce: Professor McLean referred to the fact that there was—

Professor Hughes Hallett: He corrected his understanding of it.

Q538 Fiona Bruce: I see. Thank you very much. One final point: there is an interesting piece in *The Scotsman* of 31 January in which a number of Scottish economists—academics—address your assertions that increasing fiscal devolution is likely to increase economic growth. It is headed "Shoogly peg to hang an economy on". You might guess from my accent that I'm not familiar with the word "shoogly". What is a shoogly peg, and why was that title used?

Professor Scott: A shoogly peg is an unstable adornment on a door, on which you hang your coat at your peril—I guess that's the allusion. I guess that is a fairly concise definition. As you well know, much of that letter raised questions about the evidence. It also erroneously repeated the claim that we were attributing growth outcomes, which is long-term and dependant on supply-side factors, with performance indicators. They were basically disagreeing with us vehemently—as I think someone elsewhere put it—and they have every right to do that. We disagree with them, although not vehemently. You may or may not have seen a 1,300-word response to that letter, which I am very happy to send you, if you like. It sought to address the questions raised.

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Professor McLean: May I add to that? Andrew and Drew's paper undoubtedly states that a "1% point increase in fiscal devolution...generates additions of between 0.16% and 0.32% to growth rates." I think the cause of the confusion here is that the evidence that they are drawing on is cross-sectional evidence—that is, jurisdictions that have higher devolution tend to be richer, or possibly have higher growth rates, than jurisdictions that have lower devolution. That does not in itself generate any prediction as to what happens if a jurisdiction moves from a lower to a higher level of devolution. This is where the language that they used in the paper was possibly misunderstood by Scottish Ministers.

Q539 Lindsay Roy: Professor McLean, you expressed disappointment in the fact that the income tax on savings income is not to be devolved as Calman proposed. What are the merits of devolving income tax on savings?

Professor McLean: To be pedantic, what Calman proposed was assignment rather than devolution. That is to say that the revenue from income tax on savings income would accrue directly to the Scottish Parliament. I think that HMRC at the time said to us that if you devolve the power to change rates, you get into a minefield. We accepted that evidence from the Revenue. However, since you have to define a Scottish taxpayer anyhow for the purposes of income tax on earned income, I do not understand why the White Paper and the Bill backed off from the rather modest suggestion that you could assign income tax on savings made by Scottish taxpayers to the Scottish Parliament. It would have a modest effect, but only the modest effect of making the Scottish Parliament more careful to ensure that the savings of Scottish residents grow.

Q540 Lindsay Roy: Am I right to say that you are suggesting that this could be reopened through the course of the Bill?

Professor McLean: I would hope so.

Chair: Can I just mention to people that we have just been told that there is a vote at 4.15 pm? We're having great fun here, but I suspect that it might be as well to finish then. Otherwise, you will have to wait here until we did one or two votes. If that is acceptable, people will have to question and answer with that in mind.

Q541 Cathy Jamieson: I will be really quick, in the hope that we get some agreement among the panel members and get something that we could take forward when we make reports. I want to talk about borrowing powers. There have been various comments; one suggested that the powers in the Bill were low to woefully inadequate and, in economic terms, fundamentally flawed, just to pick a few quotes. I would like to ask people's views about what the borrowing powers should look like. People out there in the wider world are probably trying, with some difficulty, to follow what some of this will mean in real terms for the Scottish people, so can you give us some ideas about what you think the limitations of the

current borrowing powers would be, in terms of the kind of projects that could be funded?

Professor McLean: May I start, because I think I'm a market fundamentalist on this one? The Scottish Parliament should essentially have unrestricted powers to borrow, and the markets should judge the soundness of the projects on which the Scottish Parliament raises money. That is what happens in Canada, and it works there. On this matter I may be more extreme than others.

Q542 Chair: When you say borrowing, is that borrowing from the Public Works Loan Board or from issuing bonds?

Professor McLean: That would be borrowing for capital projects. Were the Scottish Parliament to attempt simply to borrow in order to cover a gap in tax revenue, the markets would presumably take a rather negative view of such borrowing, and that would be reflected in the rates.

Q543 Chair: So they would issue bonds for their money. Is it bonds, rather than from the Public Works Loan Board?

Professor McLean: Yes, bonds.

Chair: I just wanted to be clear about that.

Professor Scott: There are two parts to this, and one is the non-capital borrowing, about which we have real concerns because of the £200 million limit—£200 million is about 5% of the Scottish tax take. If the forecasts are more than 5% over, in the sense that it needs to claw back after 12 months, £200 million won't be enough. The OBR's evidence from the nine years from 2001 to 2009 suggests that in three of those nine years it over-forecast by 5% or more. The average forecasting error was 2% over—we're back into the use of history here—and that implies that Scotland will always be borrowing to repay an excess forecast, which is a problem. We call it a dynamic instability, because eventually you will come to the limit of your borrowing, which is £500 million, and you can't do anything else now except cut spending or raise taxes.

A fundamental question I have about borrowing is: what is the tax base on which you're borrowing? That is why I don't agree with Iain McLean. You've got to be extremely careful. If your tax base is so narrow, you are loading it very heavily with unlimited borrowing and then it all depends on whether the markets are working efficiently. Will the markets believe that the UK would bail out Scotland? We can't determine that; it depends on the deal between the Treasury and the Scottish Parliament.

Q544 Chair: Surely it's not just your tax base; it's your income base, and the income would also be the Barnett formula.

Professor Scott: That's right, but basically you don't have the independent ability, under this kind of proposal, to generate the type of economic performance that may justify the investment you're making. Even if you do generate income from the investment you're making, you'll only get a partial return on it because a whole bunch of it is still flowing

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into Westminster. This is a very complex area, and it is one that I would urge the Committee to tread very carefully on because I don't think there is a simple answer, despite the fact that I know we're all trying to get one. This is potentially a very difficult area.

Q545 Cathy Jamieson: So what should we do, in terms of the Bill? There is also an issue about there having been calls for the borrowing powers to be brought forward earlier than other parts of the Bill.

Alan Trench: Can I give you my answer? I think that on this point I agree more with Drew than with Iain, and that I am less of a market fundamentalist, because I am profoundly concerned about the risks and implications of an implied, let alone an explicit, UK bail-out. I have cited in my memorandum a book called "Hamilton's Paradox" by an American scholar, Jonathan Rodden, which very vividly demonstrates the hazards that can arise from the risks of bail-out. The risks of bail-out are very high when you have Governments that are heavily dependent on transfers, which is inevitably going to be the case, even if the proposals pass as they stand, because depending on whose figures you take, the Scottish Government are at least 65% dependent on transfers from the UK, so there's going to be an implicit assumption by the markets of risk. Even then, that is difficult, because the Barnett formula is non-statutory. It is a purely discretionary mechanism that just happens to be applied by the Treasury quite consistently. You would be asking it to bear quite a different sort of weight if you were to ask it to service borrowing as well.

I would end up favouring the kind of approach that is outlined in the Bill immediately, but the longer term is a different issue—that is to say, borrowing through the Treasury at Public Works Loan Board rates and through the PWLB. However, the borrowing limits are probably quite seriously low. I am not in a position to say how low they are, but as I said in my memorandum, they are about 2.5% of annual spending on the revenue side, and that strikes me as being quite scary. That would force the Scottish Government to impose dramatic, drastic and immediate cuts if they were to face a significant downturn in their revenues.

Q546 Chair: You are generally supportive of what is being proposed, but you give it only three out of five.

Alan Trench: Well, again, if we want to go through the particular heading of what I said—

Chair: Time is short, but I would have thought at least three and a half.

Alan Trench: Before we move on, could I say something about the discussion we had about corporation tax, which was prompted by Lindsay Roy? I think the biggest thing you have to take into account is something that has not been mentioned here so far: the nature of EU rules. It is one thing to talk in the abstract about what in an ideal world might be done, but if we are talking about what practically can be done, you have to be conscious of the impact of EU rules. Furthermore, there is then a knock-on impact on how you might want to do forms of fiscal equalisation in the future. So it really is—

Chair: No, we understand that bit.

Q547 Cathy Jamieson: Just one short supplementary to that. In your paper, you talk about the capital borrowing limit amounting to the cost of only one or two large-scale infrastructure projects. Do you want to say what you believe are the implications of that, in relation to the choices that would be available to the Scottish Government? Would they have to use public-private partnerships or private finance initiatives? Is there an opportunity for not-for-profit, and so on? How would they be able to use the money?

Fiona O'Donnell: May I first add my supplementary, which is linked to that, and then you can answer both at once? We've heard the debate about the link between fiscal autonomy and economic growth, but you dismissed the Bill, saying that it offers no opportunity to deal with economic growth.

Alan Trench: No, it is not designed to do that.

Q548 Fiona O'Donnell: Sorry, it is not designed to do that?

Alan Trench: No, it is not designed to do that, and I don't believe that it does it. It is not designed to, anyway.

Q549 Fiona O'Donnell: So you don't think building a new Forth crossing would improve the infrastructure in Scotland, possibly fuel economic growth and provide jobs in the construction industry?

Alan Trench: I am sure that it would confer those kinds of benefits, but they are fairly time-limited. Yes, I would agree in that respect. On the macro-economic level, the Bill is not giving the fiscal levers to improve economic growth, but it is not designed to do that.

To answer Ms Jamieson's question, I would like to see the Scottish Government in the same position when it comes to making choices about how they fund infrastructure as the UK Government are, in relation to their functions. Their problem is that up till now, they have had two choices. One is to fund directly out of revenue, and the other is to use PFI/PPP schemes, which are an inordinately expensive way of borrowing. I want the Scottish Government to be in a position where they are able to make an overall rounded decision, and if they want to go with PPP, which involves high costs of capital but also possible advantages in terms of market efficiencies, delivery and so on, they can do that, but equally, they can do it themselves and borrow the money to do so.

Q550 Chair: Would that be without limit?

Alan Trench: Again, there probably needs to be a limit, but it needs to be much higher.

Q551 Chair: Who sets the limit?

Alan Trench: There is no question but that, under the arrangement that we are talking about, it has to be a UK-set limit, but it has to be the kind of limit that can only be exceeded by quite bizarre, extravagant behaviour. So if you wanted to build multiple—

Chair: We are getting close to time.

Q552 Cathy Jamieson: In terms of the technicalities of how you would build enabling powers or checks

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and balances into a Bill, do you have any suggestions as to how that could be done?

Alan Trench: That is one of those issues that we need to come back to and think about, which is why I say that this is a step along a path, not the end.

Q553 Cathy Jamieson: So it is not for this Bill.

Alan Trench: I don't think it is for this Bill.

Q554 Chair: Does anyone else want to come in on that?

Professor Hughes Hallett: One sentence: if there are going to be limits—I would support limits; we can argue about the level—they should be on the debt, not the deficit. I've spent a lot of time arguing that in Europe, and gradually we are getting there, if you look at the new Bills coming in. There are good reasons for that, which I can go into another time.

Chair: Good man. Any final points anyone wants to raise?

Q555 Fiona O'Donnell: I was going to ask a question about the taxes that were not implemented. Lindsay touched on the remaining ones: tax on savings and dividends, but on the aggregate, and air passenger duty. In the argument on 3 February about whether 35% of revenue would be raised, Michael Moore said of the remaining taxes that they will still be devolved, that the Government would look at devolving the aggregates levy once that case is resolved, and that they intended to devolve air passenger duty once the review is concluded here. It appears that those two will be coming, just in case that raises Alan's scoring further and we can manage to get a 2:2.

Chair: That's at least half a mark—surely it's a 2:2. Have a bit of generosity. Surely we could have an extra half-mark for that.

Professor McLean: May I say on that that these little taxes, and the little taxes that are in the Bill, are essentially taxes on land, and land is the best thing for a devolved Government to tax, just as corporations are the worst? The area of land taxes, which Drew

and Andrew were talking about, is where the Scottish Government could act more efficiently and to the benefit of all parties—taxpayers and consumers of public services. That is where they could do it. They could have a more sensible mixture of council tax, business rates, stamp duty, land tax, tax for digging holes in the ground and tax for filling them in, and a tax on airports. That is your slew of land taxes. *[Interruption.]*

Q556 Chair: The Division bell is ringing. Could I ask a final question? If there were a referendum, would you vote for the Bill, yes or no?

Professor McLean: Yes.

Alan Trench: I would be furious if there were a referendum on a question like that. It would be completely inappropriate.

Q557 Chair: To be fair, that was not the question. Would you vote for this?

Alan Trench: Only if you extended the vote to people who live in England.

Q558 Chair: Okay, that's two evasions. If you were an MP, would you vote for it?

Alan Trench: I would, on the basis that it is a step.

Q559 Chair: I am not sure whether you would get one vote each.

Professor Scott: No, I'm going to have a vote. I have to say this: I would vote against it, because I don't think bad economics ever makes good constitutions or politics.

Q560 Chair: You get just one vote between you, do you? I was prepared to give you a vote each.

Professor Hughes Hallett: I'd vote no.

Chair: Fine. On that happy note, I thank you very much for coming along. I hope you don't feel that you have been hard done by. We have been much better to you than those bad people up the road. I hope that *The Scotsman* reflects that in its coverage. Thank you very much for coming along.

Examination of Witnesses

Witnesses: **Rt Hon Michael Moore MP**, Secretary of State for Scotland, **Rt Hon David Mundell MP**, Parliamentary Under-Secretary of State, Scotland Office, **Chris Flatt**, Deputy Director, Corporate and Constitution Division, and **Laura Crawforth**, Head of Scotland Bill Team, gave evidence.

Chair: May I welcome you to the sitting? I am glad that both of you are here this time after the slight confusion there was last time about whether David was invited. I notice that David is half the man he used to be, so he has obviously got a new diet or taken exercise. We very much welcome him in whatever form he chooses to come in front of us.

David Mundell: Ian, a compliment from you is always well received.

Q561 Chair: Treasure it, because it might well be the only one you get.

Could I start off, Michael, by asking about the timetable for the progress of the Bill? We saw the reference in *Hansard* on Thursday to Sir George Young indicating that the intention was to bring it back fairly soon. That is going to be before the Scottish Parliament Committee has reported, as I understand it. I wonder whether that is entirely desirable, and whether you would consider rethinking it.

Michael Moore: From the outset, our timetable had the intention of securing Third Reading, subject to the will of Parliament, before the Scottish Parliament

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went into its election dissolution period so that the electorate and the parties in Scotland had a strong indication of where the Bill was headed and to demonstrate that it had secured parliamentary support. Given the nature of the Bill, and because it will be scrutinised very thoroughly in the Scottish Parliament, and rightly so, we have recognised from the outset that there will be some delicate—if not choreography, at least timings of the reports so that we will be able to get our processes to completion. We expect that the report from the Scottish Parliament LCM Committee will come in the first week in March. Obviously, that is a timetable the Committee controls, and it is subject to all the issues that might still confront it. But if that is the timetable, our commitment is that we will be going into Committee after that date. So we would hope and expect that the report will have been published before we start Committee stage. None the less, there will be a Report stage for us and Third Reading, and then the full role of scrutiny in the House of Lords before any changes might come back to the House of Commons. It is my judgment—and I hope it will be accepted, given what we are trying to do to get to Third Reading—that that is a tight timetable, but a reasonable one. It will allow your Committee, the Scottish Parliament Committee and the House to consider matters fully.

Q562 Chair: Sir George Young said on Thursday, “On the legislative consent motion, it is indeed our intention to secure that before we reach the appropriate stage in proceedings on the Scotland Bill.” I interpret that to mean that he would want to have the legislative consent motion before you start the next stage in this House. You seem to be saying that in fact he will start the next stage once Ms Alexander’s Committee has reported, which is not quite the same thing.

Michael Moore: No, indeed, and Sir George has written to Stewart Hosie today, copying it to the shadow Leader of the House, to clarify the situation in the way that I have described to you. I have written to the shadow Secretary of State, who wrote to me as well—on Valentine’s day—to raise her concerns about the process, and she has had a reply this afternoon as well. This is slightly difficult for me, but you have been here a number more years than I have, Mr Davidson, so I am sure you know that I cannot preempt tomorrow’s business statement—depending on when tomorrow starts, after this evening’s proceedings. However, I think you might want to follow that closely. But the point is, as I have expressed before, that on the expectation that the Scottish Parliament Committee will report in the first week of March, we will not be going into Committee before it has reported.

Q563 Chair: Right. When you say Sir George Young has written to clarify, you mean that he has done a complete somersault and a U-turn and reversed the position—it is a horrible thought to contemplate in your head. The idea is that he has completely changed what he said. Is that correct?

Michael Moore: The distinction is between the report and the motion. The motion will still need to be debated—

Q564 Chair: But that is not what Sir George said, of course, so he is not clarifying; he is completely changing.

Michael Moore: I say he is clarifying. You are entitled to take a different view on that.

Q565 Chair: Okay, I think I understand that point—*[Interruption.]* I got a new BlackBerry today and I don’t quite understand how you switch it off—I think that is possibly right. There you are; it has run out. That’s resolved.

May I clarify, then, how speedy you intend the progress to be, and how many sessions of the Committee of the whole House you intend to take place before the timing of the likely legislative consent motion and the likely production of our report?

Michael Moore: I may have misunderstood the timing of your report. You are completely in control of your own timetable. I understood your intention was to conclude your report in time to be able to table amendments on Report, but I don’t know whether I’ve misunderstood that.

Q566 Chair: You’re not speeding it up? It’s not going to be four days in a row or anything like that? It’s going to be over a period, so we will still—

Michael Moore: Indeed.

Q567 Chair: Sir George has done one somersault. There’s no reason why he shouldn’t be doing a second, and we might be caught out by that.

Michael Moore: We have discussed these things carefully. I hope—again, this will be your judgment, not mine—that when you see the proposed timetable, you will see that it is appropriate. It allows the Committee, Members of the House and others to get on with the business of scrutiny and amendment, if they so wish.

Chair: Questions on the timetable before I move on. Eilidh, you were looking poised to ask a question.

Q568 Dr Whiteford: My question echoes your own, Chair. When precisely will the Committee stage commence? Will our Committee have had a chance to report? George Young’s letter says that there should be an amending stage in the first House after the LCM has been passed to enable amendments to be tabled. Can you confirm that that will be the case?

Michael Moore: That would apply to Report stage. If we go back a moment and look at the LCM procedure as it has been over a number of years, the principle has been not that we should as a House sit doing nothing with legislation, but that there should be an opportunity, after the LCM has been passed, to get an amending stage here in this House. We will certainly satisfy that principle. On the point about whether we will go into Committee before the motion or the report, I just refer you to the answers I’ve already given.

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Q569 Fiona Bruce: May I ask whether you have any additional comments to make about the sufficiency of four days to debate this issue?

David Mundell: I think that we will be able to have a full debate. One of the points on which we have rebutted criticism from some quarters is that the Bill hasn't received full scrutiny. It has received extremely full scrutiny from the Committee in the Scottish Parliament. We had a very robust debate on Second Reading and this Committee is scrutinising the Bill, so there is a very thorough period of scrutiny. There will be three full days on the Floor of the House in Committee, and there will be Report and Third Reading. There will also be the opportunity for scrutiny of the Bill in the House of Lords. As has been well reported in the media, there are a number of distinguished former Scottish MPs, and indeed MSPs, in the House of Lords who I am sure will play a very full part in that process.

Q570 Mr Reid: What's the reason for having Third Reading at the time that it's scheduled for?

Michael Moore: That goes back to the initial driving force for the timing, which was to get Third Reading in the House of Commons completed before the Scottish Parliament goes into its election dissolution period.

Q571 Mr Reid: What's the reason for that?

Michael Moore: Because that was our way of demonstrating that the Bill has reached a very advanced stage and that the basic principles and shape of the Bill are well established and endorsed by the House of Commons. It was an approach that from the outset, when we were talking with other parties that have supported the Calman process, had broad support.

Chair: That was a hard one.

Q572 Lindsay Roy: Can I ask when our paper—the Scottish Affairs Committee's paper—is likely to be concluded?

Chair: In time for Third Reading.

Michael Moore: In time for Report.

Chair: As I understand it, you're accepting the amendments that we will propose, so we will endorse that!

Q573 Fiona O'Donnell: I was going to ask about that because I am new to this and I am learning how legislation works. The opportunities to make amendments are at Committee stage.

Michael Moore: Three days thereof, and then Report stage.

Q574 Fiona O'Donnell: So there is a further stage.

Michael Moore: As this is a constitutional Bill, all stages of Committee are taken on the Floor of the House, rather than in one of these Committee rooms, so everybody can participate in the Committee and table amendments there. Traditionally, Report stage was a way to report back to the rest of the Commons on how the Bill had emerged from Committee. Clearly, it is an opportunity for further amendments.

Q575 Fiona O'Donnell: So the report from the Holyrood Bill Committee and this Committee could provide the substance of further amendments?

Michael Moore: Yes, precisely. And there is also the House of Lords. Let's not forget that there will be further opportunity there. Any changes that are made in the House of Lords come back to the House of Commons for further consideration.

Q576 Fiona O'Donnell: Before our last panel of witnesses left, we asked them how they would vote if they were Members of Parliament, and it was 50:50. Can I just confirm that you will both vote in favour of the Bill and be present for the vote?

Michael Moore: Yes, thank you, Fiona—
[*Interruption.*]

Q577 Chair: David did not seem very enthusiastic about that, I must say.

David Mundell: Just for the record, I rebut that statement.

Q578 Chair: So what would your answer be?

David Mundell: I will be voting in favour of this Bill. It has been a great privilege, as I said on Second Reading, to have been part of the process throughout, from when we joined Members of the Scottish Parliament to bringing the Bill to Parliament.

Q579 Chair: Indeed. Can I just clarify that we intend to publish in the week beginning 14 March, so will that give us enough time? Is it correct, Michael, that there will still be time?

Michael Moore: Yes.

Q580 Chair: Can I ask another set of questions on the process of consultation and discussion? We saw witnesses from SCVO, and we also had the benefit of reading blogs by Martin Sime, who is SCVO's chief executive. Commenting on everything you had produced, he added: "And all this without an ounce of consultation from the Coalition government." It would be helpful if you clarified whether there has been an ounce of consultation with SCVO at any stage in the work on the Bill, because it seemed very strong on this. For the chief executive to say what he did in an article in *The Scotsman* or *Scotland on Sunday*, as well as on the SCVO's official blog, seems a fairly damning indictment of the coalition Government. Perhaps you can clarify whether there is any truth in what he said.

Michael Moore: I was surprised and, indeed, disappointed that Mr Sime had reached that opinion, not least because the first stage of consultation was back during the Calman process itself. Those involved engaged extensively with different stakeholders; they had consultation meetings around the country. SCVO and others were able, I am pretty sure, to give evidence as part of that process. We have what we call the high-level implementation group, which brings together different key stakeholders, and they have helped and advised us along the way about how we developed the Bill. The group met a few times before we published the Bill. A senior member of the SCVO team is part of that process. On charities law, in

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particular, it was pretty clear that SCVO had pretty strong views. We were talking about re-reserving that, and we have not done so—it is not in the Bill. Not only have we consulted, but we have responded to what I understood to be one of SCVO's major concerns about the Bill and the Calman process.

Q581 Chair: I find myself in a bit of difficulty here. Obviously, what I read out was what SCVO stated to us when it met us and what it put in its blog and in the papers. Perhaps we will reflect on that and pass it on to SCVO. If it remains unhappy, we might discuss with you about how best to pursue this.

Michael Moore: I wouldn't suggest for a minute that it is signed up to every last bit of it—clearly it is not. On the other hand, if the charge is that it was not consulted or did not have an opportunity to contribute, that is simply wrong.

Q582 Chair: Let me repeat the quote: "And all this without an ounce of consultation from the Coalition government."

Michael Moore: I just don't know how that can be said.

Chair: Fine, that's very helpful.

Q583 Fiona O'Donnell: We had quite a big debate during the last evidence session about the 10p tax band being applied evenly across all the bands. What is the reason behind that, and not allowing the Scottish Parliament perhaps to raise the levels for higher-band taxpayers?

Michael Moore: The starting point for this was part of the recommendations that came forward from the commission. We agreed that we were going to take those through into the Bill. We obviously examined the reasons informing that particular decision.

There are three elements to this. First, this broadly maintains the redistributive nature of the tax system. Our fundamental is that we want to keep the virtues of a unified United Kingdom tax system. We are not going down the road of separate tax systems in Scotland from the rest of the UK—in the main. Clearly, on some of the smaller taxes we will be, but on this main one we will not be. We want to maintain the integrity of the most important tax in the UK. The redistributive element is the first part.

The second part is the volatility issue. In particular, when you look at the additional rate, in times of economic growth especially, it will outperform—the yield on it might do better than the yield on the other levels of taxation. The converse is also true: when you get into a period of economic decline or recession, the yield on that tax will decline more quickly. It is inherently more volatile, which increases risk, and we are determined to limit the risk in the process. The third and final part is that it obviously has the merit of simplicity.

Q584 Fiona O'Donnell: Given that, is it about people having to fill in a tax return? Would a Scottish taxpayer then have to—

Michael Moore: They won't have to do that.

Q585 Fiona O'Donnell: No, but if that power had gone, would that have been necessary?

Michael Moore: It's really about the question of how you design the collection and information systems and everything else.

On the issue of whether taxpayers have to fill out tax returns, they will get a special Scottish coding, so the work will be done through the software in the systems. It will not be necessary for everyone in Scotland to do that.

Q586 Fiona O'Donnell: What I was asking about—sorry if I wasn't clear, Michael—was if that power to vary the rate to different taxpayers had been devolved to the Scottish Parliament.

Michael Moore: I would be happy to clarify, but I don't believe that that, of itself, would have required a tax return, but it would certainly have made the software to manage the collection process much more complicated.

Q587 Fiona O'Donnell: We heard slightly concerning evidence from Alan Trench. He raised some concerns about HMRC not having Scottish representation and—I want to be very careful about the words I use—its impartiality, and about where the accountability to the Scottish Parliament and Government would be. Do you have any concerns about that?

Michael Moore: No. HMRC works on behalf of the whole of the United Kingdom, and it will be the responsibility of HMRC to continue to collect not just the tax retained in the Treasury, but the amounts then passed on to the Scottish Government. We will be appointing an additional accounting officer within HMRC with specific Scottish responsibilities—absolutely named and nailed as responsible for the collection of the Scottish rate of income tax. That is an important additional bit of accountability, in addition to which there will be the UK-Scottish bilateral tax committee, and all the governmental mechanisms that will ensure that the oversight within Government is strong, and that Parliament here and in Edinburgh will be able to scrutinise all the activities of HMRC.

Q588 Chair: May I just pursue that point a little bit? One of the issues about this is the extent to which it is transparent. To what extent will the figures involved be out in the public domain? Clearly, there are those who might wish to make mischief and dispute the accuracy of figures. We want to ensure, I would have thought, that as much as possible is publicly available so that we can avoid those unnecessary disputes.

Michael Moore: I am happy to confirm what is spelled out in the Command Paper. The Office for Budget Responsibility will be responsible for the forecasts of tax receipts. The amounts that are subsequently collected will be publicly available. The reconciliation will be publicly notified and will be available for scrutiny and independent audit as Parliament or Government see fit.

Chair: Fine. All of that will be done. Sometimes you do have mistakes in the arithmetic and the like, so we

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would want to ensure that all of that was overcome, if possible.

Q589 Fiona Bruce: The UK Government have decided, at this time, not to devolve certain taxes that the commission recommended devolving, or corporation tax. I would be interested to hear the reason why.

Michael Moore: Corporation tax is obviously the most significant of those taxes that might have been devolved. Again, that was looked at by the commission. The report—whether it is of the independent experts or of the commission itself—spells out that one of the main reasons for that is to maintain the integrity of the United Kingdom taxation system, maintain its simplicity and minimise the compliance costs for businesses, and also not set up the overt possibility of tax competition for corporations, which might be tempted, if the rate were higher or lower—depending on whether they were north or south of the border—to relocate their headquarters. The underlying factories or businesses might stay where they were, but the brass plate on the door of the headquarters might be moved around simply according to the corporation tax provisions within the United Kingdom. We do not think that that is sensible, so for that reason corporation tax was excluded.

Let's turn to the other taxes that we are not devolving that the commission recommended we should. The main reason for not devolving the aggregates levy—I rehearsed this point on Second Reading and it had already been put in the Command Paper—is the fact that this issue is before the courts at present. It is not appropriate to devolve a tax when its very existence, or its structure, is under challenge. We have put the commitment in the Command Paper, and I am happy to repeat it today, that assuming an appropriate outcome from the court case, we will look to devolve that. On the issue of air passenger duty, you will be aware that the Government are reviewing that. Once the outcome of that is known, we will take steps to devolve it as appropriate. I hope that we clearly signalled that in the Command Paper.

Chair: It was very helpful to have that point clarified.

Q590 Cathy Jamieson: Could you say a bit about the rationale for having a situation in which any new taxes that the Scottish Parliament wish to introduce have to be approved by Westminster? Some people have argued that that is almost like fiscal centralisation rather than devolution. Can you also explain for the record how that would work in practice? What would be the process for Westminster approving that?

Michael Moore: I'm sure someone can flick me to the page in the Command Paper that spells out the criteria that we have established for that. I am a bit sad that people might take the glass-half-empty perspective on this. It would have been a lot easier to say, "There will be no facility for any other taxes within Scotland for devolution." That would have made this a smaller, less impressive Bill, as far as I'm concerned. What we're providing, for the first time, is the facility to allow the Scottish Parliament, with the agreement of the United Kingdom Treasury, to set new taxes.

They're really tightly defined in existing legislation. I refer you to page 33, which has very helpfully been drawn to my attention. You'll see there the list of criteria. Essentially, this goes back to Fiona Bruce's point about corporation tax and to my answer to her. We need to make sure that we're not setting up some kind of artificial competition within the United Kingdom and not, overall, unbalancing the arrangements between Scotland and the rest of the UK.

Q591 Cathy Jamieson: It may not be possible at this stage to give an outline, but I think people would want to be assured that the scrutiny at Westminster would be proportionate if the Scottish Government decided that they wanted to introduce something. Have you thought through how that would actually work in practice, in terms of how it would be approved or not by this place?

David Mundell: I think it's important to restate that this is a positive measure. One of the examples that I'm aware of, from my time in Parliament and your own, is the proposal for the plastic bag tax. Whatever the merits or otherwise of that particular proposal, there were issues around its validity and operation. I certainly believe the Scottish Parliament should have the opportunity, if it wanted to do that, to bring it forward.

Q592 Cathy Jamieson: Can I use that as an example? Supposing the Scottish Parliament decided it wanted to introduce such a tax and brought it forward. Would it bring forward the primary legislation in the Scottish Parliament? Would it come here? How would that be dealt with?

David Mundell: My understanding is that there would be a resolution here, in the way that orders are currently brought forward, and there would have to be a positive—

Q593 Cathy Jamieson: It would be affirmative?

David Mundell: An affirmative vote in both Houses of Parliament.

Q594 Cathy Jamieson: So would the Scottish Parliament bring it forward first, and would it be approved here after it had gone through the whole process in the Scottish Parliament, or would it be almost a bit of a reverse Sewell, where there would be an in-principle agreement here first?

David Mundell: At the moment, we have—I think it has worked very effectively, certainly during my time in this role—a process for Scotland Act orders, where orders are brought forward at the instigation of the Scottish Government and Scottish Parliament. Most recently, we've been discussing an order about kerb crawling. Inevitably, there is preliminary discussion about the fact that the order is likely to be supported. I think it's perfectly legitimate for the Scottish Government to bring forward an order that they are not necessarily sure would be supported at Westminster—they're perfectly entitled to do that—but the process would require a degree of discussion if the objective was to get it implemented.

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Q595 Cathy Jamieson: I appreciate that it's a bit of an ongoing and developing scenario. There's also been the criticism that the devolution of the tax powers proposed in the Bill is a blunt instrument that doesn't give the Scottish Government sufficient levers to stimulate economic growth in Scotland. Can you put a few points on the record about your views on that?

Michael Moore: I am happy to repeat comments made before, and some of the arguments in the Command Paper. Primarily, this is a constitutional Bill. It's about giving the Scottish Parliament more accountability, ensuring that we tweak the balance of devolved and reserved powers, and improving some of the procedural aspects of Parliament and of interparliamentary and intergovernmental relations.

However, as far as economic growth is concerned, my view is that the greater scrutiny and accountability that will be inherent as a result of the need to set a tax rate will really focus the mind on what impact that tax rate will have on people and businesses in Scotland. It will also renew the scrutiny of how Scotland spends its other Government expenditure and whether that is focused on economic growth. Separate to that, we are introducing, through the Bill, significant new capital powers. They could be used in a way that would not generate economic growth, but I would be surprised if that was the case.

Q596 Chair: Could I seek clarification on both of the points that Cathy raised about the new taxes? Can I clarify that, if the Scottish Government wanted to tax large landed estates, for example, they would be able to do so? In terms of your caveats—it shouldn't be distorted and so on—is that the sort of thing that would fit?

Michael Moore: I don't know whether that is a particular tax that you have always longed to introduce.

Q597 Chair: You, like me, have seen life in the Borders; a better taxation of large landed estates would not be a bad thing there, in my view.

Michael Moore: I think I'd better be careful, on a number of different levels, about speculating about that kind of thing. Just to build on what David said in response to Cathy Jamieson, what would happen in those circumstances is that the Scottish Government would come forward with their proposal, we would discuss it, and it would have to be agreed. It would have to meet the tests set out on page 33 of the Command Paper about competitive tax arrangements, arbitrage, tax avoidance and so on, although it is pretty hard to move a big landed estate.

Chair: That's why I'm trying to clarify the issue.

Michael Moore: What I will not do, if you will forgive me, is get drawn into speculation about whether or not that is a good tax to want to introduce. For any type of tax to be brought forward, the Scottish Government would bring it forward and they would take account of these criteria. There would then be a process of discussion and negotiation with the Treasury, and then—assuming that the Treasury agreed to the new tax and that the Scottish Government were still happy with the way it would

be shaped—the orders would be passed through the relevant institutions.

Q598 Chair: I am not pursuing the question of process. I am seeking clarification from you, the Minister.

Michael Moore: I am not going to speculate on how that tax might be used.

Q599 Chair: Nor am I asking you to discuss the virtues of the tax. I am just trying to clarify whether or not, under your understanding of the criteria that would possibly rule out a tax, something like a tax on large estates or on rural land would actually qualify, or whether it would automatically be rejected.

Michael Moore: There is a very fine line between commenting on the whys and wherefores of the desirability of that tax and saying whether or not it would be allowed to come through. Put it this way: any process like that would require discussions and agreement with the Treasury.

Q600 Chair: To be fair, I understand that. Perhaps I will ask David, because he actually made it clear that he thought this was quite a step forward and quite a development, and that it was a permissive power to be welcomed. I agree with that. I had not actually realised that it was, perhaps, as significant as might appear from what you said. I am just trying to clarify the extent to which it is something that is likely to be used.

Michael Moore: Could the Scottish Government bring forward such a proposal? Yes. Whether it would get the agreement of the Treasury is an entirely different point.

Q601 Chair: I am seeking to clarify, though, the sorts of criteria that the Treasury might use. I hear what is in the Command Paper, but what I am not clear about is how the criteria are likely to be applied in practice. I am seeking some guidance from you, the Minister involved in bringing this forward. If the Scottish Government, for example, came forward with a Buckfast tax, under which it was proposed to tax alcoholic drinks containing a high proportion of caffeine, would that fall under the criteria of unfair competition? You have presumably discussed all these things.

Michael Moore: No, we haven't gone through a list of taxes that might be brought forward. The whole point about this is that it enables a power that will enable parliamentarians in Scotland to consider what they want to do. If they came up with that, it could be considered. How the Treasury and the UK Government respond depends on the specific proposals and their compliance with the criteria.

Q602 Chair: I think we would ask you to reflect on that and see whether or not you can give us additional guidance as to what might qualify. I am genuinely uncertain about what sort of things might qualify, notwithstanding the caveats you have provided. How meaningful is this? Specifically, I understand the point about wanting to have this cleared before the election. I think it would be helpful, rather than unhelpful, to

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avoid a lack of clarity on this particular matter. I can think of areas where the possibility of banning or taxing Buckfast would be very popular, and I can think of areas where it might be unpopular, but we need to be clear about something like that. Is that acceptable?

Michael Moore: I appreciate that that's your perspective. For us, the important point about this is that it is an enabling power. As I look at it, I am not sure how helpful it is to go through and have a menu of potential taxes.

Q603 Chair: At the moment, we don't know what it enables, though.

Michael Moore: It enables the Scottish Government to come forward with their own decision and their own views on what those new taxes might be. If that is what they want to do, then they will bring it forward. Like much of the rest of the taxation proposals, there is a lot of work that will have to be done after Royal Assent to work through the new mechanisms, and to get the transition on income tax and all that sort of thing sorted out. There will be a lot more discussion on that. But I accept you—

Chair: It could be a Buckfast or a Buccleuch tax.

Michael Moore: The Duke will be delighted to hear that.

Chair: Indeed. No more than he deserves.

Q604 Lindsay Roy: Good afternoon, gentlemen. Witnesses have expressed concern about a lack of detail in the Command Paper on the method that will be used to calculate the reduction in the block grant, especially as that is so central to the Government's proposals in the Bill. Why is this process and methodology not outlined, and how would you suggest that it be done?

Michael Moore: You will not be surprised to hear that I take a slightly different perspective from those witnesses on the lack of detail. What we have sought to do in the Command Paper—and again, this was set out on Second Reading—is set out how we would anticipate this being done. We recognise that fundamentally, this is a huge development for Scotland. Above all else, it is important that we get it right. When we come to reduce the block grant permanently—for the smaller taxes initially but then, most importantly, for income tax—we need to ensure that the process is agreed, is transparent and uses the best available data.

At the moment, we do not have good forecasting arrangements for income tax receipts. We do not have all the data that we will require. However, we are setting out in the Command Paper how we will go about doing that with the OBR, from financial year 2012—how we will begin to do those forecasts, building up the body of evidence and making sure that we are equipped to make the judgments. We will want to make that adjustment, based on a period of years, and ensure that the judgment we are making is consistent both for historic figures and expectations going forward. If we get that number significantly out, it makes a big difference to that permanent adjustment.

Q605 Lindsay Roy: Are there any options actively being considered at the present time? Why not have a once-and-for-all adjustment, for example? Professor Muscatelli has suggested that a different arrangement might be put in place based on a straightforward formula.

Michael Moore: And others in different commissions—the Holtham Commission and others—have looked at formula versions, too. All the evidence that Professor Muscatelli gave in his independent group and, through that, to the commission, and their judgment, which we accepted, is that it is best to do it on the basis of a period of years in time, and make that adjustment. What we have also said, however, in the Command Paper is that we will make sure that we keep that under review, so that there are not massive divergences after that adjustment is made.

Q606 Lindsay Roy: Calman suggested a commensurate reduction to the block grant. You are suggesting a proportionate reduction. Is that the same thing?

Michael Moore: Yes.

Q607 Chair: Can I just clarify a matter, again? On the formula, this would be “show working” again, wouldn't it?

Michael Moore: Yes.

Q608 Chair: All of this is going to be transparent?

Michael Moore: It has to be. It absolutely has to be.

Chair: It doesn't have to be. We are just trying to seek clarification on what the Treasury might do on something else there.

Q609 David Mowat: I don't really understand how that “show working” would work. I listened very carefully to your answer about the first year and how you would actually work it out. What you do is get your income tax amount through this systems change that you are going to make, and calculate in advance what you would have expected the block grant decrease to have been. If those two things are different in year one, what do you do?

Michael Moore: What we're saying is that as we now start to identify those receipts for Scotland and make projections about what those tax receipts will be for the future, and build up that expertise both in forecasting and in understanding what Scottish tax receipts are, we will have a body of evidence that will allow us to say, “The Scottish tax take is x% of the grant,” and therefore we reduce by that amount.

Q610 David Mowat: I understand that, and that would have been based on this estimate you've made of the tax take, and you do that based on the OBR and everything else, but then you do this mechanical process that's going to require thousands of bits of software to be changed in payroll systems up and down the country, and that will come up with a number, which may be different from the number you estimated; and there you are—you are left with those two numbers. One might be—I don't know—£3 billion, and the other £2.5 billion. You have got a difference. What do you do then? I don't know that

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being transparent helps with that. In a way, you've just got a different answer.

Michael Moore: Well, I hope the disparity wouldn't be on that kind of scale. Let me come back to the way it will work. In terms of making the adjustment, from 2012 onwards, we're going to be doing the forecast on tax receipts. We will also be building up the body of evidence on what the actual recent tax receipts have been in Scotland, so that when we get to 2018 or 2019, which is the year when the final adjustment is going to be made—that is still to be decided—we will have six years' information on which to base a sensible decision. Thereafter, we will be using OBR forecasts for the allocation of income tax receipts into the Scottish funds, and we will reconcile those the year after that, and any adjustments will go through the Scottish Consolidated Fund.

Q611 David Mowat: I don't understand—sorry, perhaps I am being dense on this—what the process of reconciliation means. The amount you knock off the block grant in the first year is based on an estimate from the OBR, isn't it?

Michael Moore: No. It will be based on our OBR forecast and our historic receipts—the data that we have built up.

Q612 David Mowat: But you can't know what that is, because you don't know enough about where your tax base is resident, do you? Or are you making lots of assumptions about it?

Michael Moore: We will make assumptions, which will be very clear. Also, part of the reason for the length of time we wish to take is that we want to make sure that we can get the methodology moved from the principles that we are identifying; it should be a period of years, and it should have backward evidence and forward projections at the heart of it. We should ensure that we get the right, fair outcome for United Kingdom taxpayers, and Scottish taxpayers as a subset of those.

Q613 David Mowat: So you've got this model that you're going to use, effectively, that's going to estimate the reduction in the block grant based on a few years of looking at what you think the Scottish tax base is.

Michael Moore: The model will be developed in partnership with the Scottish Government, because, again, it's important that there is full openness about the figures that are being used. Again, that will be available for scrutiny by Committees.

Q614 David Mowat: And when you talk of reconciliation, you're reconciling that model with what actually happened, are you?

Michael Moore: No, sorry; the reconciliation is for the future. Once we have made that permanent adjustment, we'll be in a situation where every year the Scottish Government will need to get access to the funds through the year.

David Mowat: I see. So that's just a time reconciliation. Thank you.

Q615 Chair: Can I just clarify one thing? Do you think that HMRC will be able to do all this within the £45 million that I think you've estimated it's going to come to, given that I think there's no historic experience in government of things coming in on time and on budget?

Michael Moore: That is a provisional estimate in the regulatory impact assessment, and I would strongly highlight the provisional nature of that. A number of factors will come into play on that cost, but one of the critical ones will be what the Scottish Government decide they want on P60 documentation and other things. Until we know what the Scottish Government of the day think is the appropriate information that they need from the system, the costs, I'm afraid, cannot be finalised.

Q616 Chair: Would you care to wager a fiver that it will be more than £50 million?

Michael Moore: I'm not going to take any wager.

Q617 Chair: So you lack confidence?

Michael Moore: I don't think it would be appropriate for Ministers to start betting on this kind of thing.

Q618 Chair: Right. A charitable donation then?

Michael Moore: I'm sure you'll be quick to remind me if it goes your way.

Chair: I certainly will.

Q619 Dr Whiteford: I want to come back to the ambiguity about the mechanisms by which the reductions in the block grant will be calculated and reviewed. We've heard a lot of contradictory evidence on the tax proposals. My question, which comes back to the timing of all this and your acknowledgement that you want to get it right, is: how can the Scottish Parliament, or indeed this Committee, make decisions or express views on these tax proposals if we don't know what that mechanism is going to be?

Michael Moore: I hope that the Committee and others will recognise the complexity of the arrangements and the need to take some time. We could sit down with the Treasury and say, "Here it is. This is the adjustment, it's decided already." I can just about imagine the howls of protest there would be about that. We're setting out a process over a number of years that will fully engage the Treasury, the Scotland Office, others and, crucially, the Scottish Government.

Q620 Dr Whiteford: One of the reasons that confidence is low is that one of the other areas of ambiguity is your estimate that the measures in the Bill will result in the proportion of the Scottish budget funded from devolved taxes rising to about 35%. We've heard evidence from some very unlikely bedfellows—Reform Scotland and, more recently, the STUC—and they estimate that the figure will be closer to 26%, which is quite a big discrepancy. It is difficult for us, in this very truncated process, to reach conclusions on that. Do you stand by the Government's estimate, or do you think that there is room for revision?

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Michael Moore: The 35% figure goes back to the report of the Commission on Scottish Devolution, the Calman report.

Q621 Dr Whiteford: The Government haven't analysed it?

Michael Moore: No, we are broadly comfortable with that assessment. It may change one way or the other, but it is indicative as much as anything else. Surely the important point is that this significantly enhances the financial accountability of the Scottish Parliament.

Chair: I think there's an issue here about credibility, because people have been bandying different percentages around. It would be helpful if you wrote to us showing your working and how you established 35%, as distinct from any other figure. That would help move things forward.

Q622 Fiona O'Donnell: I want to take you back a bit, and colleagues will correct me if I'm wrong. We heard evidence from Professor Scott, who talked about the forecast for tax receipts. He said that such forecasts are always high, and on average they are 4% high. It might be that this is another occasion on which it would be better for us to write to you with his evidence. He implies that Scotland would constantly be borrowing to get itself out of that situation. Could you give us any reassurance either that there is something in the contingency to protect Scotland or that, if you know the forecasts are always 4% ahead of what will be taken, you would adjust for it?

Michael Moore: That is part of the reason for building up the body of experience in such forecasting through the OBR and elsewhere. That is why we are not hanging around until 2017–18 to start the process. The OBR will have a mandate to start forecasting from 2012 onwards. It will then be an open book. We will all be able to see how accurate the forecasting is, compared with the out-turn.

There might be difficulties, but with respect to the experienced people who observe the scene more closely than I might, I would hope that we can get the discrepancy as small as possible. Let's not forget that that will be for the Scottish Government of the day to anticipate as they make their forecast. It is the same for the UK Treasury, which forecasts its tax receipts and then develops its spending plans on the back of that. The UK Treasury builds in some contingencies, I am sure, and looks at what other measures should be taken if suddenly there is a shortfall. That is essentially a really important part of the new accountability. However, we are not just throwing away all the protections of the existing UK funding system. Apart from the devolution of income tax, there will still be a huge block grant coming through, which will maintain stability and keep things pretty secure for Scotland.

Q623 Cathy Jamieson: I wonder whether I can ask a couple of questions about the borrowing powers. We have heard a lot of evidence, including from some members of today's earlier panel, that the limits set for current borrowing are too restrictive and should be higher. Could you explain your rationale for the figure

that has been proposed? Is there scope to change that, and are you prepared to listen to the evidence that has been brought forward? How do you propose to allow the Scottish Parliament as much discretion as possible over the level of borrowing?

Michael Moore: There are a number of issues there. The first and most important principle, I am sure, for all members of the Committee is whether we will listen to the evidence and look at it—of course we will. We have given some assurance to colleagues in the Scottish Parliament who are scrutinising this, and I am conscious that there have been different representations about this and we want to take note of that.

If we look at the current borrowing powers of up to £500 million, that level was determined by colleagues in the Treasury based on their estimations of what the fluctuations might be in tax receipts that would need to be covered in any given year. The central assumption was that in the worst year of the recession, income tax receipts fell by 6% year to year. If you factored that in, the borrowing that we are setting for the new arrangements would be more than adequate to cover that. We will look at any evidence that suggests that is not right.

I also point out—again, we have said this in the Command Paper—that the maximum stock could be £500 million, and although that may be varied from time to time, it will not be reduced. There could be uplift in that, but it will not go below £500 million. On capital borrowing powers, the judgment is about providing sufficient powers to enable the Government in Scotland to get on with major infrastructure projects. When I was in front of the Scottish Parliament Committee, obviously the Forth replacement crossing was one such idea, but it could be about hospitals and so on. The possibility of a railway is something else that might be considered—down to Galashiels and Tweedbank or wherever. That is an argument to be had in the Parliament.

Q624 Cathy Jamieson: Can I pick up on that? One of the pieces of evidence that we have had from Alan Trench suggests that the capital borrowing limit is also low, amounting to the cost of only one or two large-scale infrastructure projects. Issues would arise from that in relation to affordability and whether it would be PPP, PFI or some other method of financing. What would you say to that?

Michael Moore: This won't be the only facility. This is an additional facility over and above the capital available already. I am happy to look at evidence on this from Mr Trench or anyone else. We make it clear that the £2.2 billion facility—we might call it that—can be varied, but it will not be below that figure.

Q625 Chair: Can I follow that up? Unless I am mistaken, no one we have heard has suggested anything other than that the limits are too low. There have been suggestions that the Scottish Government should be able to issue bonds and so on. Has that been considered by the Government at all?

Michael Moore: It has been. Again, this is the glass-half-empty perspective. This major capital borrowing power was actually not in Calman. However, when

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we were looking at the financial powers that were appropriate as part of the package, it was recognised that that facility would be important. So it's £2.2 billion more than anybody was reasonably expecting. We can have discussions about the levels. As I hopefully clarified—helpfully or otherwise—we are clear that this is a baseline. We are not saying that it will be a free-for-all that will extend massively at any given point in time; it will have to be done with Treasury consent. It will also have to be within the overall United Kingdom borrowing. This is part of the UK's borrowing capacity, so it is entirely fair. The Treasury needs to consider what the appropriate level is within that UK context.

Q626 Chair: Yes, because presumably UK borrowing for projects in England and Wales will be competing with projects from Scotland, Wales and Northern Ireland.

Michael Moore: If we're talking about increasing the facility, that £2.2 billion facility will be available for the Scottish Government. After the first couple of years—during the current spending review period—when we are looking at ways of reducing our debt levels, there are some constraints on that at the moment. But, after 2015, in relation to lighter restrictions within that envelope, it will be a matter for the Scottish Government.

Q627 Cathy Jamieson: On that, there have also been suggestions that the borrowing powers might have been brought forwards and made available, helpfully in advance of some of the other parts of the process kicking in. What is your view about introducing those in advance?

Michael Moore: At the moment, that is not something we are looking at. However, I don't want to undermine the point I made before—namely, that the Committee will take a view, the House will debate this and the Scottish Parliament Committee will also come forward. All I would say is that that figure has been arrived at both with a view to the United Kingdom's overall debt management requirements and at a level at which we think serious capital projects can be contemplated.

Q628 David Mowat: How much of the borrowing number that you've allowed for this is because of the timing issue on the receipts of tax flows, which you mentioned in a previous answer to me? How much of that will you use for that purpose?

Michael Moore: That's primarily what that facility is for. The flip side of it is should receipts outperform forecasts, there is, of course, a Scottish cash reserve, which will be available for the Scottish Government to retain that excess and spend as they wish, subject to the rules.

Q629 David Mowat: So for clarity, you see that £500 million being used for the smoothing of cash flows. You don't see it being used for capital spending.

Michael Moore: No, the capital borrowing is quite simple. But there are existing public finance rules that allow the transfer of the current spending resource

into capital resource. That is something the existing Scottish Government could be allowed to do.

Q630 Chair: Can I just clarify whether all the capital borrowing will be through the Public Loans Board? As is the case for bonds or something similar. Did you consider bonds?

Michael Moore: Our colleagues at the Treasury looked hard at that and the judgment taken was that that was not necessary. But, again, I know that the Committee and others may wish to raise that.

Q631 Chair: I think it would be helpful if you were able to access something from the Treasury or directly that shows why you came down against bonds. We have a lot of evidence on that, but we haven't had all that much back from yourself there.

Michael Moore: Apologies that I don't have it immediately to hand. The Exchequer Secretary, David Gauke, provided evidence to the Committee in Edinburgh.

Chair: Fine. I think that would be helpful to allow us to consider this.

Q632 Fiona O'Donnell: On that point, when you gave evidence at Holyrood, there were a couple of points you said you would write to them on to clarify. One was about the residential status of Scottish taxpayers. I can't remember what the other was. I wonder if we could be copied into that correspondence. I understand that it is not with them yet.

Michael Moore: Certainly.

Q633 Fiona O'Donnell: The other thing that was put in terms of capital borrowing was why not let the Scottish Government—the Scottish Parliament—go out there and try and borrow money openly in the market and let the market judge whether they are a good risk. I think that was the view put forward by Professor McLean.

Michael Moore: People can argue the case, and have done so. What I would simply say is that the Treasury retains overall responsibility for the United Kingdom's borrowing and how that looks to the markets and internationally. I think it is entirely fair that it should—having given great flexibility with this power—establish how it should be used.

Q634 Chair: Presumably, generally, borrowing from the Public Loans Board would be cheaper than issuing bonds, would it?

Michael Moore: It depends on the time you go to the market.

Q635 Mr Reid: Why was the Office for Budget Responsibility selected as the body for forecasting the Scottish tax base?

Michael Moore: Because it is now set up to be independent of Government but do the forecasting for the United Kingdom Government, as it has already been doing. It seemed like a natural extension of that work, to ask it to do this work as well.

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Q636 Mr Reid: What discussions have you had with the OBR about the problems that are going to arise in forecasting the tax base?

Michael Moore: Those discussions will only start once the Bill gets Royal Assent. I would again stress the fact that we have a number of years of work ahead of us, which means there is plenty of time to consider all the different issues.

Q637 Mr Reid: Have you done a feasibility study? Are you satisfied that it is feasible to get a reasonable estimate?

Michael Moore: Yes, I'm sure that is clearly our working assumption. The OBR itself is relatively new, but it is getting established, and over the next few years, I am confident that it can take on the role and provide the information that all of us need to judge the tax situation in Scotland.

Q638 Mr Reid: Several witnesses expressed concern that, once the Bill is implemented, both the Scottish and UK Governments will share the same tax base, and that organisations like the OBR have to be accountable to both Governments. Have any mechanisms been looked at as to how the OBR will be accountable?

Michael Moore: The OBR will be accountable to this Committee, to Committees of the House, as they see fit, and clearly more generally. We have expressly said in the Command Paper that its work will be open for scrutiny and audit. If the Scottish Government were to decide that they wanted to have the information audited, that would be possible. It will prepare, independently and professionally, its estimates and calculations, and if others wish to scrutinise and audit, they can.

Chair: That is very helpful. There is a healthy dose of paranoia running through some of the contributions that we have had: the suggestion that, because they are based in Westminster, the NAO, the OBR or the HMRC can't be trusted. If you are saying that all their workings will be visible, or they could be audited, that tends to overcome that difficulty. That is very helpful. Thank you.

Q639 David Mowat: As a follow up, I have been reflecting on the matter. This OBR number is going to be the driver of what you knock the block grant down by, so the OBR matters.

Michael Moore: The OBR matters, but we will have historical tax receipts. We will actually have established tax receipt numbers.

Q640 David Mowat: But you won't have that, because the only way you're going to get the tax receipt numbers is by this tax code change that you have mentioned of getting an S on the code and working it all through the systems and getting a final number. You're only going to have that when you go live. I'll tell you what I was reflecting on: you could have actually implemented this by getting an accurate tax receipt number for year nought, and using that for the block grant reduction rather than a forecast.

Michael Moore: Bear in mind the final adjustment in 2018–19 is two or three years after we've

implemented the tax powers in 2016. So you have built up a body of evidence—right to the heart of your point—of actual Scottish tax receipts.

Q641 David Mowat: Okay, so—to the heart of my point, then—the first year reduction in the block grant will be based on the actual amount that we got in the first year.

Michael Moore: Actual and further.

Q642 David Mowat: So the OBR is only a cash-flow timing device, then? It's not relevant to actual cash flows.

Michael Moore: I would be surprised if people didn't want not only to look at the historic figures but to look forward to what the OBR was forecasting for years to come and look at that based on its forecasting work and decide whether that was a relevant consideration. Going forward, you're absolutely right.

Q643 David Mowat: Okay. I will go back to what I'm supposed to be asking about now, which is the mechanics of the HMRC process. I think you mentioned earlier in your evidence that the tax code will have an S on it and the software will flow all that up through. Is that HMRC software, or is it software that all companies in the whole country have, which is what they run their payroll systems on?

Michael Moore: Correct. It is the latter.

Q644 David Mowat: It is the latter. So that's quite a big job there. Anyone who might employ someone who is resident in Scotland will have to have this in their system.

Michael Moore: In your constituency and across the country, a point that we have been very keen to ensure that the business organisations and others are aware of and engaged with. I apologise if I don't get its title completely right, but the Chartered Institute of Payroll Professionals or its equivalent is a member of the higher level implementation group. One of the first questions we asked was what the compliance challenges of the introduction would be for businesses, given that companies in England will also need to comply with this. Its response to that was that, when the Scottish variable rate was being established back in 1999, the software packages that were then on the market were upgraded to take account of the need to identify a Scottish taxpayer. Its view, which has not changed since, as far as I'm aware, is that that software will work for this as well. In other words, it has been lying dormant in most businesses over the past 10 years.

Q645 David Mowat: But a business will have to report, won't it? It will have to report two numbers quarterly to HMRC: its Scotland number and its other number.

Michael Moore: That will be driven out of the system in the same way as normal tax information.

Q646 David Mowat: I am not trying to minimise it, but not everybody uses computer systems. A lot of people do this manually. There is an overhead to all

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of this, however. Are you comfortable that it can be done?

Michael Moore: Based on the professional advice that we have received, yes.

Q647 David Mowat: Your advice is that you're comfortable. But the £50 million number—

Michael Moore: Is the HMRC cost.

Q648 David Mowat: Who is paying for the HMRC cost? Is it the Scottish Government or the UK Government?

Michael Moore: The Scottish Government.

Q649 David Mowat: So that is just part of the deal. That was how it was to be done.

Michael Moore: That is why they are taking a very close interest in the sum of money involved. If I may refer to the inelegance of the situation of the Scottish variable rate arrangements at the moment, there has not always been perhaps the best communication and discussion on these matters, but I am pretty confident that a lot of attention will be paid to this in the years to come.

Q650 David Mowat: And is most of that HMRC cost going to third-party software suppliers? It is all outsourced, isn't it—all that software and that process?

Michael Moore: Yes, but it is basically the marginal cost of establishing this functionality in the UK system, so that HMRC will be responsible for collecting that tax and paying it into the Scottish Consolidated Fund, and ensuring that the Scottish Government are not thrashing around looking for where their next money is coming from.

Q651 Chair: Can I just clarify the jobs involved in any of this? If new jobs are created as a result of this new mechanism will they be in Scotland, and will you give us that guarantee? New jobs involved with HMRC operating any new system. I think you can understand why we raise this point. It would perhaps be inappropriate if any new jobs in HMRC were created as a result of having a Scottish tax system but they were actually outwith Scotland.

Michael Moore: These are operational matters for HMRC. I think it's hard to envisage a situation where it will not have people in Scotland, because it will have to work very closely with the Scottish Government. Equally, it will have to have people working with their colleagues here in London within HMRC. I would be prejudging and pre-empting the operational decisions by some margin, but I think that we can be reasonably confident that there will be additional roles for people in Scotland as a result of this.

Chair: So that's a yes, then.

Michael Moore: I think you heard my answer.

Q652 David Mowat: Surely, it depends on how HMRC currently does its processing.

Michael Moore: Among other things, including how it designs it and how it manages it—all those things.

I am not an expert on all that, but at the appropriate time I am sure—

Q653 Chair: There is no need to talk yourself down. I am sure that you are well on top of all this, but I think you can understand that if there are going to be jobs created, they ought to be in Scotland. That is a point that has been made to us, and it would be inappropriate for us not to reflect it back to you. Having obtained your guarantee, I think we're quite happy with that.

Can I come back to the legislative consent motion concept? If the Scottish Parliament passes what could be described as a partial legislative consent motion, supporting some but not all of the proposals, what then happens?

Michael Moore: We will reflect on the report when we get it, as indeed I am sure you will, and then we will work with colleagues to establish which bits of it we agree with and wish to reflect in amendments, either to the Bill itself or as clarifications of the Command Paper. I wouldn't want to prejudge whether the Parliament will take a different view to the report from the Committee—that's a matter for the Parliament—but we will have plenty of time for scrutiny and consideration.

Q654 Chair: I understand some of that, but I am not sure I entirely grasp your answer. If the Scottish Parliament, which may receive options from the Committee, chooses options that are at variance with the Government's proposals at the moment, or if the Scottish Parliament fails to pass some elements of the Bill and provides a legislative consent motion, what happens when it arrives here?

Michael Moore: We will still have plenty of opportunity here after the motion has been passed, and in the House of Lords as well, to reflect on the motion rather than on the report, if there is a material difference between the two. So I don't foresee a real problem.

Q655 Chair: Can I just clarify what happens if the Scottish Parliament passes something that the coalition Government are minded not to support, or rejects something that the Government here are minded to support? Would the Government overrule that legislative consent motion?

Michael Moore: Ultimately, we are responsible and accountable for taking the legislation through. We have not offered a guarantee that we will change everything in our Bill and in the processes attached to it—in the Command Paper—as a result of this process. What we've undertaken to do is to reflect very carefully indeed—

Q656 Chair: It is very helpful to have that clarified, because there was some doubt as to whether the Scottish Parliament would effectively have a veto over the Bill and, by not passing something, would force the Government, either legally or morally, to abandon it.

Michael Moore: If it came up with a fundamental issue about the Bill that it did not like and wished to change, we would clearly have to reflect on that and

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consider what it meant for the legislation. I am hopeful, based on my view of the work so far, that that's not a problem that we'll have; but, again, I don't want to prejudice the Parliament's work or the outcomes of the process.

Q657 Chair: We feel obliged to some extent to comment on what might happen. If the Parliament decided that income tax, instead of being variable by 10p, should be variable by either 5p or 15p, what then would be the mechanism? Would you retain the right to ignore what it said and put through the 10p?

Michael Moore: Yes.

Chair: Fine. I think that that has the merit of clarity.

Q658 Dr Whiteford: I want to move on to clause 12 of the Bill and the specific concerns that have been raised about the unintended consequences of the insolvency proposals. You'll be aware that the Scottish Federation of Housing Associations has made some very serious pleas about the risks of these proposals. Essentially, with housing policy being devolved and a very recent regulatory framework having been established in the Scottish Parliament through the Housing (Scotland) Bill 2010, its concern is that this would be a very retrograde step, which would create a lot of risk for housing associations and prevent some of the good measures in the Bill from taking effect. Essentially, it doesn't want to see fragmentation of the regulation from the policy-making procedure, which would be a consequence of clause 12 of the Bill. Given that its members own or manage some 47% of affordable housing in Scotland, I think it's something that we, as a Committee, need to take quite seriously, and I would be keen to know what room for manoeuvre there is on that issue in order to reach a more appropriate solution for housing and for social landlords.

David Mundell: I respect the concerns that have been raised, but it is exactly to avoid the issue of fragmentation that the re-reservation in relation to insolvency is happening. It would be inconsistent with that for registered social landlords to remain the only part of insolvency legislation that was still devolved. Any interpretation of this being a back-door way of undermining the legislation and policies that the Scottish Parliament has pursued is not correct. It's perfectly possible under the new arrangements for the Scottish Government to work with the UK Government to have specific arrangements in relation to registered social landlords in Scotland. Indeed, I understand that officials have already had that sort of dialogue, so it isn't a way of undermining those policy decisions. There are lots and lots of areas where we, in both the coalition Government and the previous Government, have worked with the Scottish Government to ensure that the reserved elements of responsibilities were actually dovetailed with the policy objectives of the Scottish Government. That is an undertaking that we continue to give and would want to give.

Q659 Chair: We understand the thrust of what you're saying, but the SFHA still seems to be greatly exercised. Have you or any other Government

Minister met people from the SFHA to discuss the detail of its anxieties and to see whether there is a way round this? That would perhaps not be by legislation, but through other assurances.

David Mundell: I would certainly be happy to meet it. I have been in correspondence with Alex Neil—the Housing Minister in the Scottish Government—who broadly relayed the same issues that Eilidh Whiteford set out.

Q660 Chair: But could you consider maybe meeting the people directly? Why don't you just see them directly? They came down here and spoke to a number of Members, and I think most of us lost the will to live after a certain period, because it was so complicated, and we thought that someone like you would be able to sort this out.

David Mundell: We would be happy to undertake that and, following this discussion, we will proactively contact them to make that happen and report back to the Committee.

Chair: Fine. That would be very helpful. That is the best way of dealing with this.

Q661 Fiona O'Donnell: I know that it is a tight time frame, but, in terms of our report, it would be very helpful if that could happen before the publication of the report, because we may be voicing concerns that you may already have reassured them about.

David Mundell: Next week, because Parliament is in recess, the Secretary of State and I will be in Scotland for a significant part of that, and we could perhaps make sure that that happens.

Chair: You'll be looking for things to do, so there you are.

Michael Moore: An uncharacteristically unfair thing to say.

Q662 Chair: Antarctica is the next section to which we wish to turn. People in my constituency speak of little else. Clause 14 allows various things to take place where there seems to have been omissions and so on. Have you checked the 1998 Act to see whether there are any other omissions? By what process did this omission of Antarctica come to light? It's a fairly big place, and I would have thought that somebody in the Scotland Office would have noticed it.

David Mundell: It was interesting that when it came to light there were people who immediately thought it should fall within the responsibilities of the Scottish Parliament, having never previously set out that concern. I know it's easy to be flippant about this matter, although I would never accuse you of such a thing—

Chair: Very wise, if I may say so.

David Mundell: It came to light because Edinburgh University wished to undertake a major expedition in Antarctica, and appropriate licences must be granted in relation to that. There are now obviously serious concerns about activities in areas like Antarctica, and that was the basis on which it came to light. There was to be legislation, which may still go forward in this Parliament, in relation to wider regulation of Antarctica and particularly drilling activities. It was

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clear that the position wasn't covered in the Scotland Act.

Your second question is rather like the one raised on possible taxes. It is impossible to list areas that we don't know.

Q663 Chair: This is the unknown unknowns.

David Mundell: It is. If we were to bring forward a provision that said, "and everything else that no one has ever thought of before", we would suffer criticism. If there are areas that people—

Q664 Chair: So there is nothing else you are aware of. If something else comes to light, how is it dealt with? If the Bill had gone through and wasn't a vehicle to deal with the Antarctica question, how would the next—

David Mundell: There are procedures within the existing Scotland Act called section 30 orders, which allow for changes within the environment. There have been a number of significant changes between 1999 and the present day, and in my time in the Scottish Parliament, the most significant was in relation to railways and the regulation of that environment.

Q665 Chair: So if this Bill had not been coming forward, there would have been another mechanism to deal with Antarctica?

David Mundell: Indeed. There was a mechanism that was thought about in relation to Antarctica, but doing it in the Bill makes it much more straightforward.

Chair: That is a great weight off everybody's mind, as I'm sure you will appreciate. We turn now to the question of the Crown Estate.

Q666 Mr Reid: Several witnesses have criticised clause 18 on the Crown Estate. They describe it as deeply flawed and say that the whole Crown Estate should be devolved to the Scottish Parliament. What is your response to that?

Michael Moore: First, following on from the principle that we were seeking to implement—the Calman report and its provisions—we believe we have done that faithfully in the provisions here. It looked at the issue and invited evidence, and there was a range of opinion—I will not dispute that—but in terms of a fully worked-up suggestion as to what you do with the Crown Estate, there was no consensus. Do you devolve the Scottish interests? Do you specify more clearly the governance arrangements and the requirements to consult and interact with the Scottish Government? There was a whole range of opinion on that but there wasn't a consensus when the commission was taking evidence.

I have looked at it again because the Scotland Office has a direct interest in the Crown Estate, and I am very conscious that we ought to be more engaged. Since my appointment as Secretary of State, I have met with the Crown Estate formally three times, and I plan a further meeting with it in the near future, which will specifically focus on its activities on renewables. It gave evidence to the Scottish Parliament LCM Committee—I apologise that I do not know whether it has given direct evidence here. However, in my time dealing with the Crown Estate,

it has shown a great willingness to make itself available to the Scottish Parliament and to present evidence on any issues that might be of concern to MSPs. It has considered establishing a memorandum of understanding with the Scottish Government. There have been discussions, although obviously I understand that the Scottish Government have different views on this.

The Crown Estate is making strenuous efforts to ensure that it is accountable in Scotland, and I am making efforts as Minister to work very closely with it to ensure that it is focused on Scotland and its interests. I have now had two meetings with Justine Greening, who is the Treasury Minister with direct responsibility for the Crown Estate. We will have further discussions in the near future. However, I am satisfied that the provisions in the Bill reflect, first, what came from Calman and, secondly, our broader interests, and that we can make the Crown Estate continue to work well for Scotland.

Q667 Mr Reid: A lot of the evidence that we have received is that coastal communities in some of the more remote parts of Scotland will want to carry out some developments—say harbour developments or perhaps renewable developments—but they feel that they have no stake in those developments because of the way that the Crown Estate operates currently. What is your response to that?

Michael Moore: Because I have had plenty of representations from colleagues who represent coastal communities—more so than from those who represent landward areas—I am conscious that people in those coastal communities think, from time to time, that the Crown Estate has got that wrong. The Crown Estate needs to look very carefully at how it engages with those communities. My judgment so far is that, with a little bit of guidance and interest from Ministers and others, the Crown Estate can be perfectly pragmatic about some of these decisions. I have said to the Committee in the Scottish Parliament—I am happy to repeat it here—that we will reflect on all the evidence that comes to us and we will continue to keep the operation of the Crown Estate under active review.

Q668 Mr Reid: There were recommendations in Calman that have not been taken forward. Why is that?

Michael Moore: In terms of the power of direction, specifically?

Mr Reid: Yes.

Michael Moore: That issue was very seriously examined by the Treasury Committee in the previous Parliament. I know that a lot of evidence was gathered about the legal power, such as what the Secretary of State for Scotland can do to direct the Crown Estate's activities? We have revisited this issue since the election and the legal advice that we have had is that it is not feasible to distinguish between directly Scottish interests and the interests of the rest of the UK, and that the power of direction remains a kind of power of last resort if there are some very serious problems within the Crown Estate. The power of direction is not an invitation to the Secretary of State to micro-manage how the Crown Estate operates.

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However, I hope that I can give you an assurance. The engagement that I have had with the Crown Estate already and my commitment to maintain that level of engagement will give reassurance to you and others that I understand the importance of the Crown Estate in Scotland, and the Crown Estate ought to understand how seriously we as a Government take its activities in Scotland.

Q669 Mr Reid: What message would you have for coastal communities? I am thinking in particular of Tiree, where there are plans for a large wind farm offshore, and there is fear within the community that their views do not count and that they will not be involved in the process in any way. What sort of assurance could you give a community like that?

Michael Moore: I would be very surprised if the Crown Estate did not engage directly with the community, although I am not prejudging whether the community will be satisfied with the outcome of that engagement. However, I am very happy to discuss that issue further with you as necessary.

Q670 Chair: It is fair to say that this is one of the proposed changes in the Bill that to some extent caught us unawares. I don't think that we were quite expecting the strength of opinion that has come forward on the Crown Estate, and that is probably true of Calman as well. Indeed, it admitted that when it was in front of us. I will perhaps seek some guidance from you, but the choice for us is whether we say something about what ought to be done in the Bill, or whether we get some sort of assurance from you that after the Bill has gone through there will be some ongoing dialogue about how this issue will be pursued with a greater degree of urgency. As I said, we don't want to let this go, given that so many people have raised so many good points about it with us, but we don't want unnecessarily to cover conflict about the Bill, because I'm not sure that it's actually the right vehicle for this. It's a convenient vehicle, but I'm not sure it's the right vehicle.

I'm also not sure I agree entirely with your analysis of the power of direction as a nuclear option. I think that a power of direction, particularly in consultation with the Treasury, would become an immensely subtle element of your armoury to get a change in the practice and operation of the Crown Estate Commissioners, since you are renowned for your subtlety in these matters—*[Interruption.]* I'm sorry to hear you laugh at that. It seems to me that it's something we could discuss after the Bill, if that's acceptable to you.

Michael Moore: I'm very happy to do that. I actually think the Crown Estate would welcome that too, because I sense some frustration that a lot of efforts that it has been making to engage, particularly in Scotland, haven't always necessarily been very obvious. But it is aware that not every community in Scotland is exactly thrilled by how it operates. There's lots of improvements that could be made to that.

Obviously, it's your decision about whether you wish to cover it in this report or come back to it, but I'd be very happy to come back to this at some future stage.

Fiona O'Donnell: That's a really good idea for a way forward. Can I suggest that the Committee should look at conducting a separate inquiry and taking evidence, given the strength of feeling that is out there? Otherwise, it's going to feel like they weren't listened to. We could assist the Secretary of State then in responding.

Q671 Chair: Your enthusiasm for that would be total, would it?

Michael Moore: Complete and utter.

Q672 Chair: Don't overdo it, but thank you. That's very helpful. It probably is a more constructive way forward than some of the suggestions and proposals that we've had, and it would be longer term as well. Can I turn to the question of implementation of international obligations in clause 23? It has been pointed out to us that the necessity for the provision in clause 23 "is not clear, nor is it clear whether this measure is in fact proportionate to the problem which it purports to address". What's the point of this clause?

David Mundell: It provides for UK Ministers to be able to make orders that Scottish Ministers could make in relation to matters before the Scottish Parliament and within its responsibility. It doesn't require them to make those orders.

Q673 Chair: But what's the point? What's the need?

David Mundell: There are circumstances where it may be more appropriate to proceed on a UK-wide basis than simply on the basis of individual orders within Scotland or here at Westminster. That's the purpose of it.

Q674 Chair: Sorry, I don't understand that. What does that mean?

Michael Moore: If there are international obligations placed on us by a European treaty, or other obligations we've taken on internationally, the UK, as the member state of the relevant organisation, is responsible for ensuring compliance within its borders. If the UK Government then pass the necessary implementation procedures here, that covers only England and Wales at present—sorry, England; I am not sure about Wales. It doesn't cover Scotland. In the gap between implementation for England and the Scottish Government Ministers covering this for Scotland, the UK is at risk of non-compliance. This is a facility to enable the UK Government to make the order for the whole country and implement it appropriately. Beyond that—

Q675 Chair: There is a paranoid tendency out there. Some are worried that this is an insidious intrusion into Scottish Parliament powers. Why is it necessary? Surely the Scottish Parliament wouldn't want to do something that would put it at risk anyway.

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Michael Moore: The Scottish Government are not the one at risk of non-compliance; it's the United Kingdom, which is the member of whatever organisation it is.

Q676 Chair: So the Scottish Government could put the UK in danger of being enormously fined by the bad boys in the European Union and just sit back and enjoy it, and we would have to pay.

Michael Moore: I would never accuse them of wishing to do that, but that, conceivably, would be the case. I have a very good technical example. The European Union Military Staff (Immunities and Privileges) Order 2009, S.I. No. 887, was made for England, Wales and Northern Ireland on 8 April 2009. The European Union Organisation for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) Order 2009, S.I. No. 1748, was made for England, Wales and Northern Ireland on 8 July 2009. The Scottish equivalent—the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010—was made on 11 May 2010, a long time after the original orders had been made for England, Wales and Northern Ireland.

Q677 Chair: Why was that, then?

Michael Moore: That is a matter for the Scottish Government, and they will have other priorities.

Q678 Chair: What penalties would have followed from that?

Michael Moore: You're trying to catch me out. The next page of the brief doesn't actually tell me that.

Q679 Chair: I think we understand. So there is a clear understanding that there is nothing else behind this.

Michael Moore: No, there isn't. I'm slightly at a loss to imagine what kind of evil thing the UK might wish to implement in Scotland.

Q680 Chair: There is, as I've said before, a healthy—or unhealthy—degree of paranoia out there

among some folk; they just look at something and assume the worst.

Michael Moore: I hope those of that disposition are reassured by what I've said.

Q681 Chair: I certainly hope that they would be, although there is no guarantee, of course.

The final point I wanted to ask about was Government amendments to the Bill. Are any lined up at the moment, apart from technical things? We would not want to be having our sessions and discussing what you have come forward with only to find out that you had on the stocks a whole string of amendments to which we were not able to respond.

Michael Moore: We have some technical amendments, which will be introduced as early as possible. The teams are working on that at present. The only substantive one is on section 57(2) of the Scotland Act, which is to do with the powers of the Lord Advocate and the way they are treated. As you will be aware, the Advocate-General consulted on that. That has yet to come forward, so that is one area.

Q682 Chair: But my understanding is that the Scottish Government were willing to see a legislative consent motion on that come back after the election, so they were dealing with that as a different matter.

Michael Moore: We made it clear in the Command Paper that this was still work in progress. We will make sure that—

Q683 Chair: Right. I think we accept that, but there is nothing else?

Michael Moore: Obviously, we await with interest your report and the report from the Scottish Parliament.

Chair: Now that we are aware that you will generally accept our amendments, we will obviously put a great deal more effort into them than might otherwise have been the case. Do colleagues want to raise any other points? No? Okay, thank you very much. It's always a pleasure to see you before us.

Michael Moore: Thank you very much.

Tuesday 1 March 2011

Members present:

Mr Ian Davidson (Chair)

Fiona O'Donnell
Mr Alan Reid

Lindsay Roy
Dr Eilidh Whiteford

Examination of Witnesses

Witnesses: **Gerald Byrne**, International and Constitution Directorate, Scottish Executive, **Fiona Hyslop MSP**, Minister for Culture and External Affairs, Scottish Executive and **Graeme Roy**, Office of the Chief Economic Adviser, Scottish Executive gave evidence.

Chair: I welcome you to the Committee. As I have just said to my colleagues, do switch off BlackBerrys and things. I had a new one at the last meeting with Michael Moore, and I have just been reminded that I had not quite mastered it and did not switch it off completely, but I have managed that today.

As I understand it, Fiona, you have to get a plane at about 1 o'clock, and you want to be out of here by 11.15, so we will proceed as quickly as we can.

As we discussed briefly outside the meeting, I am concerned about the report in a BBC News press release this morning of what the Committee was going to discuss. You are quoted as saying what you intended to discuss with us. We have outlined our understanding that the legislative consent motion dealing with these matters will come back to us after the election, and that there will be two legislative consent motions. The legal one will come back after the election, and we will therefore have the opportunity to discuss it further. We welcome the opportunity to discuss those matters with you or your successor after the election. That is our understanding of the timetable. While you might want to mention it in passing, we do not want to have a substantial amount of today's Committee hearing devoted to that particular subject.

We propose to ask you to introduce yourselves. I have some initial questions, and then I will bring in my colleagues for about five or eight minutes, and we will go on from there. Towards the end, we will ask you whether there are any final comments you want to make. I wonder if, for the record, you could introduce yourself and your colleagues.

Fiona Hyslop: My name is Fiona Hyslop. I am the Minister for Culture and External Affairs in the Scottish Government, responsible for the Scotland Bill process in the Scottish Parliament. I have with me Gerald Byrne from the Constitution Unit in the Scottish Government and Graeme Roy from the Office of the Chief Economic Adviser.

Q684 Chair: May I start by asking who exactly you are representing? You are here as a representative of the Scottish Government, but I am not clear whether your evidence has been endorsed by the Scottish Parliament.

Fiona Hyslop: As you know, there is a difference between the Ministers, the Executive and the Parliament in Westminster. My responsibility is the Scottish Government. In terms of major pieces of UK legislation, on publication of a Bill, the Scottish

Government give a legislative consent memorandum to the Scottish Parliament. The Scottish Parliament's appropriate Committee—in this case, a special Committee—considers evidence and gives its views on the recommendations provided by the Scottish Government in a motion. When we get a report back from the Committee, the normal process is for the Scottish Government to lay a legislative consent motion, which is then debated by Parliament.

There are issues around the time scale, which I think you might have alluded to at the start. Clearly, we are in a process just now, and I understand that the Scottish Parliament's Committee will report by the end of the week. It is intended that there will be a debate in the Scottish Parliament on 10 March, but that is subject to the Bureau's discussion. Our real concern about that time scale is that next week amendments on the non-financial aspects will be tabled, debated and voted on, including on the areas I have very serious concerns about—the legal issues in relation to human rights and the Lord Advocate. That will happen next week from 7, 8, 9 March, before either the Scottish Parliament has had a view or indeed the Scottish Government can have meaningful dialogue to try to influence that.

I welcome the fact that, with your understanding, the legislative consent motion from the Scottish Parliament on 10 March will not be the last say in the matter for the Scottish Parliament. I completely agree with you. Can I say, however, that we have not had assurances from the UK Government that there will be an opportunity for either the non-financial or the financial issues to come back to the Scottish Parliament? It would be very helpful to both the Scottish Government and the Scottish Parliament if this Committee said that in serious areas of concern—legal, financial or others—there will be an opportunity for such issues to come back to the Scottish Parliament after the House of Commons Committee stage.

Q685 Chair: That is not entirely what I was saying. The point I made earlier was that it was intended that the legislative consent motion relating to the Lord Advocate and the legal issues was coming back after the election. Indeed, that was the substance of the evidence that we were given by the Secretary of State. Can I come back to the substance of the point that I made at the beginning about who you represent? The evidence that you are providing us with has been

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endorsed by only your own political group. Is that correct? Has it been endorsed by the Parliament?

Fiona Hyslop: We are the elected Government of the people of Scotland. Our views represent the people of Scotland as represented by the Scottish Government.

Q686 Chair: The people of Scotland have elected quite a lot of people to the Scottish Parliament, of whom you are a minority. The views you are expressing here today are the views of that minority rather than the views of the people of Scotland as expressed through the Parliament as a whole. Is that correct?

Fiona Hyslop: They are the views of the elected Government of the people of Scotland.

Q687 Chair: Right. It is important for us to clarify that it is the SNP's position that you are giving us today, and it has not been endorsed by the rest of the Parliament.

Fiona Hyslop: No. It is not the SNP's political position. It is the position of the elected Government of the people of Scotland.

Q688 Chair: Who else has endorsed it?

Fiona Hyslop: When UK Ministers have spoken to the Scotland Bill Committee, I am not sure that they have come with endorsement from Parliament.

Q689 Chair: They have a majority in Parliament. When a UK Minister comes in front of us, we know that they have a majority in Parliament behind them. We want to be clear about whether you have the majority of Parliament behind you.

Fiona Hyslop: We will know the position on 10 March. What is of real concern is that there are major issues, including changes to the appeal system for justice in Scotland, which is a fundamental change. Whether you agree with it or not, it is a shift to develop the Supreme Court as an avenue for appeals. Cathy Jamieson—a member of your own Committee—said on 29 January 2004 that she saw no reason to permit an appeal to the new Supreme Court in criminal cases, and that was not her position at the time.

Q690 Chair: We will want to discuss that issue subsequently and we have agreed, we understand, to come back after the election to discuss it, which is why we do not want to do so now.

Fiona Hyslop: You cannot assume that we have the endorsement of Parliament, but neither can you assume that we do not.

Q691 Chair: Right. Okay. We cannot assume that you don't have the endorsement—that is a clear position.

Did the Scottish Government provide all the evidence that you have supplied now to Calman before Calman reported?

Fiona Hyslop: Gerald, can you indicate what the Government provided to Calman?

Gerald Byrne: We did provide evidence to the Calman commission. Mr Russell, who was then the relevant Minister, also met with Sir Kenneth Calman

to discuss both the national conversation that was going on under the Scottish Government at the time, and the work of the Calman commission. Then we answered specific questions that the commission had asked us—factual questions that were asked of the Scottish Government during their process.

Q692 Chair: But the evidence that you are giving us now about a variety of issues that you believe should be dealt with in the Bill, was all that provided to Calman?

Gerald Byrne: To Parliament?

Chair: To Calman.

Fiona Hyslop: Can I answer that? Clearly the remit of your Committee identifies that there are things in the Scotland Bill that were not in Calman, and there were things that were not in Calman that are in the Bill. So you cannot equate what we did with Calman with this Bill. What we must do is concentrate on the legislation in front of us.

Q693 Chair: To be fair, the way this works is that we decide what we want to ask, and then we ask it. At the moment we are wondering whether all the things that you are saying to us now were considered by Calman because they were submitted to him, or whether they have all come along subsequently.

Fiona Hyslop: No. I think it is the case that some will have been discussed with Calman and some will not. That would be a fair assessment.

Q694 Chair: Okay. Am I right in thinking that there is nothing that we can say to you, Fiona, that will satisfy you? As a nationalist, you are in favour of independence and Calman was not set up to produce that, so you are here to find fault with the legislation.

Fiona Hyslop: We are here to improve the legislation. I laid a motion in the Scottish Parliament that welcomed the transfer of power within the Scotland Bill, particularly in certain areas, but there were obviously concerns about the financial areas, particularly at that time, when we had no idea about the justice issues that have come forward subsequently.

For each and every item, non-financial or financial, we have provided briefing both to the Scottish Parliament Committee and the UK Government, which sets out suggested improvements by way of amendments, and I am happy to make sure that Committee members all have a copy of that.

Clearly, on the financial areas we think that the preferred option is to make sure that we have the full responsibilities that, yes, we can have within independence. But more importantly, we have set out how you can improve the Bill, even within the United Kingdom, and we recognise that a number of your members will share that.

On fiscal autonomy and improving issues on borrowing and the different range of taxes that are available, which I know some of your members are concerned about, we have provided draft amendments that would be helpful for those who are trying to improve the Bill. We have done that even within the confines that we would challenge, so we have tried to be constructive in making improvements.

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Q695 Chair: That is helpful, because in the section of the legislative consent motion—it may seem irrelevant, but it deals with Antarctica—you say that as a matter of principle the Scottish Government are opposed to any powers being taken back to Westminster. There seems to us to be a danger of approaching the whole thing through that prism—an ideological view that nothing should ever be transferred back and therefore everything can only be a one-way street, which mitigates to some extent against evaluating individual proposals on their merits.

Fiona Hyslop: We are saying that we have reservations in principle about taking powers away from Scottish Parliament in the practical details. Antarctica is perhaps not the strongest of those areas, but health professionals and insolvency certainly are. There is an important area in the Bill that I hope, as parliamentarians, you would appreciate. The Bill, as it stands, takes away more powers from the Scottish Parliament than it gives. The power that it gives is on airguns, but it reserves three others—so for one power given, three are taken away. The Scotland Bill provides the Scottish Executive and Ministers with more powers, but weakens the powers and responsibilities of the Scottish Parliament. Obviously, I know there is a running issue here between the powers of the Parliament in Westminster versus Whitehall, Downing Street and Ministers. That is an important area to be aware of—there is a weakening of the Parliament's powers, with three taken away and one going to the Scottish Parliament.

Q696 Fiona O'Donnell: Good morning, Fiona. May I clarify? Are you saying that, if the Scotland Bill is enacted, the Scottish Parliament will have less influence over the lives of Scottish people post-Bill than it does now?

Fiona Hyslop: The Scottish Parliament will lose three powers and will get only one back. In terms of the financial aspects, which are the core of where people argue that more powers will be given, most powers are to be given to Scottish Ministers and not to the Parliament. Even within the financial aspects, an area where we have real concern—that is why it is really important that it is not just the justice issues, but the finance areas that come back—the Treasury is left deciding on the block grant adjustment.

Q697 Fiona O'Donnell: So is the answer to the question then that you believe that there will be less power? In which case, why do you welcome the Bill?

Fiona Hyslop: Well, as you might imagine, as a Minister, we welcome powers as a Government and as Ministers, but I am conscious of the constitutional position. That is very important, because on the financial aspects I would argue—if you agree with me, because you are right to say it is really for the people that the Parliament must get more powers—that the Scotland Bill should include a provision, which is not there currently, for the Scottish Parliament to agree. If the Scottish Parliament got to agree at the time of commencement of the financial aspects, the answer to you would be, yes, they would be getting more powers. But if the Bill is left as it is, the Parliament

itself would be more limited, but the powers would remain with UK Ministers, particularly the Treasury, and Scottish Ministers in the Government. That is why one of the important amendments we have proposed is that any commencement of the financial aspects, which we know are at the core of the debate here, should be endorsed by the Parliament. That provision is not currently in the Bill. Again, I would welcome the Committee's support on that area.

Q698 Lindsay Roy: People have expressed concerns about the impartiality of HMRC. Is that a view you share, Fiona?

Fiona Hyslop: Yes, I do.

Q699 Lindsay Roy: On what basis?

Fiona Hyslop: On the basis that the tax system will be a variable item in terms of what comes forward and how it comes forward. Even now, in terms of how much this would cost us, there is nothing definitive. We don't think it should cost us in the Parliament, because it is an initiative from the UK Government. We have already had Francis Maude acknowledging in relation to the Public Bodies Bill, which is currently going through, that any proposal initiated by the UK Government under the statement of funding policy with the Scottish Government should be funded by the UK Government. That is my concern.

Chair: To be fair, the point was about trusting HMRC.

Q700 Lindsay Roy: Are you saying that it is a mark of transparency and trust?

Fiona Hyslop: I think the issue is about transparency—

Q701 Lindsay Roy: Not trust.

Fiona Hyslop: I do not think it would be appropriate for any Minister to undermine the trust of the civil service and professional officials in other Departments, in other areas. I am not prepared to do that. I do think that there is an issue about transparency and accountability. That is the issue. One of the proposals for improvement could be making sure that that relationship is improved. Again, one of the positive suggestions in the Bill, which we think should start now and does not need to wait until the Bill is passed, is a joint fiscal committee between the UK and Scottish Governments.

Q702 Lindsay Roy: That is not insurmountable.

Fiona Hyslop: No. We think that, rather than wait until the Bill is established, it would make absolute sense to establish the joint fiscal committee to allow these issues to be more transparent, more accountable and relate to concerns.

Q703 Chair: The point of the structural change you are suggesting, about the joint committee, is to achieve transparency. Is that correct?

Fiona Hyslop: It is, first, to improve. We have worked very hard, from the early days. In fact, my first discussion of the Bill was with the previous Secretary of State for Scotland, Danny Alexander, before he was

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moved on. We have engaged right through the period to argue our case, that we think full powers—

Q704 Chair: I understand that. I am trying to identify the objective you are seeking to achieve. If you want the joint structure in order to achieve transparency, we have said on a number of occasions that we are in favour of transparency and showing workings in a variety of things. Now, that does not necessarily mean a joint committee. A joint committee implies joint control. What we want to be clear about is the point of the joint committee you are suggesting. As I said, if you are looking for transparency, it is pretty clear from the views that we have been expressing over a period, that we want to, say, show workings in a number of areas. I am wondering whether that would satisfy your expressed intention.

Fiona Hyslop: I suppose we had better be careful when we use the term “committee” in terms of Parliament and Westminster, because this is a Committee, and I do not necessarily mean this type of structure; it is more about working between Finance Ministers and officials. Graeme, could you explain the benefit of having such a—joint group is perhaps too weak a term—committee? There’s a terminology within the Bill. That would help with some of the issues, particularly in relation to how the OBR and forecasting in different areas is resolved.

Q705 Chair: That’s all showing working, like when you had to show your working to get extra marks at school. If we can show the workings, that achieves your objective of transparency, does it not?

Fiona Hyslop: I think it is slightly more sophisticated than that. Take borrowing, for example. One of our real concerns is that, when you look at the forecasting provided by the UK Government, there is a danger that we will be about a billion pounds out on some of the issues that we will have to address with a very limited borrowing capability.

Let’s take it back a step. We think that there are real concerns with the Bill as it stands. The finance committee aspects, which are being put forward by the Government, cover how it will operate once things are up and running. Some of those provisions might not come in until 2019, so the Government think that it is a long play over a long time. We think that we can get on now with a lot of work. It is not only about transparency, which I think Lindsay referred to, but it is about saying, “Okay, what are the flaws in this and how can we actively improve it?” That is what we have been trying to do.

Q706 Chair: But there are dialogues. Maybe we are getting hung up on terms, but there has always been dialogue between officials from here and officials from the Scottish Parliament and the Scottish Government on these sorts of matters. I remember from my time in local government that there was always a row on Edinburgh not showing its workings when it came to grants for local authorities. I do not know whether you are completely transparent in your grants to local authorities or health boards.

Fiona Hyslop: I am delighted to say that the relationship with local government has improved.

Under this Administration, we have far more regular and open discussions.

Q707 Chair: It is not transparent though, is it?

Fiona Hyslop: I think it is far more transparent than previously. It is recognised as such.

Q708 Chair: So that’s a no then, isn’t it?

Fiona Hyslop: I am not the Finance Minister, so I cannot tell you what is shown to local government. As far as I am aware, it is as open as we can make it.

Q709 Chair: You see, that is our intention. We want to be more transparent than your relationship is with local government or with, for example, health boards and the calculation of financial provision. I am not clear on whether or not you are getting hung up on the question of joint committees and whether it is the wrong way to proceed.

Fiona Hyslop: I may be misunderstanding where you are coming from. Maybe we are starting from two different points. I am not accountable to this Committee or to this Parliament. I am accountable to the Scottish Parliament. Similarly, UK Ministers are accountable to you, but not to the Scottish Parliament. That does not mean that we cannot have Government-to-Government working, if we get into the space of working together on what improvements can be made in how things are calculated and operated. Borrowing is an area where—whatever different perspectives people have on the Scotland Bill—there is a strong appetite for improving what is available. That is a good example of where there have been dialogues and discussions, but more on a formal basis with officials and Ministers. It would be better if it were put on a footing with a regular, established forum, so that that could happen Government to Government. That would be better than an ad hoc—

Chair: Okay, I think we understand that point.

Q710 Lindsay Roy: This is to do with the respect agenda, and further cultural and attitudinal change about working together, because that is the only way that we will succeed.

Fiona Hyslop: I think you are right. The progress that has been made is variable. I have said to Nick Clegg, who is the constitutional lead for the UK Government, that it is important that we recognise that some of the relationships are better than others. Although I might come and say to you that there are concerns about this and that, I also want to make sure that good, successful and productive relationships are recognised. I think that there is something to be gained from it.

If you look at what we are trying to argue in terms of the financial aspects, and if you go back to Calman, you will see that one of the proposals in Calman was for welfare benefits to be transferred. When I was the Minister with responsibility for this, I worked with Tony McNulty on integrating skills development with Jobcentre Plus. We put people together and had joint policy on the work that we launched in, I think, Greenock. Early evaluations of the results of that pilot, which has now been rolled out across Scotland, showed that 44% of the people who went for it were

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more likely than the controlled group of customers to experience a positive employment outcome and 47% of the people going into that programme went into work. That's huge. It shows you that integrating policy, by itself, can get you a benefit in policy terms. What we haven't got in the Bill, which we want, are the financial levers on economic growth to allow us to improve the jobs.

Q711 Chair: But that is an argument in favour of joint working. I don't think anything in the Bill proposes that there should be no joint working.

Fiona Hyslop: That was done in the teeth of resistance of the DWP at the time. It effectively meant that we had to have an independent decision making—

Chair: But as I am sure you have discovered, most things that Government do are in the teeth of opposition of civil servants. That's what they're there for, isn't it? To explain to you in great detail why this is not the right time or, "That's a very brave decision, Minister." The fact that it was done in the opposition to the DWP is neither here nor there. The fact is that it was done. I've got joint working between council departments in my own area that hate each other, but it doesn't mean to say that we cannot achieve it.

Let's go on to a number of other issues. Fiona, you wanted to raise a number of points.

Q712 Fiona O'Donnell: Fiona, you have referred several times to your view that financial powers should be in the Bill. Your statement earlier was that the Scotland Bill as it stands would take more powers away. Do you think that the Scottish Government and Parliament will have more powers on financial matters and economic levers under the Scotland Bill than they have at present?

Fiona Hyslop: Let's distinguish between the Scottish Government and the Scottish Parliament. The Scottish Government would have more powers on the financial aspects, but not on economic growth. UK Ministers and those involved in the Calman process have made it clear that they think that the Bill is not about economic growth, but about public accountability and prudential responsibility. That implies that they think that the Scottish Parliament and Government are currently neither accountable enough nor prudentially responsible enough. That's a view that people can make a judgment about in the election. My concern, which I raised earlier, is that Parliament itself will receive one power back in terms of air guns—

Fiona O'Donnell: I want to concentrate on finance.

Fiona Hyslop: On finance, the Bill will change the block grant adjustment. We still don't know from the Treasury how it is going to do that. There is a kind of feeling of, "Don't worry. The Treasury will see you all right." I don't know what your dealings with it are; it's a bit like the DWP officials.

Chair: So in your view the Government wouldn't be doing it.

Fiona Hyslop: I think that's quite worrying, because you are about to vote in—we don't even get a legislative consent motion—provisions that say, "Don't worry. We'll sort it out over time." That's a bit

like signing a blank cheque, and that's the worrying part.

In terms of growth and income tax, it is a narrow basis—only one tax. We've already seen in fuel duty and VAT changes that the UK Government are using a variety of levers to try to achieve economic growth. To rely on one single tax—income tax—to be a lever to make changes is a risky way of going forward.

Q713 Fiona O'Donnell: Regarding the present situation, John Swinney, in his evidence to the Scotland Bill Committee, was clear in saying that economic growth and job creation are the core of everything that the Scottish Government do. What powers do you currently have to foster economic growth?

Fiona Hyslop: I will give you a good example in terms of our capital budget. Our capital budget has been slashed by 37% by the Westminster Government going forward, but we were the first part of the UK that brought forward capital acceleration to invest in public infrastructure, whether on housing, schools, roads or railways. As for the employment statistics for Scotland, Scottish unemployment is going down and the UK's is still going up. Our employment is still at a very high level in comparison. Growth in the construction industry in Scotland was very strong indeed. As for the growth for the quarter going up over the summer period last year, Graeme might give me information about the construction figures. We have used the levers we have to create economic growth.

As for the example that I gave about trying to get people back into work in terms of the skills aspect, we also managed to get 20,000 apprenticeships for young people last year to help take the edge of some of the charges they face, so we can use the levers we have.

Q714 Fiona O'Donnell: So the reason why you are arguing for full fiscal autonomy for the Scottish Government is that you believe it would give you the levers that you need to achieve economic growth.

Fiona Hyslop: Yes.

Q715 Fiona O'Donnell: What is the basis for that?

Fiona Hyslop: It is about if you want to support your growth sectors and have economic levers on tax incentives. For example, you have taken evidence about what might be provided in the video games industry. Canada uses that. If you look at other countries such as the Basque country, in terms of its growth and the levers that it has had to use for economic growth, it has managed to outperform the rest of the Spanish economy. Economic levers can be successful, if they are used properly.

Q716 Fiona O'Donnell: That is the key. I would surely be surprised if you did not refer to the evidence of Hughes Hallett and Scott at some point during the proceedings. Their research was part of the basis of the view of the Scottish Government.

Fiona Hyslop: There are two aspects to this. One is that there will be efficiency and growth by having powers that can be deployed.

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Q717 Fiona O'Donnell: Is that based on the Hughes Hallett and Scott research?

Fiona Hyslop: Yes. We presented that as evidence, but we have also provided examples from other countries. I have mentioned the Basque country. Having levers allows us to be creative in what we do. There are two steps to this: one is the efficiency of having the integration of policy and influence, an example of which I have given, and, secondly, if you have levers in corporation tax and other areas, you can do things differently.

Q718 Fiona O'Donnell: In their evidence to this Committee, they said, "We have made it clear that, for a good reason, the empirical evidence is inconclusive on the question of whether it does or doesn't lead to an increase in the growth rate systematically." Is it not about the powers you have, but what you do with them.

Fiona Hyslop: There are two aspects: there is a one-off gain from having powers where we can be more efficient in how we make decisions. A good example is the future jobs fund. With the powers that we have, we could set up an equivalent. The UK Government have obviously got rid of the current one. We could set up a version of the subsidised employed aspects of the future jobs fund, but we would not benefit from the savings of unemployment benefit that the DWP would make. We have one half of the coin, but we cannot get the payback. We would be spending, but we would not be saving. It would be more expensive for us to do the equivalent of the future jobs fund in Scotland under the current devolution system. That is the first level.

The second point is what you do with economic levers once you have them. We think that that can lead to economic growth, as do Professor Hughes Hallett and Drew Scott. Again, it is the choice of what you do with the levers when you have them.

Q719 Fiona O'Donnell: One point that was outstanding from the evidence to the Scotland Bill Committee was when John Swinney said that, by 2018 or 2019, the norm of public spending rising faster than income tax revenues would have returned. That is in relation to the debate around the deflationary bias, but Dr Goudie said that the period of fiscal consolidation would continue until 2025. So who is right—John Swinney or Dr Goudie?

Fiona Hyslop: It is not an either/or. Graeme, do you want come in?

Graeme Roy: Essentially, the material that Dr Goudie was referring to was not about the end of the fiscal consolidation, but just the point at which public spending would return to pre-crisis levels, so it's the point where the level effect kicks back in to where it was in 2009–10. The end of the consolidation on current plans—the end to the cuts to public spending—is forecast to be 2015–16, with the potential for something else in 2016–17.

Q720 Fiona O'Donnell: So to clarify, Graeme, the point at which the Scottish Government would expect public spending to be greater than income from tax would be 2025.

Graeme Roy: The 2025 date is when the level of public spending will be back at 2009–10 levels, so that does not have anything to do with income tax. What will happen is that we know the path of public spending for the next four or five years, at which point it will no longer be being cut. The key point after that is what happens to the growth in public spending from that trough versus the growth in income tax, and which one is faster. If income tax grows faster and the Scotland Bill provisions are in place, the budget would be slightly larger; if it were to grow more slowly, the budget would grow more slowly.

Q721 Fiona O'Donnell: Do you have predictions for what share of the take of revenue will come from income tax beyond the four years?

Graeme Roy: We do not forecast beyond that. The UK Government wouldn't forecast beyond that either.

Q722 Dr Whiteford: I would like to pick up where Fiona left off by asking about economic growth and jobs. You have put forward proposals for levers that would deliver economic growth, and I wonder whether you could say a bit more about those?

Fiona Hyslop: The example that I have just given of the future jobs fund is a classic example, where a lever for growth would be to have savings and benefits to help people get back into work, which at this time we are all very conscious of. Whatever the Bill does, if it is not seen through the prism of economic growth and jobs and what benefit it can give, you are changing a constitutional funding arrangement, but you are not actually serving people by helping them on the economy and jobs.

On economic growth, there are different levers that can be used. A good example is in relation to corporation tax. In Northern Ireland, where there are obviously arguments for having corporation tax powers now, there are predictions that that would make a significant difference and would actually pay back the investment by encouraging growth sectors. On other areas related to economic growth, I come back to some of the issues around borrowing. You will have a situation where the Scottish Government have fewer powers than the city of Birmingham or the City of London to be able to borrow to make sure that we can invest and build. Again, we have shown with the example of construction, that one way out of the recession is to make sure—

Q723 Chair: Sorry, can I be clear? On the question of borrowing powers, is your objection simply to the level that's being proposed?

Fiona Hyslop: There are two aspects: there's certainly the level, but there's also the pattern in trying to make adjustments on whether the forecasts—

Q724 Chair: Do you have alternative levels?

Fiona Hyslop: It has to be what can be sustained. We recognise that at the minute—

Q725 Chair: That's right. Sorry, Eilidh, but I think that this is an important point for us to clarify.

Fiona Hyslop: In terms of the borrowing aspect, obviously we understand that, within the UK

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parameters, there would have to be some kind of understanding as to what could be sustained. We think that in terms of prudential borrowing arrangements and the types of arrangements that can be made available—the city of Birmingham had a major investment, and the City of London has also managed that—it’s how you can sustain your investments to pay for them. As you know, our biggest issue, and I’m sure Lindsay would be interested in this as the second new—

Q726 Chair: Sorry, I understand that. What I am not clear about—I will add this on to Eilidh’s time—is whether or not you have alternative figures in mind. We have heard objections saying that the borrowing levels being proposed are too low. Do you have alternative figures, or are you just saying it’s too low in general?

Fiona Hyslop: That is exactly the sort of discussion that we should be having, Government to Government, in this joint fiscal—

Q727 Chair: So you don’t actually have an alternative figure?

Fiona Hyslop: That is exactly the sort of dialogue and discussion that we would need to have. Graeme, is there anything you want to provide on that?

Graeme Roy: The material that has been shared with the Scotland Bill Committee in Holyrood puts forward the proposal of a prudential regime, so it does not actually have a fixed limit imposed on it—

Q728 Chair: You are hostile to the limits being proposed, because you regard them as too low, but you don’t actually have a figure in mind.

Fiona Hyslop: We would have to have that dialogue—unless, again, we had complete powers transferred. But even if you are looking at the borrowing arrangements within the remaining settlement with the UK, obviously we would have to have that discussion with them. The concern is that it isn’t happening to the degree or extent that we think it should be.

Q729 Dr Whiteford: We have had quite a lot of discussion about the borrowing powers in this Committee, particularly in the context you alluded to the 37% cut in capital expenditure. Turning the question the other way round, what would the impact be if the borrowing powers as they are presented went through? What constraints would that be likely to put on the Government?

Fiona Hyslop: There is an absence in terms of what we can do to support capital investment, but the other area is the concern about not having access to cyclical borrowing to allow us, if we anticipate, for example, another downturn, to ensure things. The whole funding formula we have been presented with is based on forecasting. Even if we understand that the forecasting might be out because we anticipate something, we cannot borrow—we would end up borrowing at the wrong time of the cycle, during times of recession, as opposed to necessarily being able to be more flexible.

The whole point about economic growth is being nimble, agile and flexible. That allows you, for example, in Scotland, to take sector-specific approaches, such as for energy, which is a big growth area for Scotland and we have opportunities around that sector. Similarly, with creative industries, the area I am responsible for, there are some things that we could do to help boost that sector, rather than have this one-size-fits-all, UK approach. That might suit the majority of the population, in particular those based in London, but it does not necessarily suit our flexibility.

Q730 Chair: Sorry, I understand those words, but I am genuinely unclear what you are actually saying to us in terms of amounts.

Fiona Hyslop: I think you are confusing the different things about the borrowing in terms of capital, for amounts, and in terms of how to adjust and any problems that might come out of the funding formula. It might be helpful if Graeme were to come in on this point.

Graeme Roy: There are two bits to separate out, the capital borrowing and the current borrowing. On capital borrowing, the evidence that Mr Swinney has given puts forward the idea of prudential regime, which does not actually have a fixed limit. The idea is that it is based on the affordability of revenue raising and budgets going forward, so it would not have a limit on it, just like a local authority—

Q731 Chair: Unlimited borrowing.

Graeme Roy: It is constrained by affordability, but the affordability is not a fixed limit, so you would not be able to borrow an infinite amount because it would be based on your affordability. A set of arrangements would determine what is classed as affordable, based on future tax streams, etc.

Q732 Chair: Assessed by whom as being affordable?

Graeme Roy: If you had it under a prudential-type regime, it would essentially be an overall framework for affordability, which could be assessed partly by outside assessors—

Q733 Chair: Outside. Just clarify—who would decide what was affordable?

Graeme Roy: It would be an overall framework. The Government could decide what was affordable, subject to—

Q734 Chair: So the Scottish Government would decide what was affordable.

Graeme Roy: Ultimately, the Parliament would have to decide.

Q735 Chair: So there would be unlimited Government borrowing subject only to the agreement of the Government and the Parliament.

Graeme Roy: In the same sense as a local authority.

Fiona Hyslop: As in a local authority, and what is wrong with that?

Q736 Chair: We just want to be absolutely clear. We have had a number of people coming to us and saying that particular figures are right and particular figures

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are wrong. John Swinney mentioned a figure of £1 billion, compared with £500 million, being too low, and so on. We just want to be clear about whether you had particular figures in mind for what you are saying, as I think you are now saying that you want unlimited borrowing subject only to the self-imposed restraint from the Scottish Government and Parliament.

Fiona Hyslop: Affordability is absolutely key.

Q737 Dr Whiteford: It would be helpful to talk about application, because this is about a framework and a way of looking at it in slightly more conceptual terms, rather than just clearly in numbers, which is not possible to do.

Fiona Hyslop: Absolutely. That is why I am very pleased to lay the evidence that we provided to the Scottish Committee, on borrowing, because we are quite clear that it is about a framework. Affordability is absolutely key.

Graeme Roy: It could be governed as part of the code between the Scottish and UK Governments. It could be part of an overall code for prudential borrowing. It would be something set and determined by the Scottish Government, but part of an overall code agreement—

Fiona Hyslop: For which this intergovernmental bilateral committee on fiscal devolution would be useful to discuss—we don't have to wait until 2019 to do it. It needs to be done sooner than that.

You asked about economic aspects in particular. You can try to change the issues around borrowing and other areas, but you need economic levers to do it for growth. My concern is that the UK Government do not see the Bill as one for economic growth and jobs, but one for public accountability. I just think that that is not good enough.

Q738 Dr Whiteford: Another area where there has been a lack of clarity, which you have already described this morning as a blank cheque, is the mechanism for the reduction of the block grant. What is your assessment of the risks of the Bill's proposals at the moment, and how would you improve it?

Fiona Hyslop: Well, the risk is that you, as MPs in the UK Parliament, are going to have to vote within the next few days, in some cases, and certainly within the next few months, on a system that has yet to be established. The whole premise of the income tax changes is that you would have a calculation where the Treasury would do a block adjustment. Our concern is that we don't know what that is. Even the Scotland Office, in presenting its explanation to the Scottish Parliament, gave us a figure and said, "This has not had Treasury approval." That hasn't happened yet.

I suspect that the Treasury is saying, "Well, it won't happen for several years. It will be 2018 or 2019 before it is fully fledged." The issue has been kicked into the long distance, but that's not good enough if you are expected to vote on it here and now. That is why one useful amendment to the Bill would be to say, "Anything to do with financial provisions should be subject to a time of commencement and to approval by the Scottish Parliament." Otherwise, you would

give a blank cheque and rely on the Treasury to have a veto on what is given.

Dare I refer to Lord Forsyth to the current membership of this Committee? He has known for a long time—he used to be Secretary of State—that there were people in the Treasury who would be quite happy to get their hands on the block adjustment, because they were unhappy about where it was. Perhaps he has some sense of what the concerns are. We cannot have a blank cheque, which is why it's essential that in the Bill, even while the work is going on, there are provisions for adjustment.

What the Bill is trying to achieve is very complicated. If it doesn't achieve economic growth or help to provide jobs for Scotland, why are the UK Government spending up to £145 million to implement this new system? What is it about accountability and responsibility? We have to think long and hard about whether there is anything we can do to ensure that the Bill delivers on growth and jobs as opposed to just bringing a different funding system. That's all this is—a different funding system. That's my concern. There are many question marks about it that we haven't had answers to. We don't know what the block adjustments will be, which is why we have tried very hard since May in a series of meetings to understand them.

Chair: I am conscious that you have to escape in a little while. I think you've outlined the general case quite well. Perhaps you could now get the answers to be a bit shorter, if that's possible. Eilidh, are you finished?

Q739 Dr Whiteford: There is one more question that I want to ask—I have asked every panel this. How adequate do you think that the Bill's proposals on the Crown Estates are?

Fiona Hyslop: I've already described them as inadequate and feeble. They don't come near to what the Calman commission proposes or to what Scotland needs. We think that there should be devolution of the powers over the Crown Estate. You have to look at the land mass of Scotland, our coastal areas, our interests and the Crown Estates Commissioner, whose purpose is to generate value for the Scottish Exchequer. There's more to management and stewardship. I know that there are some good individuals working hard in partnership with people in Scotland at different levels, but there is an issue when, even under the Bill's proposals, the appointment will not even be made by the Secretary of State for Scotland, but by the Treasury Minister. That says it all: it is all about trying to make financial gains as opposed to gains in some of the others areas. So we have some real concerns, which are shared by a number of people on a cross-party basis; the councils in the Highlands and Islands are a good example where a strong case has been made.

Q740 Chair: Maybe it's worth mentioning at this stage that we've agreed to look at the Crown Estates after we've finished this.

Fiona Hyslop: That's very welcome. I'll be interested in your time scale, bearing in mind that the vote is next week.

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Chair: To be fair, we take account of the nature of reality. Given that there is not a majority at the moment for the radical changes being proposed for the Crown Estate, it is unlikely that there will be any substantial change to what is proposed in the Bill. However, that is not to say that we can't look at things either before the final element of the Bill, which will be well after the election, or indeed on any subsequent occasion.

Fiona Hyslop: May I suggest—I will try to do this politely—in terms of a defeatist approach and the Liberal Democrats and their previous position on the Crown Estate, I would think that, certainly within the Scottish Parliament, and I would hope within the coalition, there might be influence to try to improve this position? If you look at the first substantive UK legislation on Scotland and parties that have championed home rule for decades, it seems very sad that we have actually got—whether it is on finances or whether it is on Crown Estates—

Q741 Chair: You are trying to lead me down the road of commenting on what I think about the Liberal Democrats. I will decline. There might be families watching this programme.

Fiona Hyslop: I very much welcome the fact that your Committee will be looking at that area. It is long outstanding. I know there have been strong recommendations in another inquiry at Westminster. It is worthy of inquiry. I look forward to seeing your deliberations.

Q742 Lindsay Roy: May I go back to corporation tax? In his evidence, Professor McLean described devolution of corporation tax as a terrible idea. Why do you want devolution for corporation tax?

Fiona Hyslop: It would give us the flexibility to have a competitive environment for key sectors. We could emulate other areas where it seems to be of benefit. If you look at what Northern Ireland is doing and its pursuance of this, it has anticipated that growth and jobs would be 180,000 over a six-year period. That is what it thinks it would be able to generate. I acknowledge that Northern Ireland is a particular case, because of its close relationship with the Republic of Ireland's economic situation, but a corporation tax would provide us with flexibility, particularly in key growth areas.

Interestingly, in Scotland we had a UK Treasury Minister implying there was not much opportunity with corporation tax. I don't know whether that is because they do not plan to do anything on a UK-wide basis, but we are trying to encourage growth areas, and it is important that we try to ensure we have the levers to do that. Remember, the problem with the financial aspects and relying on income tax and funding is that we don't get the full benefit of the higher rate on income tax. In a lot of growth areas and companies, it helps to generate larger numbers of people in the higher rate band. Unfortunately, even the funding system would not benefit from that.

Q743 Lindsay Roy: In his evidence to the Scottish Parliament, John Swinney suggested that the business community would have mixed views on the option of

a corporation tax. Can you explain why that is and why it is so important to take this forward?

Fiona Hyslop: The issue is that the Bill was presented without the levers for economic growth. As in many areas, you get different views on tax from different parts of business, and they might want to see continuity. But there are also certain sectors, particularly growth areas, where we would want to see more flexibility for growth. There might be issues around administration, although I don't want to second-guess what those might be. It would be wrong to say that if we can get economic growth by lowering corporation tax in particular areas, we should try to pursue it, but we think that is an opportunity that should be open to Scotland.

It goes back to Fiona O'Donnell's question. It is what you do with what you've got in terms of economic levers as to whether we will be successful. Some evidence says, "We don't think corporation tax matters." If it doesn't matter, let the Scottish Parliament have those powers, and we can determine whether it makes a difference. If it doesn't matter, I don't see why there is such resistance to letting us have those powers.

Q744 Lindsay Roy: If you reduced corporation tax, presumably there would be a funding gap. How would you propose to fill it?

Fiona Hyslop: That is why we would want more levers than just corporation tax, or indeed more levers than just income tax as a provision. Part of that is to use a basket of other materials to help you. It allows you to plan. That is one of the things about the spending reviews. You can plan for different years and spread your provisions. It would also allow flexibility on borrowing, so you could work between those two different powers to manage the overall budget. Unfortunately, that is not the place that we are in. You will spend a great deal of time scrutinising the UK Treasury Ministers in relation to how they are managing that pot, but that is why having the range is more important, rather than having one simple, narrow, lower rate income tax—or standard rate.

Q745 Lindsay Roy: How do you stop companies brass-plating in Scotland and employing their work force elsewhere in the UK?

Fiona Hyslop: That can happen now under the current arrangements, as it might happen in future. Greater economic powers are likely to be more headquarter-based and high value. Again, it comes back to the type of jobs that we want, which are high-wage and high-skilled. You know about the competition that UK and Scottish workers have elsewhere. We must try to build our economy on strength, quality and skills, particularly in areas such as food and drink, which is why it is important to open up the market to salmon and whisky, for example. It is important to get the skill base for renewable energies, so that we have higher value jobs.

Obviously, the higher the base of investment for those high-wage, high-skilled jobs that can attract the headquarters of those businesses, the better. But we are not necessarily suggesting that we want to turn into a Guernsey or a Jersey, if that is what you are

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implying; we recognise that it will be a different system.

Q746 Lindsay Roy: To pursue another matter, do you agree that economic growth comes from success of policy implementation?

Fiona Hyslop: It is two things—policy and economic levers.

Q747 Lindsay Roy: There has been devolved control over education for 10 or 12 years. How far has education come in relation to international league tables? How are we doing?

Fiona Hyslop: You will be very interested and familiar with this—as a former head teacher and Education Minister. My understanding of the figures is that Scotland is holding its own and its position. In relative terms, there are slight improvements. Other countries are improving at a faster rate, but Scotland's is still a highly regarded education system. Our qualification performance is at its highest level for a number of years.

We could be here all day on this, but it depends on how you judge it. The real challenge for us is not necessarily on the top performers or the high performers; it is on the youngsters who are not achieving. It is about the gap between the top performers and the bottom ones, which is why the curriculum for excellence and early years intervention are key areas.

Chair: Let us not spend too much time on the detail of education.

Q748 Lindsay Roy: Why have the Scottish Government decided not to participate in the international league tables? Why have they withdrawn?

Fiona Hyslop: They have not withdrawn from all international league tables, but they are certainly concentrating on those that are most highly regarded and respected, and are maintaining their subscription to those. There is obviously a great deal of expenditure and time spent by teachers on a lot of those assessments, so it is important still to benchmark ourselves internationally, but in a way that will benefit education. I am sorry—

Q749 Chair: Life is too short to discuss that, too. May I return to one point? We heard evidence from the Federation of Small Businesses and asked it about a variety of things. One of the issues that it raised was the high levels of innumeracy and illiteracy among young people who were coming to it to look for work. That is an area in which the Scottish Parliament has had responsibility for some considerable time. You have powers in that area, but you have not used them adequately, because the problem has not been resolved. I understand why we have some hesitation about saying that the answer is additional powers, when you have clearly not used the powers that you already have.

Fiona Hyslop: I am accountable to the Scottish Parliament on these issues, and I have spent a great deal of time in discussion with the Scottish Committees. Scotland's numeracy and literacy is of a

standard that has been maintained. We are improving—particularly in early years—and the focus on numeracy and literacy will come with the qualifications that are being brought forward.

On performance, there had been a relative decline over a number of years in some areas, which we have stopped. The performance is standard—as I have said, it is maintaining. It is about how we stand in relation to the speed of growth of other countries.

Q750 Chair: Scotland is slipping backwards, comparatively.

Fiona Hyslop: We are in a much better place than England. I am delighted that Wales has taken a great deal of interest in our curriculum for excellence and is recommending that the Welsh look at the Scottish education system.

Q751 Chair: Do you understand out anxiety about having a group such as the FSB coming along, identifying an area for which the Scottish Parliament and Government have full responsibility and identifying the situation as not being satisfactory? We have listened to your telling us that you need more powers. Here is an area where you have complete powers, and you have not achieved as much as is desirable.

Fiona Hyslop: We are making significant progress and have done so over the past three years. That is the difference. I can send you the charts that show that. I do not want to get into the political issue of what happened in the first eight years relative to the past three years, but we can show—

Q752 Chair: We are not looking at that at all.

Fiona Hyslop: If you did, it would show that we are making a difference. In terms of powers that we can use, the small business bonus is something that the FSB is delighted that we are using.

Q753 Chair: To be fair, that is not tackling the issue of illiteracy and innumeracy. That is the issue that we have.

Fiona Hyslop: Our children are not illiterate and innumerate. We can make improvements, most certainly, in areas of deprivation, but one of the biggest challenges, which I put back to you as a Committee, is that the responsibility for tackling some of the issues around poverty—which has a major impact on the life chances of our young people—lies with this Parliament and Government, because they have key levers of influence. Before they get to the age of five, many young people are disadvantaged. It comes back to whether we have influence on welfare and benefits. If you want to tackle the issues of illiteracy and innumeracy in Scotland, give us the powers over welfare reform, so that we can ensure that we improve the life chances of these young people, many of whom have real challenges even before they get to school. It is one of the reasons why we have increased the hours of education available for three and four-year-olds. There has been a big increase in the number of hours available at those times. We have reduced class sizes in the early years, so that

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there is more time and attention on literacy, reading and writing up to the age of eight—

Q754 Chair: We welcome lots of these things, but the results have not shown through yet.

Fiona Hyslop: I would hardly say that the argument against more economic powers is that the results have not shown through yet, when I am telling you that, in terms of performance, we have halted any reduction there may have been in the first few years.

Chair: Another issue that we intend to look at is having some comparisons between Scottish education and parts of England and Wales over the period. We would welcome co-operation from yourselves on that. Lindsay, are there any issues that you want to raise?

Lindsay Roy: No. I have one or two questions for the end.

Q755 Mr Reid: We touched on the Crown Estate earlier. When we asked Professor Calman why the commission had not recommended devolving the Crown Estate, he said that it was a very complicated matter and that they had not had time to look at it. What is your response to that?

Fiona Hyslop: I am not here to judge the Calman commission on the extent of what evidence it did or not take, and what it evaluated. On the Scotland Bill, there has been extensive evidence, including from one of the inquiries here at Westminster, that there need to be more powers. On the comparison between the Crown Estate and the marine environment, it seems crazy that we have control over the fish and the seas, but we do not have control over the Crown Estate, when it is in the same landmass area. When you are managing a country such as Scotland, with such an extensive coastline and extensive interests in relation to the marine, we need to have closer protection. I do not want to criticise the Calman commission unnecessarily.

Q756 Chair: Can I clarify whether, when the Calman commission was doing its work, the Scottish Government submitted something on the Crown Estate?

Fiona Hyslop: We would need to get back to you about what we discussed.

Q757 Chair: It would be helpful if you did, because it would be helpful if we knew whether you had made any proposals on the Crown Estate.

Fiona Hyslop: We have also, in terms of our proposals, had the national conversation White Paper and other—

Q758 Chair: I understand that. We are working on the basis that the Bill has flowed from Calman, although not exclusively. It would be helpful to know whether Calman had the benefit of your views on the Crown Estate when it was drawing up its report.

Fiona Hyslop: We need to check that.

Q759 Mr Reid: The Scottish Parliament already has widespread powers to legislate on property rights. What powers do you need that you do not already have in relation to the Crown Estate?

Fiona Hyslop: Part of it is what is sold and when, and for what reason and for what purpose. It is taking the holistic view.

Q760 Mr Reid: But the Crown Estate does not sell off the sea bed.

Fiona Hyslop: You have talked about the Crown Estate generally. In Princess Street, it is also—

Q761 Mr Reid: I am sorry, but I want to concentrate on the sea bed. The evidence that we have had is concerns from coastal communities about the Crown Estate and the use of the sea bed. I want to concentrate on that area.

Fiona Hyslop: It is so we can take a more holistic view of the management of that area and arena in terms of how things are used. You know that offshore wind farms are a major issue for different communities for different reasons. Part of it is the economic growth argument, but also part of it is the communities themselves and their ability to have influence. You can have protocols and the electoral accountability of the Scottish Parliament or, indeed, working with local authorities like Highlands and Islands, which is very important indeed.

Q762 Mr Reid: All the offshore wind farms on the sea bed, on the Estate, that are being proposed—at the end of the day, it is the Scottish Government who decide through the planning system whether or not they go ahead and all the conditions that are imposed. What other powers do you feel that you need that you do not already have?

Fiona Hyslop: There is the revenue aspect.

Q763 Mr Reid: But on revenue, Calman said that only 5% of the Crown Estate's revenue, UK-wide, was raised in Scotland, and that Scotland was only to get 5% of the Crown Estate compared with the share that it currently gets of UK public services, and 5% sounds a very bad deal.

Fiona Hyslop: Again, that is part of the issue about transparency, if it is Treasury-led—Exchequer-led. It is quite interesting that the Bill is compounding that. It is not even saying that Scottish Ministers should appoint somebody to be the Crown Estate commissioner, and there is no requirement regarding the Scottish interests within that. It becomes more of a mechanistic, revenue-raising regime controlled by the Treasury for revenue-raising purposes rather than the broader policy range, which I certainly would like to see.

Q764 Mr Reid: In terms of policy, I still don't understand what the Scottish Government would do if the Crown Estate were devolved, which it cannot achieve at the moment through its existing powers of planning and right to legislate on property rights.

Fiona Hyslop: Stewardship and management of resources should not be driven by planning decisions. They should be focused; they are focused, and they are constrained and controlled by very tight legislation that is—

Q765 Mr Reid: That is devolved.

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Fiona Hyslop: Yes. I am tempted to go back to education. If you had education decisions about schools and school capacity driven slowly by planning, you would recognise that that was not the correct way to determine how big a school should be. Similarly, if you determine your policy purely by planning decisions, it is a very narrow focus that is actually very much legally bound in different areas. I suppose that the argument I am trying to put across—

Q766 Mr Reid: You have the powers.

Fiona Hyslop: But it is very dangerous to take the view that stewardship—which, in effect, it is—of a geographical area should be determined by planning applications. That is a very narrow view of the world. I would be very concerned if that was the sole power that we could use.

Q767 Mr Reid: If the powers of direction over the Crown Estate were devolved to Scottish Ministers, in what way would you be able to use those powers to the benefit of coastal communities that does not happen at the moment?

Fiona Hyslop: That is where transparency and accountability are absolutely key. It is to make sure that there is that transparency and accountability with local communities as well. I do not want to be disparaging and say that the Crown Estate commissioners are not trying to achieve that. I am just saying that it would make it more democratically accountable because the Crown Estate commissioners are not democratically accountable to the people. The Scottish Government would be.

Q768 Chair: Feel free to be disparaging about the Crown Estate commissioners. Don't let us hold you back.

Fiona Hyslop: I am very conscious that I am sitting between two civil servants, and I have every respect for the professional quality of people doing the job. I do not want to be in the position that you have invited me to be in. It is about transparency and accountability. That is the ultimate issue. It is the balance between revenue raising and the wider public interest. The wider public interest isn't necessarily always served simply by the planning application process, if that makes sense.

Q769 Mr Reid: On taxes, we were talking earlier about the powers to vary income tax and the adjustment to the block grant. You clearly felt that there was a lot that was wrong with those proposals. If you compared the Bill's proposals with the status quo, which would be your preference?

Fiona Hyslop: The real danger of what is currently there is a deflationary bias. Had the Bill been in place since 1999, we would have seen a £8 billion difference. I think that that is the danger. The Secretary of State has acknowledged that there is a deflationary bias, even though he might dispute with me how much that was. The argument seems to be that the only time that Scotland would benefit from the new funding regime would be when public spending was being slashed, because the slashing, as we are currently seeing in both revenue and capital

terms, would be more severe than the impact on income tax. The idea that the only time the Bill would benefit Scotland in financial terms was in a period of slash and burn public finances is hardly a recipe for confidence at a time when we're looking for economic growth.

Q770 Mr Reid: So you prefer the status quo, then?

Fiona Hyslop: We want to see more powers come to Scotland.

Q771 Mr Reid: But more powers bring risks as well as opportunities.

Fiona Hyslop: Absolutely. I think that that comes to the nub of it. The risk of the current proposals on finance is that only one taxation is used—income tax. Even then, it's just the low or standard rates that we will have the majority of influence on.

Q772 Mr Reid: You're still not giving a yes or no answer to my question.

Fiona Hyslop: Because we hope to have an opportunity to work with the UK Government to improve the Bill. That's what we have been trying to do.

Q773 Mr Reid: So where would you like to see this part of the Bill improved? What would be your proposal?

Fiona Hyslop: We have made it clear that we think the best solution would be to provide the Scottish Parliament and Government with powers over 85% of the Scottish revenue.

Q774 Mr Reid: What other taxes would you like to vary?

Fiona Hyslop: Everything bar VAT, because there are issues with that within the European Union.

Q775 Mr Reid: So the likes of excise duties, fuel and alcohol? Is there not a risk that if all four countries in the UK had the opportunity to vary those taxes, we would just end up with a competition downwards to have lower taxes and fewer public services?

Fiona Hyslop: I think you could use that argument for between the UK and Ireland, the UK and France or the UK and the Netherlands. We would have to have a sensible understanding of what was in the common interest.

Excise duties are a really good example. One problem that we had in the Scottish Parliament in trying to pursue our policies on alcohol is that we wanted to see minimum pricing, but the other parties in the Parliament voted that down, and one argument was that it would be better dealt with through alcohol pricing duties.

Q776 Mr Reid: If you reduced alcohol duty, say, in Scotland, would that not force the UK Government to do the same in England because of cross-border purchasing?

Fiona Hyslop: One of our proposals is to make sure that we can pursue issues such as health. Let's go back to the issue of the challenge for young people in

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Scotland, many of whom are disadvantaged right from the start—

Q777 Mr Reid: I think that is going away from the question, which was about competition. If there was competition in excise duties, would it not just force them all downwards?

Fiona Hyslop: If you are trying to tackle a booze and blades culture, you can try, for the booze culture, to do it through minimum pricing, which we have tried to do. The argument against that was that we should be using powers on alcohol pricing and excise duties, but we currently don't have those powers to make improvements in health policy. So I would like to have those, not just for economic growth or to look at opportunities, but to implement good health policies.

Q778 Mr Reid: But you are not answering my question. If you increase duties on alcohol, what's to stop people from popping over the border to buy it cheaper there?

Fiona Hyslop: That might be an argument for debating what would be the benefits to health policy of having an opportunity to influence excise duty. We have had that debate in microcosm, I suppose, in the debates on alcohol pricing in the Scottish Parliament. Obviously, that was a differential pricing regime that we thought would help improve the health of the people of Scotland. Nobody is against trying to use alcohol pricing, and some MPs in this Parliament have said that they would like to use variable pricing on alcohol to impact positively on health. We would just like to have the opportunity to do that ourselves, and we would have done so, but our jurisdiction was limited to minimum pricing. The arguments about what taxes we need are, yes, about economic growth, but also about the social consequences of what you can do with some of these powers as well.

Q779 Mr Reid: I still feel you are not answering my question. If you increase alcohol duties for the health reasons that you have mentioned, what is to stop people just popping over the border to buy cheaper alcohol?

Fiona Hyslop: That is a debate that would happen, as it did with minimum pricing, around whether people would actually do that to the extent that it would have an impact. I am sure that that is a debate that not just this Committee, but other Committees in this Parliament will look at, because it is a running issue. It shows you that the transfer of financial powers is not just about economic growth; it is also about social impact. I have talked about that in relation to the future jobs fund, and in terms of alcohol.

Q780 Chair: I am conscious that you've now got 14 minutes. On booze and blades, you've wanted powers over airguns in order to ban them, which we understand. You have powers over knives, but you haven't been effective in dealing with the knife culture. It comes back to the question of why you are seeking extra powers when you don't adequately utilise the powers that you have. Is this not a difficulty for us in acceding to your constant requests for more

powers, when it is visible that you don't actually work adequately with what you have already?

Fiona Hyslop: You will find that we have had an impact on the knife culture. I am very conscious that there have been some dreadful examples of knife crime recently, and I wouldn't diminish that and the impact of that at all. That's why—looking at the work of John Carnochan, the violence reduction unit and the impact that it has—the fact that those convicted of serious crimes and knife crimes are serving longer sentences under our Administration than previously, shows there has been an impact. I don't think that that's necessarily a particularly strong argument to use against the progress of more powers. It's an evaluation. Our accountability of whether we're successful on knives, on education or in other areas is through the Scottish Parliament and the Scottish people—we will be accountable to them. While the Westminster Parliament still has control over many areas of our lives in economic terms, the issue comes back to the central point—is there any evidence from the UK Government that the Bill will improve economic growth and the job prospects of the people of Scotland?

Q781 Lindsay Roy: The Scottish Government have proposed a supermarket tax for minimum pricing of alcohol. What would have happened if there had been a majority in the Scottish Parliament—would that have become law, or would they have had to defer to the UK Government?

Fiona Hyslop: Obviously, if that had been endorsed by the Scottish Parliament, we would have carried it out.

Q782 Lindsay Roy: You already have a facility, but the reason that that did not go through was that there wasn't a majority in the Scottish Parliament.

Fiona Hyslop: As much as, as a Minister, I would want to exercise different powers, this goes back to Fiona O'Donnell's central point that Scottish Government Ministers are given powers under the Scotland Bill, but not the Parliament. It is always important that the Parliament—any Parliament—has a check and balance on its Government and its Ministers to ensure that there is a view, and I accept that.

Fiona O'Donnell: We are in the mopping-up stage, so I will jump to another subject. You have made clear your opposition to the Scottish Parliament picking up the tab for collecting income tax. In terms of full fiscal autonomy, do you have estimates of the costs of collecting the full range of taxes in Scotland? Would the Scottish Parliament pick up the costs of that, or would you still expect the UK Government to pick that up?

Fiona Hyslop: In the statement of funding policy, it is quite clear that if the UK Government initiate the policy, they pick up the funding for it; if the Scottish Parliament and Government initiate the policy, they are responsible for it. So, clearly we acknowledge that there would be some responsibility with full fiscal responsibility for the Scottish Government over those costs. Obviously, we acknowledge that there would have to be discussions and negotiations with HMRC,

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which goes back to Lindsay's point. If you look at other countries, and we've published information—

Q783 Fiona O'Donnell: The UK Parliament would have legislated to give you the full range of fiscal powers, so why would it not be solely the responsibility of the UK Parliament?

Fiona Hyslop: I would love the Scottish Parliament to be able to legislate to give us full fiscal responsibility. Unfortunately, those levers of power are still held by Westminster.

Q784 Fiona O'Donnell: So you would still argue for the full cost—

Fiona Hyslop: It has happened over a number of issues. If you are operating within a UK system of taxation, that is why having that intergovernmental bilateral committee—

Q785 Fiona O'Donnell: So you would negotiate. How much do you think would be fair for Scotland to pick up? Have you done any estimates about the costs?

Fiona Hyslop: I think it is too expensive as it is. One of our proposals, and the information and evidence we put in our "National Conversation" paper, concerns how much cheaper it is for other countries to collect taxes than for the UK Government. HMRC has a very expensive system, and we would expect any Scottish system—

Q786 Fiona O'Donnell: What savings? With those savings in mind, do you have a cost?

Fiona Hyslop: I cannot give you that information now. If any is available, I am happy to provide it, but I think it is more a case that when you set up a system, you would have your dialogue with the UK Government and—

Fiona O'Donnell: And then have another agency to collect?

Fiona Hyslop: What is the difference between 85% and 70%? There should be negotiations between the different Departments. Unfortunately, we are not even at that level in the Bill in front of us, which is for a smaller amount.

Fiona O'Donnell: Any other detail on that would be useful.

Q787 Chair: May I clarify? One of the points that Michael Moore made to us was about additional powers to introduce new taxes. I wondered whether you had any observations on that.

Fiona Hyslop: Helpful as it is, I think it is an excuse for not transferring some of the other taxes that Calman recommended—whether passenger duty or the aggregates levy, arguments against that are cases in the European Court. They were there when Calman was looking at it, so—

Q788 Chair: You will be aware of what he said about that, that once the matters are resolved, he intends to devolve them.

Fiona Hyslop: I think that is why that clause is there. Obviously, that might provide an opportunity for other powers and other taxes to be—

Q789 Chair: That is right. I presume you have read the evidence from when Michael Moore was in front of us. I think you will have heard or read our exchange about the potential for you to devise new taxes. I think I identified taxing either alcohol with a high percentage of caffeine in it—a Buckfast tax—or, alternatively, landed estates or acreage in some way, a Buccleuch tax as it were. You could have a Buckfast tax and a Buccleuch tax if you met the criteria established by the Treasury. Do you not welcome these opportunities?

Fiona Hyslop: The clause itself is helpful. It is there for a reason, because of the aggregates tax and the air passenger duty issues. I suppose the question is, who should decide what taxes are transferred? Should the Scottish Parliament and Government have a say or influence? Could they request taxes to be transferred under this? That might be a useful thing—

Chair: You can always request.

Fiona Hyslop: Or should it be enshrined in the legislation?

Q790 Chair: We have divided responsibilities. We are the representatives of the Scottish people, just as much as you are, so Scotland's representatives in Westminster have input into these sorts of discussions. This is coming back to the question of whether you welcome there being what I recognise as a quite innovative proposal, giving you the opportunity to devise new taxes, if you were able to pursue that. And the clause would give you the opportunity to run them past the Treasury, to make sure that there was not a distorting or undermining effect, or cannibalising and so on—all the things you would naturally expect—but it does give you an incentive to look for new ways of levying tax, say to overcome any deficiency that might result in the Budget from cutting corporation tax.

Fiona Hyslop: If you look at the Bill, you as parliamentarians in this Parliament will have to vote on what is there in black and white. Accompanying the Bill is the Command Paper, and in the Command Paper, on the clause we are talking about, are a number of conditions and restrictions. The issue is, do you think that flexibility within the background would be useful, although the Command Paper is quite tight in what it is saying? Or do you think the provision is open-ended so as to allow other taxes to be transferred? I am of the view that it should be as open-ended as possible, to enable more powers and to allow us—

Q791 Chair: To be fair, you're a nationalist, and therefore, in a sense, you have a predetermined outcome. In terms of the governance of Scotland and how we improve it, do you not welcome this opportunity?

Fiona Hyslop: If it can be used to transfer more power, that is something that we would welcome. You might want it for caffeine. I might want it for economic levers. That is perhaps the spectrum of difference between what powers we think need to be transferred. It is a bit like the point we touched on at the beginning in relation to the Scottish legal justice system. It doesn't matter what is said—it matters what is said in the background as to what is intended. But

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what really matters is what is in black and white in legislation.

Q792 Chair: You have mentioned the justice system. I raised one other point where co-operation would be important, which relates to immigration. The judicial review system that operates in Scotland and the general slowness of the Scottish legal system, which seems to be far worse than in England and Wales, causes the UK Border Agency substantial difficulties in getting cases resolved. In my own constituency, I have cases that have been waiting months to get their way through the Scottish legal system. They go through far faster in England and Wales. Whether it is a question of deportation or somebody getting consent to remain here, delay is in nobody's interest. I wonder whether it is possible for you to be taking back the need for the Scottish justice system to work more closely with the Home Office to expedite such matters. It has been a long-standing grievance among many of us at Westminster.

Fiona Hyslop: I suspect you want me to go back to Scotland with a shopping list.

Q793 Chair: It has to be a two-way street. You've come here and moaned about a whole number of things, quite understandably, but we also have some anxieties—

Fiona Hyslop: I think I've been very constructive.

Q794 Chair: I said at the beginning that you were not here to be satisfied.

Fiona Hyslop: I will not say what I was thinking. You have made a very good point about justice and immigration. On immigration, Calman recommended that there should be variability. Indeed, I know the Lib Dems also held that position before the election.

Q795 Chair: That was then, to be fair to the Lib Dems.

Fiona Hyslop: Variability was recommended to allow us to respond to our circumstances. Again, something that was recommended by Calman is not in the Bill. In terms of justice and immigration, I gave you an example earlier about how UK employment has integrated with Scottish responsibility and skills to give a better outcome for individuals. Had we more control over immigration, as recommended by Calman, we could also integrate justice to ensure we could address any issues about improvement in terms of policy and process.

Q796 Chair: I understand that. But you are constantly predisposed to say that the answer to a rubbing, as it were, between the jurisdictions is that you should get the powers transferred. On the other hand, there does not seem to be any reason why a working together—a meshing—and joint discussions could not be another way of moving forward. You seem to constantly set your mind against constructive joint working.

Fiona Hyslop: Yes, it could. But in terms of the process, we have published our correspondence on the Scotland Bill. It is available to the Scottish Committee and it is available publicly. It is about all the things

we have tried to do constructively. Despite these constructive proposals—some of them are small and minor and perhaps evolutionary; with some of them perhaps we can understand a political difference. But when you don't have that dialogue and engagement that improves the Bill, that is when we worry. When you have a situation, as we have had recently, only in the last few weeks, when we've got the thinking of the Advocate-General on one of the key areas in justice, you can see where we have our concerns. We have had that dialogue. We want to have that dialogue. I am delighted that you want to make sure that it is given public scrutiny, but I think that we have to have a system of Government-to-Government dialogue. I go back to how people view things. There are too many Whitehall Departments and, indeed, some UK Ministers who seem to treat Scotland as some kind of Department of Whitehall as opposed to a Government.

Q797 Chair: That is the nature of civil servants. When I was a councillor in Strathclyde, I remember bemoaning the way in which the Scotland Office, as it was then, in its various departments in Edinburgh, treated the west of Scotland badly as if we were just serfs. It is in the nature of civil servants to treat everybody else as a lesser being.

Fiona Hyslop: There is a really serious point. The test of the relationship will be from the beginning of next week when amendments are put down. If there is no movement on trying to improve some areas of the Bill, and if the UK Government try to ram through without due consideration—

Q798 Chair: We will see what comes from your own commissioners.

We have Fiona, and then we will have to let you escape.

Q799 Fiona O'Donnell: I have a quick question about full fiscal autonomy. Would you see the Scottish Government in that situation having to transfer funds back to cover areas of reserve policy to the UK Government?

Fiona Hyslop: That is about what revenue is raised and what revenue is spent. What you are probably alluding to is something—

Q800 Fiona O'Donnell: On defence, would you make a contribution from that pot, from the moneys that you raise under full fiscal autonomy?

Fiona Hyslop: Some of the examples that are worth looking at are in relation to the Spanish. The Calman commission looked at whether you could disperse and send money back. Under our agreement and arrangements, obviously we would have revenue raising in relation to our spending in Scotland. The dialogue about relationship is where we want to get to.

Q801 Fiona O'Donnell: You are proposing it, but you do not have further thoughts just now about what contributions.

Fiona Hyslop: That is exactly why we want to have a bilateral inter-governmental committee, which is what is proposed in Scotland. We just think that these

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things should be set up now. You do not need a Bill to do that. It is a decision to be taken by Ministers.

Chair: Are there any final points that you want to make, as an alternative to missing your plane?

Fiona Hyslop: Thank you very much for giving me the opportunity to meet you. We have provided written evidence, and we will watch your deliberations with great interest. I express my concerns that decisions will be made in the House of Commons before either the Scottish Parliament's Committee or others have had a chance to have an input in terms of the parliamentary vote next week. I am sure that you will be watching the process with vigilance, as much as the content and policy.

Chair: I want to make it clear that, notwithstanding any votes that take place next week, there will still be time for anything decided next week to be undone before the legislation becomes law. There will still be opportunities, whether in the Lords or at further stages in the Commons, even after any decisions are taken on Monday, to reverse decisions. It would be a mistake to go away thinking that anything decided on Monday was absolutely and utterly final.

Fiona Hyslop: Prevention is better than cure. With great respect, I do not want to have the last word.

Chair: That is right. I am determined to make sure of that, even at the cost of your missing your plane. Thank you very much to yourself and your colleagues.

Written evidence

Written evidence submitted by Scottish Council for Voluntary Organisations (SCVO)

SCOTLAND BILL AND CHARITY REGULATION

This brief is submitted in connection with the current Westminster Select Committee consideration of the Scotland Bill. Our comments are limited to the issue of Scottish charity regulation raised by various MPs in the stage 1 debate.

SUMMARY OF KEY POINTS

The Calman Commission made two recommendations regarding charity regulation. The UK Government made the decision not to legislate for this in the Scotland Bill. We strongly support this decision and believe that suggestions to engage in a separate and wider consideration of charity regulation in Scotland and across the three charity jurisdictions outside the process of the Bill itself is the correct approach. We believe it would be wholly inappropriate to shoehorn charity law amendments into a Bill that did not have as its main focus such amendments and that did not engage the voluntary sector in Scotland or other jurisdictions such as Northern Ireland in the debate about charity regulation.

BACKGROUND

There are several differences between English and Scottish regulation of charities. The principle differences are:

- (1) The definitions of charitable purposes are different and the definition of public benefit is different; also, the constitution of a Scottish charity must not allow ministerial control, does not have provision exempted charities. There is no such restriction regarding ministerial control in England and Wales.
- (2) OSCR acts as registrar and regulator for all charities operating in Scotland unless they don't occupy land or premises and don't carry out any activities in Scotland. The Charity Commission in England does not have the same remit. This means in practice that an English registered charity may have to register in Scotland but a Scottish registered charity may not have to register in England.
- (3) The Calman Commission also noted that the HMRC definition of charity differs from the Scottish definition. This creates the potential in theory for charities in Scotland and England doing exactly the same thing to have different tax exempt status; or, alternatively that a Scottish organisation refused charitable status by OSCR might nevertheless obtain the tax exempt status with HMRC.

As a result of these differences, the Calman Final Report made two proposals:

- (1) There should be a single definition of each of the expressions "charity and charitable purposes" applicable for all purposes throughout the UK. This should be enacted by the UK parliament with consent of Scottish Parliament.
- (2) A charity duly registered in one part of the UK should be able to conduct its charitable activities in another part of the UK without being required to register separately in the latter part and without being subject to the reporting and accounting requirements of the regulator in that part.

KEY POINTS

SCVO does not support these recommendations. The voluntary sector spent years lobbying for a modern charity law that works for Scotland. Our 2005 charity Act is a reflection of the unique historical, political and social environment in which the charity sector in Scotland has developed and matured. Charitable status in Scotland, the Scottish charity brand, conveys a mark of respect and trustworthiness in a particular social and cultural context—one which matches the size and shape profile of the charity sector in Scotland. It is not simply a particular tax exempt status.

We made several submissions to the Calman Commission arguing against proposals to change the Scottish charity definition. We do not believe there is sufficient evidence of problems to justify the Calman Report recommendations nor do we believe the Scotland Bill is the appropriate place for amendments to charity legislation.

MPs have raised concerns about the burden of dual regulation on cross border charities. We question the evidence base for this. We have not seen significant problems for voluntary organisations arising from having different regulatory regimes North and South of the Border. What issues did arise were largely teething problems or technical issues during the period of transition. OSCR has minimised the burden of dual regulation by revising its reporting requirements for cross-border charities, which are now very light touch and rely heavily on the role of the lead regulator.

Furthermore, we take issue with the Calman statement that a "substantial" number of cross-border charities are subject to dual regulation. A recent OSCR report on cross border charity regulation shows 680 such charities, or 2.9% of the total number of charities registered in Scotland, of which 60% have annual income over £1,000,000. This is not a "substantial" number and for the majority of those required to register, the light

touch OSCR regulation is a very minor requirement given their size and relative resources. [<http://www.oscr.org.uk/PublicationItem.aspx?id=bd150ce8-776a-4c5c-aff1-10c5fbf73e7f>]

CONCLUSION

There does need to be a full and proper discussion to review charity definitions and regulations which involves the Parliaments, Assemblies and Governments, the general public and wider civil society in Scotland, England and Wales and Northern Ireland. We have been calling for this for some time, a position supported by OSCR in its 2010 Annual Report. An intervention without proper consultation, and inappropriately included in the Scotland Bill is not the way forward.

February 2011

Supplementary written evidence submitted by the Scottish Council for Voluntary Organisations (SCVO)

During the evidence given by Ruchir Shah and myself on 2nd February 2011, both yourself and Lindsay Roy MP invited SCVO to submit further detail and examples of the points that SCVO wished to make, via yourself, to the committee. It was also agreed that I would discuss a press article by the SCVO Chief Executive with the SCVO Convener on my return to Edinburgh. I understand that the Convener is writing to you separately.

I now enclose some examples of areas where we are aware of problems due to the current split in powers. For the avoidance of doubt, we would reiterate that SCVO is not stating that independence or further devolution are the only options to resolve these tensions. However, we did suggest that an enabling provision in the current Scotland Bill to devolve some control over benefits would allow that option to be introduced relatively easily following further discussion, and without recourse to a further Bill.

I hope this additional information is of some assistance.

Some examples for the Scottish Affairs Committee further to evidence from SCVO Practical problems if benefits are reserved but care is not The previous Westminster administration's Shaping the Future of Care Together and the National Care Service appeared to run into potential problems with devolution. The then Parliamentary Under Secretary of State for Work and Pensions, Jonathan Shaw MP, stated in a letter on 1 Dec 2009¹ "we think there is a case for bringing some disability benefits and the adult social care system together into a single system, to provide better support through the National Care Service." As care is devolved, but benefits are not, the National Care Service he refers to would not have included Scotland. But any impact on benefits would have affected Scotland, unless the decision was taken to end the concept of benefits being the same for all the UK.

The lack of an holistic view of major issues Transport is an extremely important issue for people with impairments that affect their mobility; research² suggests that lack of suitable affordable transport is one of the biggest barriers to accessing leisure and recreation for those who have mobility impairments. Benefits (principally Disability Living Allowance (Mobility) and its relationship with the Motability Scheme) are reserved. Transport is devolved and the Scottish Government has introduced the National Concessionary Card for buses and coaches, but there are limitations on its use on community and accessible demand responsive transport (DRT). Local authorities have a significant input to DRT and some have introduced taxicards to subsidise the use of taxis, and also give grants to private and voluntary transport providers. There is an ongoing debate about the role of the Scottish Ambulance Service in access to healthcare. The level of transport provision is very variable around the country, and there are clear differences between an urban area with wheelchair accessible buses and the rural situation without accessible buses. There are also differences between schemes available to individuals as some (eg DLA(M)) have age restrictions and others are local (taxi cards). Regional Transport Partnerships in Scotland are trying to address these issues, but there is no mechanism to establish an holistic view that looks at the most effective way of providing support to all those who need it; we really need to go back to a blank sheet of paper and identify the outcomes desired and the best way of achieving them. The hotch potch of current schemes, all trying to tackle one small part of the issue, leaves some people without transport. Some have access to several schemes whilst others do not.

"Policy Fit"—Impacts on other levels of government The recent decisions at Westminster to close the Independent Living Fund (ILF) to new claimants and to close the fund with funding for existing claimants only guaranteed until 2015 will have a significant impact on the support available to ILF claimants throughout the UK. However, their needs will not change and it is not clear who is expected to provide the missing finance—presumably local authorities or the Scottish government. Thus reserved decisions are affecting devolved issues.

¹ DWP's POS(6)10545/152 dated 1 December 2009

² Recreational and leisure facilities available in Edinburgh for people with severe and complex mobility impairments: A report for Ecas compiled by The Strathclyde Centre for Disability Research at the University of Glasgow.

“Policy Fit”—Contradictions and confusion In October 2004 the (UK) Department for Transport (DfT) issued a directive³ “that there should be no cycle restraints within wheelchair spaces”. In January 2006 Ecas raised concerns that cycle racks on Class 170 trains operated in Scotland were fouling wheelchair spaces. A two year campaign ensued, with support from the Disability Rights Commission and then the Equality and Human Rights Commission and local press. Dr Gavin Strang, then an Edinburgh MP, also supported the case to resolve this conflict. The DfT, with advice and support from the Disabled Persons Transport Advisory Committee (DPTAC) identified a potential solution⁴. This issue appeared to rest with the DfT and this perception was reinforced by correspondence from Tom Harris MP, then the Parliamentary Under Secretary of State at DfT, to Dr Strang. This is because disability and equality issues are reserved. However, Transport Scotland and the Scottish Transport Minister, and their advisers the Mobility and Access Committee for Scotland and the Scottish Rail Accessibility Forum, appeared to have a different view, as the cycle rack and the train are devolved. They did not choose to take action on DfT’s verdict and proposals. This took two years, two government Ministers, two UK Government departments (DfT and the Office for Disability Issues), an MP, the DRC/EHRC, Transport Scotland, three committees and a pile of correspondence to effectively reach stalemate. Meanwhile, the important issue—making a wheelchair space accessible for wheelchairs—got lost and wheelchair users were put off travelling by train as they kept finding the wheelchair space was blocked.

“Policy Fit”—care policy Although there are some common policies, there are also distinct differences between Scotland and England. The National Care Service was being proposed in England at the same time as Scotland was pushing faster towards Self Directed Support. There are major differences. DLA (Care) and (Mobility), the Independent Living Fund and other Westminster controlled benefits do not sit easily in both models. This is similar to the transport issue—DLA (Care) is reserved, as is the Independent Living Fund, but care is devolved and largely “double devolved” to local authorities.

February 2011

Written evidence submitted by Professor Michael Keating, University of Aberdeen

SUMMARY

The taxation proposals Scotland Bill are flawed and, if enacted, will need to be amended before long. There is a case for further fiscal devolution. If English and Scottish preferences on the size of the state diverge, larger powers will be necessary. There are always problems with fiscal devolution and compromises must be made. It is difficult to address the overall effect of the proposals in the absence of proposals for the reform of the Barnett Formula.

1. The present position, whereby the Scottish Parliament has a large degree of policy autonomy but almost no fiscal autonomy, is anomalous but the Bill will contribute only partially to the aims of autonomy, policy innovation and accountability. The way in which income tax is to be devolved differs little in principle from the present 3p power, although the ceiling is raised. There is rather little scope to use taxes as an instrument of policy innovation. I have the impression that the motivation for the new 10p tax power is more the political one of forcing the Scottish Parliament to make an explicit tax decision, than to give it more autonomy.

2. A radical measure of fiscal autonomy, with the Scottish Parliament responsible for the bulk of taxes but paying a share to Westminster for UK services would provide greater policy autonomy and flexibility for Scotland and spread the cyclical risk of tax fluctuations, at least to some degree. This would resemble the Basque system.

3. On the other hand, I am inclined to say that VAT should remain a UK tax, since: it is important that Westminster too have a direct link to the taxpayer/ voter; it cannot be varied under EU rules; there are problems in assigning it, since in principle it is a tax on each stage of the production process, collected for convenience at the point of sale. For this reason, it is normally a federal tax in federal systems (as in Germany, Canada and Australia). VAT is remitted on goods leaving the common tax area; this also applies to the EU.

4. There is a case for further devolution in social security, although in the Basque Country this is not devolved. This, however, plays into the current debate about reform of welfare and simplification of benefits, taking us well beyond the scope of this bill.

5. It has been argued that that various taxes should not be devolved given there are economic constraints on variation. I am not convinced by these arguments. On the contrary, it would be salutary Scottish Parliament were to face these constraints directly. If taxes are raised too much, the country becomes uncompetitive; if they are lowered too much, it loses revenue. This is a calculation for Scottish policy-makers to undertake.

6. Fiscal devolution would allow Scotland to raise or lower the overall burden of taxation, engaging in fiscal competition with the rest of the UK. There is a strand of opinion in Scotland that wants to engage in a strategy of radical tax reduction in order to attract business investment and mobile skilled labour. Suggestions that such tax-cutting will pay for itself are wishful thinking; cutting taxes leads to reduced revenues. Some sectors of political opinion would welcome the consequent shrinking of the state. Others fear that such tax competition

³ Quoted in DfT letter DP 1/1/2 dated 29 November 2006

⁴ Letter from Parliamentary Under Secretary of State at the DfT Ref DA/TH/014419/07 dated 3 July 2007

will represent a “race to the bottom” with reduced social services and note that much public spending supports economic growth. Tax competition may lead to all governments underspending on social policies. International evidence for this is rather mixed. Transition or developing economies, who do not have to support mature welfare states have tried this. There is tax competition in Switzerland and in the United States, especially among municipal governments. Elsewhere, governments realise that public spending supports economic growth and that there are trade-offs involved. In mature welfare states there is little scope for aggressive tax-cutting without radical reduction in the scope of welfare. These judgements about the balance of taxes and services, however, is something that the Scottish Parliament should be make for itself.

7. Governments may not be able to make proper decisions, however, if tax competition is so strong that they are constrained to cut taxes to the level of their neighbours. While it is unlikely that tax competition will destroy the welfare state, it could have damaging effects. These can be limited by a concordat on business taxation analogous to that on industrial assistance; there are agreements in the Basque Country and something similar has been proposed at European level although strongly opposed by successive UK governments.

8. Devolved excise taxes would give Scotland room for policy autonomy. If the UK government should commit itself to a radical shrinking of the public sector and the Scottish Parliament choose to maintain the existing welfare state, then more radical devolution of taxation will be necessary. This could make tax harmonization and concordats more difficult. The dilemma is inescapable but such divergence will severely test the devolution settlement.

9. There might be some cross-border trade distortions arising from differences in excise taxes but the geography of the United Kingdom is such that small but significant variations could be possible without provoking massive cross-border shopping. In my experience of Canada, a minority of consumers behave irrationally, spending a whole day driving hundreds of miles to save a few dollars, but most consumers do their calculations and value their own time.

10. It has been argued that fiscal autonomy itself produces economic growth. The evidence does not convince. There are far too many other variables involved and the comparative literature arrives at no reliable conclusion. Sometimes it is claimed that growth ensues because autonomous governments sustain low taxes but there is no systematic evidence that low-tax jurisdictions grow faster than higher-taxed ones. There is, indeed, a high-cost path to growth based on good infrastructure, education and training, health, and reducing the social burden of deprivation. Others argue that fiscal autonomy allows governments to make better spending priorities, but this is also true under a system of block grants as is presently the case in Scotland. A stronger argument is that governments dependent on their own tax bases will prioritize policies that maximize tax take and promote employment but I do not know of systematic evidence to support this.

11. The 10p variation gives little scope for variation in practice and it is likely that Scottish governments will default to the UK rate. As no UK government has raised income tax since the 1970s, it has become politically a very difficult instrument to use. I would favour devolution of the bands, rates and allowances, in order to provide room for pursuing social and economic policy objectives. Under the present proposals, where the UK Government alters the bands or allowances, the Scottish take would be affected automatically, possibly to its detriment. If this is to be compensated by ad hoc adjustments to the block transfer, this undermines the idea of Scotland being responsible for its own finances. It also opens up the issue of fiscal equalization, which the present proposals do not mention (see below). Short of a radical devolution of taxes, there is at least a case for *assigning* a share of VAT and corporation tax on a population basis to ensure the Scotland does not lose out from a shift in taxes. This is common in other devolved systems.

12. The framework would not have performed well in the recent recession since the Scottish Parliament does not have borrowing powers. The loss of revenue would have had to be met directly by spending cuts, as happens in US states with balanced budget contributions, such as California where there are huge budget and spending fluctuations. In Spain, autonomous communities have suffered revenue shortfalls in previous recessions and central government has helped them out by altering the transfer formula, a benefit they kept into better times, creating an imbalance. In the current recession, the central government is taking a stronger line. Italian governments have also, contrary to the spirit of decentralization laws, bailed out local and regional governments.

13. Allowing the Scottish Parliament to levy other taxes will broaden its scope. Other countries allow sub-state governments to levy any new tax that does not duplicate an existing tax, which makes sense.

14. Borrowing powers are needed for three purposes: to deal with short-term shortfalls, which the present proposals provide for; to deal with cyclical downturns; and for capital investment. There should be more scope for borrowing to deal with cyclical downturns. If petroleum revenues were to be devolved, there should also be a fund to accumulate surpluses in years of high prices. The Scottish Government should also be allowed to borrow for capital investment. International experience gives many ways to do this, including borrowing on the market, government taxpayer-backed bonds and revenue-bonds, which could be used for things like bridges or rail improvements. There could be a limit of total government debt such as exists (albeit rather theoretically so far) in the EU.

15. International experience shows that it is very difficult to predict the outcome of fiscal decentralization. The present proposals contain problems that have been highlighted by critics and which could prove destabilizing. If they are implemented, we will return to the issue before long.

16. In many federal and devolved systems, government has increased fiscal decentralization; an exception is Germany where such proposals have not prospered. It usually happens that one fiscal reform is followed by another, as the system develops. Other countries have not relied so much on devolution of a single tax. Rather they have transferred, by devolution or assignment, a share of income, sales and business taxes. Tax variations may, for economic reasons, be rather marginal but, spread across a range of taxes, represent a significant degree of autonomy. There is no perfect system of fiscal devolution and every system contains anomalies. The objectives of avoiding market distortions, fiscal responsibility and equity are by no means always consistent and the outcome is always a political compromise.

17. One issue that is not addressed at all in the proposals is that of fiscal equalization, with the Barnett formula continuing for the non-devolved part of the grant. We know that Barnett has been subject to constant refinements and there have been so many instances of by-pass that the convergence in spending levels implicit in it has repeatedly been postponed. The inevitable anomalies in the proposed system will doubtless lead to further tweaking of the Barnett allocations. There will need to be a transparent mechanism to ensure that any restructuring of UK taxation will not have a detrimental effect on Scotland.

18. Inter-territorial distribution of taxes and expenditure has become a major issue in all devolved and federal countries and has not been resolved anywhere. Other countries have experimented with systems of revenue-sharing based on needs and resources. This is always contentious and the outcome is a compromise between objective calculation and political management. Governments have often dealt with issues sequentially or postponed difficult decisions but in times of economic crisis, as at the present, have been forced to make harder decisions.

25 January 2011

Written evidence submitted by Professor Andrew Hughes Hallett and Professor Drew Scott

EXECUTIVE SUMMARY

We have serious concerns about the economic consequences that will flow from the fiscal provisions contained in the Scotland Bill. The funding mechanism being proposed has an inherent deflationary bias, and might well force a future Scottish Government to implement unexpected and potentially damaging public spending cuts that have no equivalent elsewhere in the UK. Further the new provisions will be implemented at a time when the income tax base in Scotland has been seriously weakened following five years of public spending cuts. We believe this financing regime could trigger a damaging cycle of further spending cuts leading to higher joblessness which will further erode the income tax base. The Bill offers no new economic policy levers to Scotland's Government to counter this eventuality. We recommend a broadening of the tax base on which "own resource" income to the devolved administration is raised. We also consider the borrowing provisions for non-capital spending are both dynamically unstable and inadequate. Ideally borrowing for capital spending should be extended, but this should be accompanied by a broadening of the tax base available to the devolved administration.

1. INTRODUCTION

1.1 We are pleased to offer the following comments in response to the call for evidence by the Scottish Affairs Committee of the Westminster Parliament.

1.2 The stated aim of the financial proposals within the Scotland Bill is to enhance the financial accountability of the Parliament for the revenues that it spends annually via the devolved Scottish budget. To a minor extent this will happen. But any benefits arising from this source are likely to be swamped by the wider economic costs that the new funding regime will impose on Scotland. This is because the new arrangements will result in both a deflationary bias being introduced to the Scottish budget *and* to a pro-cyclical dynamic instability of increasing size to the public spending undertaken by the Scottish Government. Accordingly, in terms of the consequences for the Scottish economy, the prospective funding arrangements are far from neutral—a matter that, in our view, has not been addressed by advocates of the new funding regime or by the UK Government.

1.3 Under the provisions of this Bill, a Scottish Government will be required to operate with a funding mechanism that has an in-built deflationary bias and which will require, on average, the Government to introduce measures that weaken the growth prospects for the economy. Added to this, Scotland's employment base upon which income tax receipts depend is especially vulnerable to the on-going deflationary macroeconomic policies being pursued by the current UK Government. That is a problem in itself. But the key point here is that the Scottish employment base on which the new Scottish income tax ultimately will be levied (ie by 2016) is likely at best to grow only slowly in the coming years—and may well decline, with the result that Scotland's income tax revenues decline, causing further budget cuts, job losses and funding reductions. Either factor alone is sufficient to render the proposed funding mechanism an inappropriate means of financing a devolved government in Scotland. When combined—as they will be by the middle of the current decade—

the impact is likely to result in public spending and job cuts in Scotland that are not matched elsewhere in the UK; and/or increases in income tax that are visited only on Scotland. This will impart further lasting damage to the Scottish economy, not to mention the extra pressures it would create to separate from the rest of the UK.

2. THE ECONOMIC IMPLICATIONS OF THE PROPOSED FUNDING MECHANISM

2.1 The stated aim of the new funding arrangement is to increase the financial accountability of the Scottish Parliament. Our calculations imply that, at best, the tax devolution proposals will result in a meagre 15% increase in the financial accountability—an increase that is highly unlikely to affect Scotland's economic performance in any significant way.

2.2 However, this increase in financial accountability is likely to be achieved at potentially significant cost to the Scottish economy.

2.3 Once the new funding mechanism has been introduced, the revenue accruing to the devolved administration will depend on two distinct financial flows. The first, from which the lion's share of funding will derive, will be a reduced block grant from UK Government adjusted annually by the Barnett formula. The second financial flow is the annual yield from the application of the new Scottish income tax, the rate of which will initially be set at 10p (and applicable to all tax bands) but which can be adjusted upwards or downwards as the Scottish Parliament decrees.

2.4 The rate at which the funds available to the Scottish budget grow annually will henceforth be determined by (i) the rate of growth of the Barnett consequential—this being determined by UK Government, at a rate related to the growth in public spending for the UK as a whole—and (ii) the rate of growth of the yield from Scottish income tax, this being determined by the rate of growth of the Scottish income tax base multiplied by the rate at which Scottish income tax is levied.

2.5 If the new funding regime is to provide at least as much funding to the Scottish budget as the current regime without an increase or decrease in the level of Scottish taxes, the rate of growth of the new tax revenue component has to be at least equal to the rate of growth of the Barnett consequential “block” that it has replaced.

2.6 It is, of course, impossible to forecast either of these elements for when the new regime becomes fully operational in 2018. We have no idea what the growth of UK public spending (for the grant element) and the growth of incomes (for the tax element) will be that far ahead. However we can look at what would have happened to the Scottish budget had the prospective funding regime been in place from 1999–00 when devolution was introduced.

2.7 Recent data provided by the Scottish Government assesses the impact on the total Scottish DEL had the proposed funding regime been in place over the period 1999–00 to 2010–11. In that event, there would have been an accumulated shortfall of almost £8 billion compared to what occurred under the current “full Barnett” model. This is a measure of the deflationary bias of the proposed funding model, and reflects the fact that the rate of growth of UK public spending has exceeded the rate of growth of Scotland's income tax revenues—as would be expected insofar as income tax is only one element of the total basket of taxes that underpin UK public spending trends.⁵ Based on the empirical record, we see no reason for not expecting this trend to continue.

3. FORECASTING AND RECONCILING SCOTLAND'S REVENUES: REVENUE BORROWING

3.1 The Bill proposes that an amount equal to the *forecast* yield of Scottish income tax would be assigned to the devolved administration for each year in the spending review period. However because of the manner and timing in which forecast and actual income tax receipts are to be reconciled, the Scottish Government will enjoy only very *limited* protection against such a contingency. In most cases, revisions to spending plans will be needed.

3.2 The Bill provides for a rolling financial reconciliation between forecast and actual (outturn) receipts from the Scotland's income tax “...no later than 12 months after the end of the financial year...” in question. Where the outturn exceeds the forecast an amount will be transferred to the Scottish Government which may be spent or retained; where the outturn is less than forecast an amount will be deducted from the Scottish Government which may be financed from “reserves” or by borrowing. To finance such a repayment Scottish Ministers will be allowed to borrow up to £200 million in any one year subject to an overall ceiling of £500 million of outstanding debt (non-capital borrowing). The presumption is that any amounts in excess of these limits must be financed by an immediate reduction in public spending.

3.3 Based on the latest estimate available for Scottish income tax receipts the proposed annual borrowing facility of £200 million represents less than 5% of the prospective (income tax) revenue stream. This means that should the OBR over-estimate Scotland's income tax revenues by more than 5% in any one year, the borrowing facility alone will be inadequate to finance the reconciliation that will be required from the following year's budget. Moreover this borrowing facility will also be required to make good any temporary mismatch in tax and spending financed by land transaction and landfill taxes.

⁵ This follows from Treasury publications showing UK revenue sources.

3.4 To put this in perspective, revenue borrowing is only possible against forecast errors. Over the decade before the current recession, 1997–2007, the UK governments track record for income tax receipts is one of forecast errors that range between +7% to –4%, with an average of +1.1%. Since borrowing will follow from *overestimates*, this means the Scottish Government will need to cut spending or borrow every year on average and should expect to exhaust its borrowing limit several times in a decade. Finally, no borrowing power is provided if the revenue loss is due to (anticipated) bad economic shocks rather than poor forecasts. The current recession, for example, would according to calculations on the Scotland Office website have cut the Scottish budget by £748 million and £559 million in 2008 and 2009 respectively, sums that are beyond the entire borrowing ceiling—let alone the annual limit of £200 million. But no borrowing would be allowed in such cases anyway. Or, to put the point another way, given that there is a cycle and that adverse shocks do occur, the more accurate the tax forecasts the more volatile will Scottish revenues become and the more the Scottish government will be obliged to cut spending and social support in a downturn. This is why we say the Bill’s borrowing provisions offer only limited protection against forecast errors and none at all against unexpected economic shocks.

3.5 In such a scenario, public spending in Scotland has to move pro-cyclically and consequently will simply worsen the severity of the initial economic shock—thereby adding to unemployment and lost output and delaying any subsequent economic upturn.⁶

3.6 Our conclusion is that the provision for non-capital borrowing as proposed is both woefully inadequate and, in economic terms, fundamentally flawed.

4. SPECIFIC ISSUES

4.1 **Scotland’s income tax base:** The proposal that part of devolved funding will accrue from income tax means that future trends in employment levels in Scotland become an important factor. In common with many economists, we are concerned that the employment effects of the current public spending plans are set to weaken—possibly considerably—the employment base in Scotland. If that happens then inevitably the tax yield will fall, implying that if public spending is to be maintained in real terms the rate at which Scotland’s income tax is levied will have to increase. Otherwise real terms spending cuts are inevitable. This would set in motion a further round of deflation and further unemployment.

4.2 To put this point in perspective, Price Waterhouse Cooper, on behalf of Unison, has estimated that 95000 jobs are likely to be lost in Scotland as a result of the UK government’s budget cuts.⁷ At the current average wage of £24546, this implies £2.3 billion taxable income will be lost because the tax base shrinks. This implies £230 million—£350 million a year, at current average tax rates, will have to be cut from the budget for as long as those job losses last. If the spending multiplier is three (marginal propensity to spend = 2/3, plus investment spending less imports), this means a fall in Scottish non-oil GDP of £860 million or 0.75% each year. A standard production function, with elasticity of demand for labour of 2/3, will give us a rough estimate of the impact of this second round effect (ie of the Scotland Bill spending cuts, not the original job losses due to the UK government cuts). It implies a 1.1% loss in employment (or 1% higher unemployment) or a loss of 27800 jobs on Labour Force Survey employment figures for Scotland in 2010. These are additional losses due to the Scotland Bill itself; they would not be observed elsewhere in the UK.

4.3 **Forecasting tax yield:** Forecasts of the future value of any economic variable are, of course, invariably wrong. Predicting the future trajectory of Scotland’s income tax receipts is no exception. Annual *ex post* adjustments will therefore be required to reconcile forecast with actual tax receipts for the previous year. It might be presumed that forecast errors will, over a number of years, sum to zero. Assuming we know the number of years involved, and we can estimate the forecast errors, one could argue that the combination of “savings” made in years when the forecast underestimated actual tax receipts, plus the new annual £200 million borrowing facility (up to a maximum outstanding debt of £500 million), will insure the Scottish Government against having to make unanticipated public spending cuts. But there is no evidence to support this presumption, and testing forecasts against outturns will be undertaken during the transition phase before the new regime is introduced. However it is unclear from the Command Paper what revision (if any) to the proposed regime will be made should the evidence display a persistent over- or under-forecast in the estimation of tax revenues, or what any future UK Government would deem to be acceptable regardless of this evidence. We have already noted that evidence demonstrates a persistent trend for Treasury to over-estimate tax revenues. This means that the Scottish Government will, on average, always find itself repaying money to Treasury in the annual reconciliation round. As borrowing is capped at £500 million in total, this necessarily means that public spending in Scotland will inevitably be forced down to finance this repayment.

4.4 **Dynamic Instability:** As already noted although the revenue “forecasting and reconciliation” arrangement proposed in the Bill rectifies one of the defects in the original Calman proposals, it does so only by introducing a new dynamic instability to the funding arrangement. This instability will arise either when the forecast of tax receipts is significantly (ie above 5%) above outturn (so borrowing will be restricted); and/or when the (£500 million) ceiling on borrowing to finance current spending has been reached and repayments are required now. Should either (or both) situation arise then under the proposals the Scottish Government

⁶ Should the economic shock be beneficial to Scotland’s economy then revenues (and spending) will rise which is also pro-cyclical and undesirable as it may exaggerate the economic upturn underway.

⁷ Calculations by Ernst and Young for the Item Club are very similar.

would be forced to implement spending cuts immediately. *We emphasise that neither scenario can be regarded as an “exceptional” circumstance.* In addition, increasing the rate of income tax in these circumstances would not be an option because any additional tax revenue generated would not be available until at least the end of the next financial year while the repayment of tax receipts is required at the beginning of that financial year.⁸

4.5 Regressive Tax: The proposal that the Scottish rate of income tax be levied at the same amount for each of the three tax bands is not, in our view, appropriate. What this essentially does is to introduce regressivity into the income tax system which will be apparent in Scotland alone. This is not only undesirable in itself, it is inconsistent with inter-regional equity and a continued UK social union. This feature could only be avoided if the Scottish Government was able to apply the Scottish income tax at different rates according to tax bands—a solution we would recommend.

4.6 Recent Downturn: Estimates of income tax collected in Scotland since the onset of the current recession and financial crisis have been provided by the Scottish Government. This shows a significant reduction in Scotland’s income tax revenues over the period 2007–08 to 2010–11—a cumulative real terms reduction of approximately 11% (£523 million in real terms). Over the same period the “full Barnett” DEL grew by 3.3% in real terms. On Scottish Government data, the cumulative real terms “cost” to the Scottish budget had the proposed funding mechanism been in place since 2007–08 would have been £3.9 billion. Under the proposed scheme, the Scottish Government would have been required to begin repaying (at the expense of current spending) over-estimated tax receipts 12 months following the onset of the recession. This would have propelled the Scottish economy into an earlier and deeper recession than that which occurred. That in turn would have triggered further rounds of self-propelling deflation.

4.7 Borrowing Powers: We consider that both the non-capital and capital borrowing powers provided for in the proposed legislation are inadequate. As argued above, the non-capital powers are inadequate to protect public spending from cuts (or income tax from increasing) that result from either poor economic forecasting or unanticipated economic shocks adversely affecting the Scottish economy. We note that the capital borrowing limit lacks any explanation or justification, and has to be questioned. In principle we see no reason why Scotland’s government should be prevented from borrowing on its own account on international capital markets.

4.8 However any debate surrounding borrowing powers must be set in the context of the prospective funding mechanism. We are very concerned this has not been addressed. We consider that the tax base on which part of Scotland’s budget will depend is too narrow as proposed to form a secure basis on which net additional borrowing (for either non-capital or capital purposes) should proceed. The overwhelming reliance on income tax revenues creates a significant risk for all public spending and borrowing that is dependent on variations in the yield from this single tax base. We therefore urge that serious consideration is given to broadening the tax base so that the new revenue stream is diversified across a wider range of taxes under the general heading of “shared taxes”. It is in our view unwise that income tax revenues alone should be relied upon to finance (service and repay) net additional non-capital and capital borrowing—even to the extent provided for in the proposed legislation.

4.9 Capital borrowing: The creation of a new borrowing facility to finance capital investment is, in principle, welcome. A ceiling of £2.2 billion is proposed (no explanation for this specific limit is provided) and the Scottish Government will be permitted to borrow “...up to 10% of the Scottish capital budget (approx. £230 million in 2014/15) in any year...”. Such loans will be sourced from the National Loan Fund, the body responsible for lending to local authorities. Significantly the Scottish Government will not be permitted to issue its own bonds—an aspect of the prospective arrangements that distinguishes Scotland’s fiscal authority from that of all other federalised “states” around the world. Therefore, while welcoming the new capital borrowing powers, we note that the scale of the borrowing to be allowed under the new regime is extremely modest and is subject at all times to “external” approval.

5. OVERALL ASSESSMENT OF FINANCIAL PROVISIONS

5.1 We have very deep concerns about the economic consequences that will flow from the fiscal provisions contained in the Scotland Bill. The funding mechanism being proposed has an inherent deflationary bias, and are likely to force a future Scottish Government to implement unexpected and potentially damaging public spending cuts that have no equivalent elsewhere in the UK. The Bill provides no new economic policy levers to Scotland’s Government at a time when, in our view, the Scottish economy is facing unprecedented challenges.

5.2 Second, the financial proposals have simply not been subject to any serious economic analysis by the UK Government. Indeed as far as we know no authority with a recognised economic expertise has endorsed these proposals, or seriously addressed the criticisms that we, and many others, have made.

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⁸ The tax revenue available for the following year would be pre-determined by a previous forecast.

Written evidence submitted by Andy Wightman

EXECUTIVE SUMMARY

1. The Scotland Bill provides the opportunity to improve the governance of Crown rights in Scotland by returning the administration of these rights to Scotland. My preferred option in order to do this is to amend the Crown Estate Act 1961 to the effect that it does not apply to Scotland.

INTRODUCTION

2. I am independent self-employed researcher on land rights in Scotland and elsewhere. I am the author of a recent book on land rights in Scotland, *The Poor Had No Lawyers* (1). In recent years I have taken a growing interest in the question of Crown property rights in Scotland and how they are defined and administered. In 2010 I submitted written evidence to the House of Commons Treasury Committee’s inquiry into the management of the Crown Estate (2).

3. In response to your call for written evidence on the Scotland Bill 2010, I would like to make some observations about Crown property rights, the proposals in the Bill relating to the Crown Estate Commissioners (CEC), and how the Bill could modernise and improve the administration of the important public rights that are currently managed by the CEC in Scotland under the Crown Estate Act 1961.

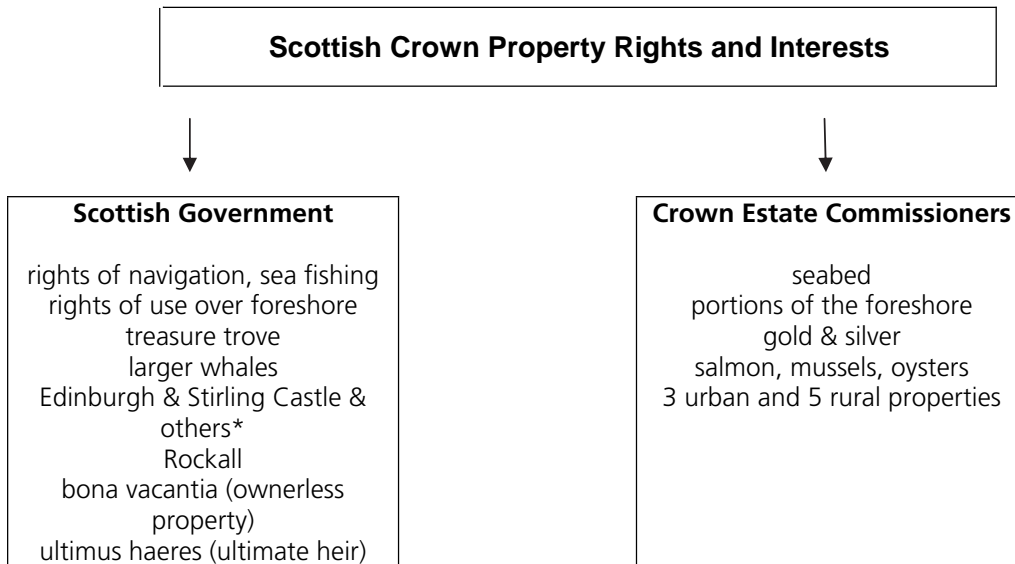
BACKGROUND

4. Crown property rights in Scotland comprise a wide range of property rights and interests (3). The property rights themselves are defined by Scotland’s law of property. They are thus distinct and separate from those of the English Crown. Responsibility for the property rights themselves is devolved and it is within within the competence of the Scottish Parliament to legislate to amend or abolish any of them (4).

5. Scottish Crown property rights are managed and administered by the Scottish Government, with the exception of the rights which make up the “Crown Estate”, which have been administered by the CEC and its predecessors in London since the responsibility was transferred in 1832 (5) (See Fig 1).

Fig 1

ADMINISTRATION OF SCOTTISH CROWN PROPERTY RIGHTS



* title to 26 ancient possessions was transferred from the Crown in Scotland to the Secretary of State for Scotland and subsequently Scottish Ministers in 1999

6. Thus a key question over the future of the property rights that comprise the Crown Estate relates to the logic and desirability of the current distribution of authority over these rights and accountability for their stewardship. In particular, given the extensive powers of the Scottish Parliament over, for example, the management of the marine environment through Marine Scotland in terms of planning and strategic management, does it any longer make sense for the property rights to be administered by a separate body in London? I submit to the Committee that it does not and that the powers of administration that were transferred south in 1832 should return to Scotland. This will mean that the property rights which make up the Crown Estate in Scotland can be administered and managed as part of an integrated and holistic approach to natural resource management and can deliver enhanced public benefits (for example, by providing trust ports and harbours with full control of the seabed within the harbour—something they currently lack).

7. Given the widespread concern there has been over this issue as reflected in the publication in 2007 of the detailed and authoritative report by the Crown Estate Review Working Group (3) and in the report of the Treasury Committee in 2010 (2), it is disappointing to note the extremely timid and frankly rather ridiculous proposal contained in the Bill.

8. The Bill provides a rare opportunity to put the administration of Scotland's Crown property rights on a modern footing consistent with the principles of devolution, subsidiarity, sustainability and local control of resources.

STRENGTHENING SCOTLAND'S FUTURE

9. The White Paper, *Strengthening Scotland's Future* asserts that it is important that "the Crown Estate's work is properly understood in Scotland" (6) Unfortunately, the White Paper itself does little to advance this understanding by itself containing inaccuracies in relation to the nature of the Crown Estate and its administration.

10. The opening sentence "The Crown Estate manages The Queen's hereditary UK property assets which She holds as Monarch including certain properties in Scotland" is, for example, factually incorrect. There is no such body as "The Crown Estate" (there is the CEC which administers the Crown Estate). The Crown Estate is not the Queen's hereditary property assets as Monarch. It belongs to the Crown in Scotland (which is represented by the Monarch). This is not semantics. It means that Crown land is public land which is moreover within the legislative competence of the Scottish Parliament.

11. The Calman Commission recommended that The Secretary of State should, in consultation with Scottish Ministers, more actively exercise his or her powers of direction under the Crown Estate Act 1961 and, having consulted Scottish Ministers, should give consideration to whether such direction is required immediately (recommendation 5.8)

12. It further recommended that the appointment of a Scottish Crown Estate Commissioner should be made following formal consultation with Scottish Ministers (recommendation 5.9).

13. Clause 18 of the Scotland Bill proposes that there be a Scottish Commissioner appointed by the Chancellor of the Exchequer in London. There is no proposal on the question of the power of direction.

ISSUES

The Power of Direction

14. The power of direction exists to enable the Secretary of State for Scotland to direct the CEC over matters in Scotland. There is a serious question as to the wisdom of retaining this power with the Secretary of State who has never used it, has little to do with the day to day governance of Crown rights and has very limited staff capacity to take a view on how such a power should be deployed and to what end over the scale and range of the CEC's operations in Scotland.

15. The Scottish Government, by contrast, is deeply involved in the management of Crown property rights and, through Marine Scotland, has extensive powers over the marine environment. Other agencies such as harbour trusts and Scottish Natural Heritage have similar roles, skills and knowledge.

16. It appears far more sensible for the power of direction to be vested in Scottish Ministers. Such an arrangement would simply return Scotland to where it was prior to the establishment of the CEC in 1956, when the Commissioner of Crown Lands for Scotland was an elected Scottish politician in the person of the Secretary of State for Scotland. Post devolution, however, Scottish Ministers are best placed to discharge this function (as they do, incidentally, with the Forestry Commissioners).

The Scottish Commissioner

17. If the CEC is to continue administering the Crown rights which make up the Crown Estate in Scotland, then adequate representation of Scotland's interests is desirable on the CEC. Clause 18 of the Bill states that Scottish Ministers should be consulted on the person that the Chancellor of the Exchequer proposes to recommend to Her Majesty and that this must be a person "who knows about conditions in Scotland as they relate to the functions of the Commissioners". This is a lamentable and scarcely credible proposal if the intent of the Bill is to "further empower the Scottish Parliament" (7). Moreover, there is no requirement to represent the interests of Scotland or of the Scottish Parliament. It means that the "Scottish Crown Estate Commissioner" (who will be appointed by the Chancellor of the Exchequer) will wield more power over the public lands comprising the Crown lands of Scotland than the democratically-elected First Minister of Scotland and than the Scottish Parliament who have legislative jurisdiction over them.

18. This particular proposal is deeply flawed. If there is to be a "Scottish Commissioner", at least let them be called the "Commissioner for Scotland", provide the post holder with clear statutory duties to represent Scotland's interests, and provide that the post is filled by the First Minister of Scotland.

RECOMMENDATIONS

19. For decades there has been discontent over the unaccountable and distant powers of the CEC over Scotland's Crown lands. A decade into the Scottish Parliament, there is no conceivable logic in continuing with an arrangement that splits the administration of Scotland's Crown rights between two separate bodies in two separate legal jurisdictions. There is nothing to be gained and many opportunities to be lost by having the CEC as a power broker and deal-maker over the development of marine renewable energy, the ability of harbours to plan their future and other matters within the competence of the Scottish Parliament.

20. The sensible thing to do with this anomalous position is to use this historic opportunity to bring the responsibility for the management and revenues of all Scotland's Crown property rights together in one place in Scotland under the full jurisdiction of the Scottish Parliament. Further discussion can then take place about what part of the Scottish Government and/or local government should administer the various rights.

21. The CEC's role in Scotland is both unnecessary and inappropriate. The Crown rights it administers account for only 4% of the value and 6% of the revenue of the estate across the UK. The Scottish Government has the capacity to take over the administration of these rights and thus the simplest, quickest and most straightforward means of achieving this is to remove the CEC from any responsibilities in Scotland.

I recommend therefore that the Committee considers dispensing with the current Clause 18 in the Scotland Bill and replacing it with the following

The Crown Estate Act 1961 is amended as follows. After Section 1(7) insert

“Section 1(8) This Act does not apply to Scotland”

REFERENCES

- (1) *The Poor Had No Lawyers*, Birlinn, Edinburgh 2010
- (2) The management of the Crown Estate, House of Commons Treasury Committee, 2010 HC 325–1. Links to the Treasury Committee Report and Evidence can be found at www.andywightman.com/wordpress/?p=60. The section on Scotland is at pg. 48 of the Report and my own response is at pg. Ev 37 of Volume II
- (3) See *The Crown Estate in Scotland—New Opportunities for Public Benefits*. Report of the Crown Estate Review Working Group, Highland Council, 2007 for a full and detailed analysis of the Crown Estate in Scotland. Available at www.andywightman.com/docs/CERWG-FinalReport12.06.pdf
- (4) Scotland Act 1998, Schedule 5, section 3(1)
- (5) The Crown Estate is not the name of the organisation responsible for administering the Crown Estate though the CEC has unilaterally branded itself as such. Instead, the Crown Estate is defined in Clause 1(1) of the Crown Estate Act 1961 thus, “the property, rights and interests under the management of the Commissioners shall continue to be known as the Crown Estate”. See also footnote 1, pg. 5 of Treasury Committee Report.
- (6) *Strengthening Scotland's Future*, CM 7973, pg. 63.
- (7) *Strengthening Scotland's Future*, CM 7973, pg. 11

January 2011

Written evidence submitted by Professor Iain McLean FBA

1. I am a Professor of Politics at Oxford University. I was a member of the Independent Expert Group on finance (IEG), Calman Commission. The views I express are my own, and are not intended to represent those of the IEG or the Commission. I have published widely in the Committee's area of interest including my book *The Fiscal Crisis of the United Kingdom* (Basingstoke: Palgrave, 2005).

2. Below I comment on the four questions listed in your call for evidence. This is a revised version of my written submission to the Scotland Bill Committee of the Scottish Parliament, where I also gave oral evidence on 11 January 2011 (their *Official Report* for 11 January 2011 beginning at col 135).

3. *Income Tax*. The Bill reserves the balance between the standard and higher rates; access to allowances; and definition of the tax base, to the UK Government. It (and the accompanying White Paper) offer what I regard as quite generous “no detriment” guarantees to the Scottish Parliament.

4. In my view the proposals in the Bill are a “sweet spot” for Scotland, offering more security than would either less or more devolution of tax powers.

5. Former Secretary of State Lord Forsyth of Drumlean has called for the rejection of the Bill and announced that he intends to move in the Lords for a referendum on its tax devolution proposals, (*Scotsman* 28 December 2010). However, rejection of this Bill would set the UK Government free to manipulate the non-statutory Barnett arrangements unilaterally.

6. The Holtham Commission (Independent Commission on Finance and Funding for Wales) has called for the Barnett Formula to be replaced by a needs-based assessment for Wales. Should Parliament reject the Scotland Bill, HM Treasury would be entirely free to impose a needs-based successor to Barnett on Scotland. Based on current data for GVA per head (Office of National Statistics, latest) and public expenditure per head (HM Treasury, Public Expenditure Statistical Analysis, latest), I have calculated that this would result in a reduction in block grant to Scotland of 12% beyond the UK-wide cuts that are coming anyhow.

7. My calculations are to be found in an opinion piece in the *Scottish Perspectives* section of *The Scotsman*, published on 11 January 2011 and included as an Annex to this evidence. I can explain to your Members, or in a supplementary memorandum, how I calculated the figures.

8. Should there be more devolution of tax powers than proposed in the Bill? Devolving the power to change, for example, allowances against Income Tax or the Income Tax base, has been widely discussed in the Scottish media. But it would have two bad consequences. First, it would increase compliance costs on employers, employees, and payroll providers. Second, it would lead to attempts to present well-off taxpayers' affairs so as to maximise tax avoidance.

9. I do, however, think that the Scottish Parliament should have the power to vary some other tax bases, and I deal with this below.

10. *Income Tax on savings income*. This is not now to be assigned, as Calman proposed. I would hope that this issue could be reopened, either via this Bill or via the Joint Ministerial Committee.

11. *Borrowing*. I think that the Scottish Government should be allowed to issue bonds subject to an upper level to be determined, for the four governments of the UK in aggregate, by HM Treasury and the Debt Management Office. The UK Government's arguments against this seem weak to me. The Exchequer Secretary of the Treasury told the Holyrood Scotland Bill Committee on December 14 that there would be "risks to do with confusion in the gilts market." If market players become confused, that is their problem. However, I think that money market professionals are capable of distinguishing between a Scottish local authority, the Scottish Government, and the UK Government.

12. In Canada, the yields and ratings of provincial bond issues provide important signals to all market participants (I provided a table of the then-current rates in my *Fiscal Crisis...*). The same disciplines would apply to Scotland.

13. *Other taxes*. I support the devolution of land transaction and landfill taxes. The IEG and the Calman Commission reasoned that the most appropriate taxes to devolve are taxes on bases that don't move. The shape of (any successor to) Stamp Duty Land Tax interacts with the two disguised land taxes already in the Scottish Parliament's control, namely Council Tax and business rates. The shape of landfill tax is obviously complementary to that of (any successor to) Aggregates Levy.

14. I am not persuaded by the UK Government's reasons for rejecting Calman's other two tax devolution proposals, namely Aggregates Levy and Air Passenger Duty. As Scottish Ministers have correctly pointed out, the litigation which is given as a reason for rejecting the transfer of Aggregates Levy was already in progress when Calman reported. If Scotland is willing to take any revenue risk arising from that litigation, it should be allowed to.

15. Likewise, the fact that the UK government intends to convert air passenger duty into a "per plane" duty argues for, not against, devolving it. The principle of subsidiarity implies that the Scottish Government, not the UK Government, should decide how to tax flights originating at small Highland or island airports. Airports don't move. They are a very suitable devolved tax base.

16. Tax devolution should have at least two good consequences for the devolved jurisdiction: it should be encouraged to broaden the tax base and to grow the devolved economy so as to increase tax yields. Both of these arguments apply to Council Tax and Business Rates, where successive Scottish Governments have not been notable for their tax effort since devolution. All tax experts believe that these two are bad taxes in almost every respect. The Scottish Parliament should be considering how to reform them, in conjunction with designing a successor to SDLT.

17. It follows that the anomaly whereby Council Tax is devolved, but Council Tax Benefit (CTB) is reserved, needs to be addressed in joint ministerial committees. I understand that the UK Government has already started to devolve CTB.

18. Various commentators have discussed the possible devolution of Corporation Tax. That would be a terrible idea. Experience in Northern Ireland between 1920 and 1972⁹ suggests that such devolution would give rise to massive tax avoidance: nowadays largely through firms' transfer pricing practices.

19. VAT is unsuitable for devolution, for multiple reasons: including EU state aid rules, and the undesirability of having huge booze-and-cigarette hyperstores at either Gretna or Carlisle.

⁹ See Richard Perren, "Vestey, William, first Baron Vestey (1859–1940)", *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, May 2008 [http://www.oxforddnb.com/view/article/36647, accessed 31 Dec 2010]. Incorporation in Northern Ireland formed part of the Vestey's tax avoidance strategy, that led George V to protest against the first Baron's Lloyd George-sold peerage.

20. Any proposals for new taxes under the powers proposed in the Bill should consider how immobile the suggested tax base is.

21. *Views on alternative proposals.* The Scottish Government has declined to put forward specific proposals of its own (see oral evidence from John Swinney MSP, Finance Secretary, to the Scotland Bill Committee on 21 December 2010: their *Official Report* for that date starting at col. 77). Instead, it has adopted the proposals in a paper by Professors Andrew Hughes Hallett and Drew Scott (hereinafter, with my apologies to them, HHS) that has been extensively discussed, especially since their evidence to the Scotland Bill Committee on 11 January 2011.

22. I am working from a version of their paper *Scotland: a New Fiscal Settlement*, dated 3 June 2010. Other commentators may have access to different versions. So far as I know, the paper has not been submitted to—or at least, has not been published in—a peer-reviewed journal.

23. In the HHS proposals, all taxes raised in Scotland would be fully devolved (with control of tax bases and allowances, as well as rates, being devolved to the Scottish Parliament), except VAT which cannot be devolved within an EU Member State. Scotland would remit an agreed amount (they propose that it would come out of the share of UK VAT revenue raised in Scotland) to pay for UK-level services. Otherwise, Scotland would be responsible for both taxing and spending. Equalisation would be overseen by a Central Grants Commission modelled on the Australian Commonwealth Grants Commission, although I am not clear what their proposed Commission would have to do.

24. In their model, UK-level services include defence and foreign policy; presumably debt interest repayment; and state pensions. Scotland-level services would include the rest of public spending, including the whole of social protection other than state pensions.

25. As HHS rightly said in their Holyrood evidence on 11 January, they cannot be held responsible for the use the Scottish Government has made of their paper. The First Minister has claimed, in a party speech, that tax devolution, in and of itself, could lead to 1% per annum growth for five years in Scottish GDP per head. If Members wish to query that claim, which is not supported by anything that HHS say, they should interrogate the First Minister, not my professorial colleagues.

26. Their claim is more modest. It is that “a 1% point increase in fiscal devolution ...generates additions of between 0.16% and 0.32% to growth rates... [T]aking a mid-point estimate of 0.25%, this means that a 1% increase in fiscal devolution might be expected [to] raise GSP by 1.3% after five years” (HHS, *Scotland: a New Fiscal Settlement* ch. 6).

27. I do not understand how this claim is derived. Questioning by members of the Scotland Bill Committee established that none of the sources explicitly cited in HHS’s paper makes it (Holyrood *Official Report*, 11 January 2011, cols 157–60).

28. It has been suggested that the claim derives from a single paper by two Japanese economists: Akai, N. and M. Sakata (2002). “Fiscal Decentralization Contributes to Economic Growth: Evidence from State-level Cross Section Data for the United States”, *Journal of Urban Economics* 52, 93–108.

29. Because the matter remains highly controversial, I have read this paper and make the following comments:

- (a) It is a cross-sectional study of the degree of autonomy that the 50 US States accord to their local governments, not of the degree of autonomy that the US or other federal governments accord to their states and provinces. This is done for sound methodological reasons, but the situation it discusses is not strictly analogous to that in the Scotland Bill.
- (b) It tries out numerous multiple regressions to see whether the postulated relationship holds across many different ways of specifying the variables of interest. Only some ways of expressing it give a statistically significant result. This technique is derided by some statisticians as a “fishing expedition”.
- (c) Fishing expeditions are not inherently wrong, but HHS catch only those fish that display statistically significant results. This is a biased selection technique.
- (d) Nothing in the Akai/Sakata paper warrants the procedure of taking an average annual effect and multiplying it by five to get a five-year estimate.

30. The theoretical literature on fiscal federalism has for decades predicted the effect that HHS postulate. But finding it has turned out to be like hunting the snark (or the Higgs boson). I would not advise your Committee to oppose the Calman proposals on the basis of this evidence.

31. HHS, and Scottish Ministers, have a second criticism of the Calman proposals embodied in the Scotland Bill: that Calman is more risky” than the full fiscal autonomy that they propose (HHS Executive Summary, second page).

32. I cannot understand these claims. Tax receipts in general depend on economic activity and are therefore highly correlated with one another. The more taxes are devolved, the *more* Scotland is exposed to fiscal risk.

33. The big-ticket taxes that HHS propose to devolve, apart from Corporation Tax, are National Insurance contributions and natural resources taxes (essentially Scotland’s share of North Sea oil taxation).

34. National Insurance receipts essentially vary with Income Tax receipts. Any volatility that arises from the latter is necessarily magnified if the former are also devolved.

35. The IEG discussed possible devolution of natural resource taxation in its report *Natural Resource Taxation and Scottish Devolution*, available at <http://www.commissiononscottishdevolution.org.uk/uploads/2009-06-06-ieg-natural-resource-taxation-1.pdf>.

36. The IEG report concluded at 10.4 that assignment of North Sea Oil revenue to Scotland “would expose the Scottish Parliament to significant revenue variations, given the inherent volatility of oil and gas taxation revenues. Oil and gas taxation revenues from the UKCS will also diminish over time given the finite nature of the resource”.

37. HHS do not mention this conclusion. If valid, it is sufficient to contradict their, and Scottish Ministers’, assertion that the regime in the current Bill is “more risky” than the regime they propose.

January 2011

Written evidence submitted by The Scotland Office

The Scotland Office has lead responsibility for the Scotland Bill within HMG and welcomes this opportunity to contribute to the Scottish Affairs Committee Inquiry into the Scotland Bill.

The Scotland Bill delivers the Coalition Government commitment to implement the recommendations of the Commission on Scottish Devolution’s report *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*. This reflects the Government’s determination to ensure that the Scottish Parliament is further empowered to meet the needs of Scotland and that it is properly accountable to the Scottish people.

The Scotland Bill provides the legislative vehicle for taking forward those recommendations that need primary legislation. The Bill will devolve power to the Scottish Parliament and Scottish Ministers across a number of policy areas. Of these, the most significant are the proposals to devolve a number of tax powers and to increase the financial accountability of the Scottish Parliament. This will give the Scottish Parliament and the Scottish Government greater scope to make policy decisions that reflect the needs of Scotland’s economy and the will of Scotland’s citizens.

The proposals in the Bill fall into four key areas:

- Improving the financial accountability of the Scottish Parliament;
- Re-balancing the boundaries between devolved and reserved policy matters;
- Improving the operation of the Scottish Parliament; and

Amending technical elements of the Scotland Act 1998.

Whilst the Scotland Bill takes forward the Commission’s recommendations that require legislation, there are various recommendations that do not require changes to the law. A Command Paper: “Strengthening Scotland’s Future” was published with the Bill, setting out how the whole package is being implemented.

This briefing note summarises the changes included in the Bill and Command Paper.

BACKGROUND

The Commission on Scottish Devolution was established in 2008 to review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom.

The Commission was established by the Scottish Parliament and was fully supported by the previous UK Government and the UK-wide parties. In June 2009, the Commission published their final report on the experience of ten years of the operation of the Scottish devolution settlement. The Commission’s consensus was clear: the devolution settlement created for Scotland in 1998 is fundamentally sound but should be strengthened, and in particular the financial accountability of the Scottish Parliament should be improved.

FINANCIAL ACCOUNTABILITY

The Commission concluded that devolution had established a Parliament that could be held to account for spending choices, but which lacked accountability for raising revenue. It proposed a reduction in block grant funding from the UK Government to Scotland, in exchange for power for the Scottish Parliament to raise its own taxes. The Bill implements the recommendations and creates a new Scottish rate of income tax. This will apply alongside existing UK-wide income tax. In Scotland, the lower, higher and top rates of income tax will be reduced by 10p. The Scottish Parliament will then make a tax decision to levy an additional rate, which can either match rates elsewhere in the UK, or go higher, or lower. This will replace the Scottish Parliament’s existing power to vary income tax in Scotland by 3p, up or down.

In line with the Commission's recommendations, the finance changes will be introduced carefully with transitional arrangements in place to ensure there is no windfall gain or adverse shock to the Scottish budget. This new tax-raising power will be in place in 2016, in time for the Scottish Parliament elected in 2015 to take the first tax decision. The Commission also recommended devolving a number of smaller taxes, two of which are included in the Bill: stamp duty land tax and landfill tax. The Government is not, at this time devolving two additional smaller taxes recommended by the Commission: Air Passenger Duty (APD) and Aggregates Levy. The former because of a separate Coalition commitment to replace APD with a per plane duty; the latter because of ongoing EU litigation on the basis of the tax. We will consider an appropriate response to the Aggregates Levy recommendation after the litigation has concluded and to the APD recommendation once the Government has determined the future of aviation duty. The Bill also enables the Scottish Government to borrow, with the agreement of the UK Government, for capital and current expenditure, subject to Treasury controls and limits. This will enable the Scottish Government to have greater choice over how and when to invest in projects that will benefit future generations. The Scottish Parliament will also be able to introduce new taxes applicable only to Scotland, subject to the agreement of the UK Parliament.

Annex A provides the Committee with a copy of a note modelling the potential impact on the Scottish budget of the income tax measures. This note was originally provided to the Legislative Consent Memorandum Committee in the Scottish Parliament.

ADJUSTING THE BALANCE OF DEVOLVED AND RESERVED POLICY MATTERS

The Commission concluded that the division of responsibilities in the Scotland Act 1998 had been carefully considered and worked well in practice. The Commission concentrated its efforts on specific areas where there appeared to be problems or pressure for change. In doing this the Commission identified a number of instances where matters should be devolved and other areas that would be better dealt with at a UK level.

Through the Bill, various new powers will be devolved to the Scottish Parliament or Scottish Ministers:

- **Regulation of air weapons:** The Bill creates a specific exception to the reservation of firearms for the regulation of air weapons;
- **Administration of elections:** The Bill gives Scottish Ministers, rather than the Secretary of State, the ability to exercise powers in section 12(1)(a) and (b) of the current Scotland Act;
- **Licensing power in relation to misuse of drugs:** The Bill gives Scottish Ministers the power to determine which doctors in Scotland may be licensed to prescribe or administer specific drugs in the treatment of addiction;
- **Role in appointment process for BBC Trust member for Scotland:** The Bill requires that although UK Ministers will retain oversight of the appointment process, no decisions will be made in the process without the agreement of the Scottish Ministers;
- **Role in the appointments process for the Scottish Crown Estate Commissioner:** The Bill sets out a requirement that there be a Crown Estate Commissioner who has particular knowledge of Scotland. Scottish Ministers must be consulted on the appointment of this Commissioner;
- **Power to set the drink-drive limit:** The Bill gives Scottish Ministers the power to make regulations in Scotland relating to the alcohol limit which applies to certain drink driving offences; and
- **Power to set the national speed limit:** The Bill gives Scottish Ministers the ability to set what is commonly known as the "national speed limit" and to create an appropriate new sign.

The Commission deemed that certain powers would be best dealt with at a UK level, and the Bill will implement this for the following areas:

- **Regulation of health professionals:** The Bill requires that the regulation of all health professions be reserved; and
- **Corporate Insolvency:** The Bill requires that the winding up of business associations be reserved in their entirety.

IMPROVING THE OPERATION OF THE SCOTTISH PARLIAMENT

The Commission recommended measures to strengthen the working of the Scottish Parliament, and the Government is taking forward those that need UK legislation in the Scotland Bill. The Scotland Act 1998 has, over the last 10 years, provided a solid framework for the Scottish Parliament to operate in. However, as has been recognised by the Parliament itself, and the Commission, the arrangements should be amended to provide Holyrood with powers and responsibilities to enable it to shape more of its processes and procedures. The following provisions have all be discussed in detail and agreed with the Scottish Parliament's Standards, Procedures and Public Appointments Committee.

- **Members' Interests:** The Scottish Parliament will be able to sanction members in whatever way it sees fit. Offences under the new Members' interest regime will continue to be a criminal offence;
- **Statements of legislative competence:** The Bill will ensure that any person introducing a Bill must make a statement outlining whether or not it is within the competence of the Scottish Parliament;

- **Presiding Officers:** The appointment of the Presiding Officer must be made within 14 days of the Parliament being convened. The Bill will also provide for the appointment of additional Deputy Presiding Officers; and
- **Scottish Parliament Corporate Body (SPCB):** The SPCB shall comprise the Presiding Officer and *at least* four members to ensure that should there be a change in the political composition of Holyrood, other political parties can be represented on the SPCB.

AMENDING TECHNICAL ELEMENTS OF THE SCOTLAND ACT 1998

The Government is taking the opportunity provided by the Scotland Bill to make further technical updates to the Scotland Act 1998.

The Government will: change the official name of the Scottish administration from “Scottish Executive” to “Scottish Government”; amend the powers of the Scottish Parliament to set time-limits for human rights action against Scottish Ministers in UK statute; confirm the reservation of the Antarctic; ensure that the criminal penalties that apply in Scotland Act 1998 are updated to reflect the current standards applied in Scottish courts; ensure that international obligations can be implemented at the UK level if necessary; and enable scrutiny of Bills by the Supreme Court to be amended to allow single provisions to be identified for consideration, as opposed to whole Bills only.

The Government has also signalled its intention to table an amendment to the Scotland Bill to implement the recommendations of the Advocate General’s Expert Group on devolution issues and acts of the Lord Advocate. The amendment recognises the unique position of the Lord Advocate among Scottish Ministers as being both a Scottish Minister and an independent head of the system of criminal prosecutions and investigation of deaths in Scotland. The Lord Advocate will become subject to a regime that is the same as all other prosecutors in the United Kingdom in relation to the latter role.

CROSS-PARTY CONSENSUS AND THE SCOTTISH GOVERNMENT

The Commission was established by cross-party consensus in the Scottish Parliament and this continues both at Westminster and Holyrood through a cross-party, cross-parliament Steering Group. In May 2011 elections to the Scottish Parliament will be held.

Demonstration that the UK Government is serious in its commitment to implement the recommendations ahead of the 2011 election campaign is a vital contribution to the maintenance of the United Kingdom. Under the terms of the Sewel Convention the UK Government has committed not to legislate in the UK Parliament on devolved matters without the consent of the Scottish Parliament. As a result of the consensus amongst Conservative, Liberal Democrat and Labour parties in Holyrood, we hope to receive majority support from the Parliament.

Annex A

PROVISIONS INCLUDED IN THE SCOTLAND BILL

IMPROVING THE FINANCIAL ACCOUNTABILITY OF THE SCOTTISH PARLIAMENT

Creation of a Scottish rate of Income Tax

The Bill includes provisions to repeal the Scottish Variable Rate of income tax. In its place the Bill includes power for the Scottish Parliament to put in place a Scottish rate of Income Tax. The tax will be created by reducing the existing rates of Income Tax by 10 pence and allowing the Scottish Parliament to determine an amount to add on to each of the lower, higher and top rates of tax.

Devolution of two smaller taxes: Stamp Duty Land tax and Landfill tax

The Bill provides for the devolution of Stamp Duty Land tax and Landfill tax by carving Scotland out of the existing taxes which apply across the UK, and giving the Scottish Parliament the competence to create their own taxes on land transactions and disposals to landfill.

Borrowing powers

The Bill gives the Scottish Government extended powers to borrow both for resource and capital.

Alterations to HMRC framework to ensure that HMRC can collect the Scottish Income Tax

The Bill ensures that HMRC legislation allows HMRC to act on behalf of the Scottish Parliament to collect taxes.

RE-BALANCING THE BOUNDARIES BETWEEN DEVOLVED AND RESERVED POLICY MATTERS

Power to regulate air weapons

The Bill amends the reservation of firearms at B4 of Schedule 5 to the Scotland Act to create a specific exception to the reservation for the regulation of air weapons in order to give the Scottish Parliament legislative competence in this area. We will create an exception to the reservation at s. B4 for the regulation of air weapons which do not fall within s.5(1) of the Firearms Act 1968 and which is not of a type declared by rules made by the Secretary of State under s.53 of that Act to be specially dangerous.

Administration of elections

The Bill enables Scottish Ministers, rather than the Secretary of State, to be able to exercise powers in section 12(1)(a) and (b) of the current Scotland Act. However, there are particular elements of the conduct of elections which continue to be the responsibility of the Secretary of State and so should be carved-out of the power which is conferred on the Scottish Ministers, these include: the franchise and the combining of Scottish Parliament polls with polls at other reserved elections.

Licensing power in relation to misuse of drugs

The Bill transfers to the Scottish Ministers the very specific function of determining which doctors in Scotland may be licensed, and then issuing licences, under regulations made under section 10(2)(i) of Misuse of Drugs Act 1971. The issuing of licences applies to cocaine, diamorphine, dipipanone, their salts, or preparations containing them or their salts. Scottish Ministers will have responsibility for deciding which doctors in Scotland can administer these drugs for the treatment of drug addiction.

Role in appointment process for BBC Trust member for Scotland

The Bill provides for UK Ministers to act jointly with the Scottish Ministers in deciding who should be recommended for appointment as the BBC Trust member for Scotland. This will include all of the steps in the appointment process—deciding selection criteria and advertising; shortlisting for interview; interviewing and deciding on a preferred candidate. UK Ministers will retain oversight of the process, in the sense that they will manage it on a day to day basis. However, no decisions will be made in the process without the agreement of the Scottish Ministers. The final recommendation will then be communicated to Her Majesty by the Prime Minister.

Role in the appointments process for the Scottish Crown Estate Commissioner

The Bill amends the Crown Estate Act 1961 to require that there be a Crown Estate Commissioner who has particular knowledge of Scotland. The Crown Estate Commissioners are appointed by the Queen following recommendations by the Treasury. The Treasury will be required to consult the Scottish Ministers in relation to any recommendation for the appointment of a Scottish Crown Estate Commissioner.

Power to set drink-drive limits

The Bill transfers from the Secretary of State to the Scottish Ministers the power to make regulations in Scotland relating to alcohol limit which applies to certain drink driving offences. In terms of legislative competence, this area is to remain reserved to the Westminster Parliament. The effect of this will be that the Scottish Ministers can alter the prescribed limit which applies when driving in Scotland.

Power to set national speed limits

The Bill includes a power to enable Scottish Ministers to exercise powers currently held by the Secretary of State to set what is commonly known as the “national speed limit” and which are contained within sections 17 and 88 of the Road Traffic Regulation Act 1984, in or as regards Scotland. The Bill also includes a power for Scottish Ministers to regulate the size, colour and type of traffic sign to indicate any “national speed limit” set using the powers described above. The Secretary of State will retain an oversight role for any new sign to ensure that it is compliant with requirements set down in Highway Code and Road Traffic legislation.

Regulation of health professionals

The Bill amends the reservation at section G2 of Schedule 5 to the Scotland Act to achieve the policy intention of reserving the regulation of all health professions without exception and not just those currently regulated by the enactments listed in the interpretation section of G2.

Insolvency

The Bill amends the C2 reservation in order to reserve the winding up of business associations in its entirety. The Bill will also include some amendments to the Insolvency Act to harmonise procedure in Scotland with reforms which have recently been made in England and Wales by Legislative Reform Order.

IMPROVING THE OPERATION OF THE SCOTTISH PARLIAMENT

Members' Interests

The Bill enables the Scottish Parliament to be able to set its own Members' Interests regime. Until such time as an Act of the Scottish Parliament is brought forward, the current regime as provided for under the current s39 will continue, and any complaints made under the old regime (once the new regime is in place) will continue to be heard under that regime. The Scottish Parliament will be able to sanction members in whatever way it sees fit and provide for a means of reasonable excuse to a complaint made under the new regime. Offences under the new Members' Interest regime will continue to be a criminal offence and any person found guilty can be fined, not exceeding level 5 on the standard scale.

Statements of legislative competence

The Bill ensures that any person introducing a Bill must make a statement under s31 of the Scotland Act as to whether the Parliament has the competence to deal with the legislation. At present this obligation is only imposed on Scottish Ministers.

Presiding Officers

The Bill ensures that the appointment of the Presiding Officer is the first substantive piece of business that the Parliament considers, and that this appointment must be made within 14 days of the Parliament being convened. This provides time for a new Government to be formed should there be tight parliamentary arithmetic following a close election where no single party wants to effectively lose a member to be Presiding Officer.

The Bill also provides for the appointment of additional Deputy Presiding Officers who will be able to act when either the Presiding Officer or the two Deputy Presiding Officers are unable to carry out their duties.

Scottish Parliament Corporate Body (SPCB)

The SPCB currently comprises the Presiding Officer and four other members, reflecting the four major parties represented at Holyrood. The Bill makes a minor amendment to the composition of the SPCB to provide that it shall comprise the Presiding Officer and *at least* four members to ensure that should there be a change in the political composition of Holyrood, other political parties can be represented on the SPCB.

AMENDING TECHNICAL ELEMENTS OF THE SCOTLAND ACT 1998

Formal acceptance of the term "Scottish Government" in legislation

The Scottish Executive is the technical term for the First Minister, Ministers of the devolved administration in Scotland and the Lord Advocate. For many years the term "Scottish Government" has been used in Scotland and in 2007 the Devolved Administration re-named itself as such the Scotland Bill formally recognises the term "Scottish Government".

Setting out time-limits for human rights action against Scottish Ministers in UK statute

As a result of the *Somerville* case a section 30 order gave the Scottish Parliament legislative competence to introduce a time limit in the Scotland Act equivalent to that in the Human Rights Act. At the time that the section 30 order was agreed, it was recognised that this was simply a pragmatic solution to avoid further delay, and that it was in fact more appropriate for any significant amendments to the Scotland Act to be made through primary legislation at Westminster. The Scotland Bill makes this amendment in UK statute and re-reserve the power.

Confirming the reservation of the Antarctic

The Government considered proposals to bring forward an Antarctic Bill at the start of the session. During this consideration it became clear that the regulation of activities in Antarctica were not reserved under the Scotland Act 1998. The Bill includes provision to amend Schedule 5 of the 1998 Act to reserve retrospectively the regulation of activities in Antarctica. This would result in retrospectively validating any legislative and executive acts of the UK Government in relation to Antarctica in so far as they made provision for Scotland since devolution and also take the regulation of activities in the Antarctic outside the legislative competence of the Scottish Parliament altogether.

Ensuring that the criminal penalties that apply in Scotland Act are updated to reflect the current standards applied in Scottish courts

The Scotland Act contains extensive powers to make subordinate legislation (eg section 104 orders which make provision in consequence of Acts of the Scottish Parliament, usually filling in gaps in reserved areas). There are general restrictions which apply to how those powers can be exercised, including a maximum limit on the criminal sentences that can be created of a maximum three months imprisonment or a level five fine on summary conviction and two years imprisonment on conviction on indictment. These penalties have become

out of sync with recent Scottish summary justice reforms made by the Scottish Parliament the Scotland Bill ensures that the penalties match existing Scottish legislation.

Ensuring that if the UK Government can implement international obligations in place of the Scottish Government to ensure compliance

The Scottish Ministers are responsible for implementing Community law and international obligations in relation to devolved areas in Scotland. The UK Ministers generally cannot act where a function has been transferred to the Scottish Ministers. The Scotland Bill amends this rule to allow UK Ministers to implement international obligations on a UK basis where it would be more convenient to take action on a UK basis rather than separately.

Enabling scrutiny of Bills by the Supreme Court to be amended to allow single provisions to be identified for consideration, as opposed to whole Bills only

The UK and Scottish Law Officers have a power in the current Scotland Act to refer the question of whether a Scottish Parliament Bill is within legislative competence to the Supreme Court. At present only a full Bill can be referred. The Bill enables part of a Bill to be sent for review, without affecting the remainder of the Bill.

TECHNICAL CHANGES TO SCHEDULE 1

References to the Electoral Commission

The Scottish Parliament (Constituencies) Act 2004 replaced Schedule 1 to the Scotland Act so that it contained references to the Electoral Commission rather than the Boundary Commission. As a result of previous legislation this is now incorrect and the Bill amends Schedule 1 to ensure that the text reflects the current position and is more transparent and less confusing to the reader.

Orders giving effect to Boundary Commission recommendations: Schedule 1, para 6

Paragraph 6(1) of Schedule 1 to the 1998 Act provides that the draft Order in Council laid before Parliament by the Secretary of State for giving effect to the recommendations contained in the report by the Boundary Commission for Scotland may make provision for any matters which he thinks are incidental to or consequential on the recommendations. The Scotland Bill amends the power at paragraph 6(1) to state explicitly that the power can be exercised to make modifications of the 1998 Act itself.

Constituency rules and references to local government areas: Schedule 1, para 12

The constituency rules govern how constituency boundaries are to be reviewed. Rule 1(1) provides that so far as practicable, regard must be had to the boundaries of local authority areas, which are defined as having the same meaning as in the Local Government (Scotland) Act 1973. The Scotland Bill updates this reference to the definitions set down in the later 1998 Act.

February 2011

Written evidence submitted by Alan Trench

1. This memorandum is submitted by Alan Trench to the Scottish Affairs Committee for its inquiry into the Scotland Bill (Bill 115) currently before Parliament. I am an honorary senior research fellow at the Constitution Unit at University College London, and was formerly research fellow in the School of Law at the University of Edinburgh. I have written widely on various aspects of devolution in the United Kingdom, including intergovernmental relations and devolution finance, and also have experience of how decentralised and federal systems work in a number of other countries around the world, including particularly Australia, Canada, Germany and Switzerland. I have acted as specialist adviser on devolution to the House of Lords Constitution Committee and the Lords Select Committee on the Barnett Formula (which reported in July 2009), and am currently specialist adviser to the House of Commons Welsh Affairs Committee. I am also author of a blog "Devolution Matters", on which many posts deal with issues relating to implementation of the Calman Commission's recommendations.¹⁰

2. Overall, I consider the proposals set out in the bill and the accompanying Command paper *Strengthening Scotland's Future*, Cm 7973, to be a very considerable improvement on those set out by the previous UK Government in *Scotland's Future in the United Kingdom*, Cm 7738. In particular, the proposal to use real tax revenues not Treasury estimates or forecasts (after a necessary transition phase) is wholly to be welcomed. However, a number of the bill's proposals present serious technical and financial problems, which mean that the most they can be given is a cautious welcome. In particular, that welcome is dependent on seeing them as steps toward the formulation of a more effective system, rather than an end point in themselves; in my view, the bill will not succeed in creating a stable or durable basis for Scottish devolution as it stands.

¹⁰ These can be found at <http://devolutionmatters.wordpress.com/category/calman-commission/>

3. The problems I would identify with the proposals set out in the Scotland bill relate principally to its institutional arrangements; the extent to which it succeeds in creating a realm in which there is meaningful devolved fiscal autonomy; and the failure to address issues relating to the block grant. I also have concerns about the proposals relating to borrowing powers, and about some of its constitutional provisions. These relate both to issues raised in the Calman Commission's report but which do not appear in the bill or Command paper, and ones which were not part of the Commission's recommendations but which are proposed in the bill.

INSTITUTIONAL ARRANGEMENTS

4. As regards institutions, the system proposed in the Command paper uses the Office of Budgetary Responsibility to carry out estimates of Scottish tax revenues and economic performance, with income tax revenues to be collected and administered by HM Revenue & Customs (HMRC), and an "Intergovernmental Bilateral Committee on Fiscal Devolution" to be created as a forum to discuss shared UK-Scottish interests in fiscal and economic policy. In addition, it is proposed to use the National Audit Office to audit the amounts of tax revenue payable to the Scottish Consolidated Fund.

5. Each of these measures presents problems. The Command paper emphasises that the Office of Budgetary Responsibility is independent, and by implication able to play such an important role impartially. Its independence has of course been widely questioned, and even if it is independent in relation to HM Treasury it cannot be said to be impartial in relation to the Scottish Government as it is part of the UK Government. There is no direct involvement for the Scottish Government in relation to tax collection—it will not have, for example, the right to appoint a member of the Board of HMRC. It is offered, rather, a "clear line of sight" (the meaning of which is not clear) to HMRC, supported at a political level by the Intergovernmental Bilateral Committee. The role of the National Audit Office (NAO) is welcome, but it is not for the UK Government to confer functions on it as it is accountable to the House of Commons, and strictly speaking its staff are officers of Parliament not civil servants. Moreover, it may be appropriate for Audit Scotland to be involved in the task of auditing Scottish tax receipts as well as NAO.

6. A better approach would be to review the role of HMRC. Its role should clearly be to serve both UK and Scottish Governments, if it is to collect taxes payable to both bodies. That should include appointment by the Scottish Government of at least one member of its board. Moreover, there should be accountability to the Scottish Parliament for both HMRC and the Department of Work & Pensions (DWP), to the extent that DWP has a role in tax collection or administration in Scotland. (The working of tax credits means that such a role is substantial.) That accountability should have a statutory basis, and the bill should therefore be amended to create a basis for it.

7. The Command paper avoids setting out the way that issues of UK-level tax policy affecting devolved taxes will be handled. These could be significant; changes in allowances and reliefs, in the rates of tax and in the tax banding structure, will affect the overall revenue from the devolved tax powers. When the UK Government makes such changes, there will be an obvious issue of working out how to compensate Scotland for the revenue foregone as a result, in accordance with the "no detriment" principle stated in the Command paper. But, in addition to that, there needs to be some mechanism for the Scottish Government to be involved actively and at an early stage in such decisions.

8. These need to go beyond the existing arrangements for intergovernmental relations, whose shortcomings are well known.¹¹ In this respect little has changed since the present UK Government came to office, and in some respects this has got worse—not least because of the abolition of the post of Director-General for Devolution in the reformed Cabinet Office structure. The importance of such issues means they cannot be left to the rather haphazard working of intergovernmental relations as that presently operates. The Command paper's proposals create the risk that either the Scottish Government will be consulted only at a relatively late stage (through the Intergovernmental Bilateral Committee), or simply informed of them as a *fait accompli* (as presently often happens with changes to the block grant), which will limit the extent to which the Government becomes genuinely accountable. Achieving such early consultation requires both a fundamental difference of outlook and approach from HM Treasury and HMRC, and institutional mechanisms to ensure that this manifests itself. I am not convinced that the proposals in the bill and Command paper will be sufficient to do so.

THE EXTENT OF DEVOLVED FISCAL AUTONOMY

9. I should clarify what I mean when I refer to "creating a realm of meaningful devolved fiscal autonomy". In systems of finance in federal systems, it is common for taxing powers to be divided between two or more levels of government, and for some of those tax bases to be shared. This does not, in itself, mean that each government is subject to constraints imposed by the other in how it uses that power. Such power also does not

¹¹ See House of Commons Justice Committee *Devolution: A Decade On* Fifth Report of Session 2008–09, HC 529 (London: The Stationery Office, 2009); the House of Commons Welsh Affairs Committee's report *Wales and Whitehall* Eleventh Report of Session 2009–10, HC 246, (London: The Stationery Office, 2010). My own views are largely set out in A. Trench (ed.) *Devolution and Power in the United Kingdom* (Manchester: Manchester University Press, 2007), and more recently in posts on the "Devolution Matters" blog: see <http://devolutionmatters.wordpress.com/category/intergovernmental-relations/>

depend simply on the number of taxes devolved or the limitations on the amount of revenue those taxes may generate. Rather, the question concerns the extent to which the Scottish Government and Parliament may autonomously make decisions in relation to devolved tax matters. The principle at issue here is of genuinely ensuring devolved control over tax functions that are nominally devolved. From the point of view of securing real fiscal accountability, this is essential; unless one level of government is clearly responsible for decisions taken in relation to devolved tax “room”, it cannot be fully accountable for those decisions. Where responsibility for a decision is shared, accountability also becomes blurred and, among other things, there is a serious risk of blame-shifting.

10. The system proposed in the Scotland Bill and Command paper fails to do this adequately. There are a large number of areas where UK Government decisions will affect devolved fiscal decisions or revenues. These include allowances, reliefs and tax rates and bands, as noted above. This is not an absolute constraint, and there are sound practical reasons to ensure a degree of UK-wide commonality on such matters, particularly if there is to be a single agency responsible for the collection and administration of all taxes. However, such arrangements should be resolved by negotiation and agreement, in which HMRC would act impartially as the agent of both UK and Scottish Governments, rather than unilateral determination by one tier of government.

11. The constraint on progressivity is another significant factor here, and in my view the approach taken by the Holtham Commission here (to allow the devolved administration to choose how many percentage points of tax to charge on each UK tax band, subject to a limit of a three point variation from the UK level) is preferable.¹²

12. Another is the question of the limited (and pro-cyclical) nature of the tax base that will be available to the Parliament. This is appreciably narrower than that recommended by the Calman Commission, as a share of income tax on savings and dividends has been omitted, for no very good reason, as well as the aggregates levy and air passenger duty. As important as the revenue that a particular element of the tax base might generate is the interest it creates in increasing the size of that base (whether by fiscal or other policy levers). It would be desirable to increase the size of that base, in two respects. One would be the restoration of the share of savings and investment income. The other would be at least partial devolution of excise duties on alcohol, tobacco and gambling. (By “partial devolution”, I mean a splitting of the tax base so that both UK and Scottish tiers levy charges on this, as has been done for income tax.) The ability to set differing amounts of such “sin taxes” would enable the Parliament to decide how to address serious social problems, as well as raise revenues from them. (Debates about minimum pricing for alcohol in Scotland illustrate the point well.) While the Calman Commission considered and rejected the devolution of these taxes, its reasoning on this point was based in concern about tax competition and spill-over that can be managed in other ways, especially if such taxes are partially not wholly devolved.

13. A further option for further fiscal devolution would be capital gains tax in relation to land and real property (not shares or other intangibles). This would be consistent with the principle that taxes relating to land should be devolved.

14. In the longer term, a much further-reaching redesign of the UK’s tax system may be called for, clarifying the relationship between UK-level taxes and functions, and devolved ones. This is an area on which I hope to be able to carry out further work in due course.

15. The system proposed in the bill would create a system substantially less under devolved control than the taxing powers of provinces in Canada, cantons in Switzerland or states in the USA. In such countries, the lower level of government raises 60–70% of its total spending from its own tax base, rather than the 30–35% contemplated here. It would create greater autonomy than enjoyed by German *Länder* or the regions and communities in Belgium (where reform of federal finance to create a measure of fiscal autonomy has been central to the inability to establish a federal government since the June 2010 elections). In Australia, the states raise about 55% of their spending, but given how the system of equalisation works there it is debatable whether what is proposed in this bill is greater than the effective fiscal autonomy of Australian states.

MECHANISMS FOR GRANT REDUCTION, AND THE BLOCK GRANT MORE GENERALLY

16. It is a matter for considerable regret that the Command paper leaves the question of how the reduction from the block grant to allow for the new tax powers to be resolved later on, despite the importance of this issue to the working of the proposed arrangements. In my view the failure to set out a proposed mechanism for this is a grave failing on the part of the advocates of the bill and Command paper, as its effect is simply unknowable at this stage. This is hugely disappointing, given that the UK Government has had 18 months to decide how to respond to the Calman Commission’s recommendations. Moreover, the reason given for this (the uncertain state of the public finances at the present time) is unconvincing—future public finances are always unpredictable. For my part, I can do little more than point to the careful and thoughtful discussion of this issue in the report of the Holtham Commission in Wales; the same principles apply to Scotland as to Wales.¹³

¹² Independent Commission on Funding and Finance for Wales, *Final Report: Fairness and Accountability—A New Funding Settlement for Wales* (Cardiff, Welsh Assembly Government, 2010), particularly chapter 6.

¹³ Independent Commission on Funding and Finance for Wales Final Report op cit, especially chapter 5 and Annex 8.

17. Equally regrettable is the refusal of the UK Government to take on wider issues of reviewing the working of the block grant. The problems of the present arrangements are very considerable, and increasing. Quite apart from issues of the extent to which the present arrangement delivers UK-wide equity, a block grant which depends on allocating to the devolved governments proportional shares of changes in spending in England on “comparable functions” implicitly ties devolved public services to those in England. It is consequently hard for the devolved parts of the UK to strike out in substantially different directions in public policy.

18. Funding of higher education is a good example of this—the adoption of deferred variable fees in England increased the resources available to universities in England and Wales, without triggering increased funding for Scotland through the block grant. Scotland’s choices have been to fund universities out of its block grant (and cut other areas of spending), allow higher education funding to decline (and so let its universities fall behind England), or to follow the English lead. It has chosen the first of those, but found it hard to sustain the level of funding necessary.¹⁴ That problem will only become worse with the changes recently proposed by the UK Government following the Browne Review and Spending Review, involving a severe cut in the teaching grant to universities in England (which will be passed through the Barnett arrangements) as well as increased funding for universities through higher tuition fees (which will not).

19. Creating a block grant that makes Scottish public services less dependent on those provided in England is far from straightforward, but it would be possible to improve the present arrangements, and to do so at little or no cost to the UK Exchequer. The Lords Select Committee on the Barnett Formula (which I advised) made a number of suggestions about institutional structures to redress this issue, which may be of use.¹⁵

BORROWING POWERS

20. Two approaches to the question of borrowing powers are possible: direct borrowing by the Scottish Government on the bond markets, and borrowing regulated through HM Treasury subject to prior conditions and limits. Direct borrowing in the bond market has many attractions, but also raises the very serious issue of whether there would be an implicit UK Government guarantee of such borrowing so that Scottish creditors would expect the UK Government to cover Scottish debts in the event of default. A significant recent book highlights the political and economic dangers of such a bail-out, and the difficulties of controlling borrowing by state-level governments if there is an implicit guarantee from the federal/ central state.¹⁶ Given the constraints on devolved fiscal autonomy noted above and the heavy reliance of the Scottish Government on the UK Government’s block grant, there are strong reasons to ensure that the UK Government is able to control the overall amount of devolved borrowing and so its own liability.

21. That said, the levels set out in the bill and Command paper are low. In particular, the £500 million borrowing limit for cumulative current spending is very tight. It amounts to only 2.5% of Scottish Government spending in 2008–09, and is subject to further limits when used to cover mismatches between estimated and actual revenues within a year. It is hard to see how this will be adequate to cover actual losses if tax revenues should suddenly decline. Unless these limits were changed, the Scottish Government would be compelled to cut spending on public services quickly in order to remain within these statutory limits, if there should be downturn in the wider economy (which itself would be due to factors beyond the Scottish Government’s control), or for some reason in the collection of tax revenues.

22. The capital borrowing limit is also low, amounting to the cost of only one or two large-scale infrastructure projects. Such a limit should put the Scottish Government in a position to make a choice between the various ways of funding such projects—whether from current revenues, PFI/PPP type structures, or own borrowing. A low limit for such borrowing will narrow the choice available to the Scottish Government to fund such schemes, even when its own revenues are sufficient to enable it to cover the costs of such borrowing.

23. In relation to borrowing, HM Treasury is given extensive powers. Not only will borrowing have to go through the Treasury, but it will have active powers to control and limit such borrowing. This is consistent with a view of the Scottish Government as a subordinate one, not one entitled to make its own decisions in accordance with its own mandate and accountability to the Scottish Parliament. In this respect, the proposed arrangements contradict the Calman Commission’s principle of adding financial accountability to existing devolved political accountability. This provides a strong constitutional basis for such borrowing, even if carried out through HM Treasury, to be subject to only such legal constraints as are absolutely necessary for carrying out the reserved function of UK macroeconomic management. There need to be adequate institutional arrangements—including for scrutiny of HM Treasury’s actions by the Scottish Parliament—to ensure that is the case. However, there is no provision for this in the Command paper.

¹⁴ See A. Trench *Higher Education and Devolution: Impact and future trends*. Universities UK Research Report. (London: Universities UK, 2008), and posts on higher education at <http://devolutionmatters.wordpress.com/category/policy-issues/>

¹⁵ House of Lords Select Committee on the Barnett Formula, 1st Report of Session 2008–09, *The Barnett Formula*, HL Paper 139 (London: The Stationery Office, 2009). See particularly chapters 6 and 7.

¹⁶ J Rodden *Hamilton’s Paradox: The promise and peril of fiscal federalism* (Cambridge: Cambridge University Press, 2006).

TRANSITIONAL ISSUES

24. The Command paper indicates an extended and phased transitional period, extending until 2016. Given the scale of adjustment necessary on the administrative level, this appears to be an appropriate period to ensure that the new arrangements will indeed be capable of functioning when introduced. The Committee will not reminding about the problems at HMRC revealed by recent disclosures concerning operation of the Scottish variable rate, or its new computer system. What is important is that there is no slippage in the timetable for implementation, so that the new powers are available as planned and particularly from 2016. The fact that the timetable is now published will help with that; the Parliament might also wish to ensure that it is able to take evidence periodically from HMRC to ensure that this is in fact complied with.

CONSTITUTIONAL ISSUES

25. Three of the bill's constitutional changes seem particularly worthy of note. All three of these are matters that have been added in the Command paper, and do not result from recommendations of the Calman Commission. First, there is the power to enable partial suspension of Acts of the Scottish Parliament pending their consideration by the UK Supreme Court under section 33 of the Scotland Act 1998, rather than requiring the whole Act to be suspended pending determination by the Court (clause 7 of the bill). There is no parallel to this in the devolution legislation for Wales (passed only in 2006, of course) or Northern Ireland. Second, there is the power to confer legislative competence on the Parliament (by "un-reserving" matters in Schedule 4 or 5) for a temporary period only (clause 10). Third, there the provisions giving UK Ministers the power to act to implement international obligations, even when these relate to a reserved matter (clause 23). The explanation offered in the Command paper is essentially that such action may be convenient for practical reasons—but that is already an option, by means of simultaneous joint action by UK and Scottish Ministers. Many such obligations concern devolved matters, in a range of areas including particularly criminal law and justice.

26. In the first two cases, the objection is essentially the same. At first glance, each of these proposals appears to make the devolution arrangements more flexible, and therefore more workable in practical terms. Certainly, the flexibility of the 1998 legislation has been a feature that has contributed to its effective working and to the minimisation of "devolution issues" considered by the courts.¹⁷ The ability to apply the constitutionally-defined devolution settlement in a flexible way has been valuable. However, these measures risk undermining its constitutional status, and encouraging UK Government departments to regard devolution as something that is wholly flexible. That would result in devolution considerations receiving even less consideration at UK level than they presently do. Ignorance, incomprehension and neglect of devolution matters is a significant, and perhaps growing, problem, within the UK Government. Further, they risk an attempt by the UK Government to control in detail the activities of the Scottish Government or Parliament, implying a degree of micro-management that is inimical to the principles of devolution set out in the 1998 white paper *Scotland's Parliament* (Cm 3658). These proposals would be better if they were omitted altogether. If that is not possible, clear and preferably statutory explanations of the circumstances in which they are to be used, the role of the Scottish Parliament and Government in their use, and the more general principles to underpin their use are needed.

27. The provision relating to international law raises further problems. It would already be possible to obtain the stated desired outcome (a single action implementing international obligations both in Scotland and in England and Wales), by joint action by Scottish and UK Ministers. International relations are a reserved matter, and there is therefore no question that the UK Parliament has sole power to legislate for the implementation of such agreements. Scottish Ministers are further prevented from any action that breaches UK international obligations (section 58 of the 1998 Act). This clause creates no requirement for agreement on the proposed action between the two sets of ministers, nor even any requirement for consultation with Scottish Ministers about proposed UK action. The potential scope of such agreements is unlimited but broad. This therefore amounts to a substantial restoration to UK control of any matter that is the subject of an international agreement, whether or not the UK Parliament has legislated about it. The necessity for this is not clear, nor is it clear whether this measure is in fact proportionate to the problem which it purports to address.

CONCLUDING REMARKS

28. The Scotland bill is a flawed piece of legislation. Those flaws relate both to what it does contain, and what it does not. Most of them are part of its design, and are not such that they can be redressed during its consideration by the Scottish Parliament, or at Westminster. Rather than representing the end of a process of reviewing and revising Scottish devolution, it will require further revisions in the coming years (possibly even before it wholly comes into effect). The Committee, and the Parliament, need to be aware that these proposals present significant problems, will require continued active engagement by both government and parliament to be workable, and will be only a staging post on the route to a more durable and workable system.

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¹⁷ See further A. Trench (ed.) *Devolution and Power in the United Kingdom* (Manchester; Manchester University Press, 2007), particularly chapters 3 and 8.

Additional written evidence submitted by Professor Michael Keating, University of Aberdeen

THE DEBATE ON FISCAL AUTONOMY

There has been a lot of controversy around the Scotland Bill on the question of whether fiscal autonomy increases economic performance or growth. The problem with this debate is not that people are giving the wrong answer but that they are asking the wrong question; or a question that cannot be answered by statistics.

Social scientists seeking explanation look for a cause (independent variable); effect (dependent variable); relevant cases for comparison; and a causal mechanism. None of these has been adequately specified.

The independent variable might be decentralization itself, or the fact that devolved governments are smaller in size. If it is *decentralization*, this is a complex and multidimensional factor that cannot be reduced to a single measure; it includes taxes, spending discretion, types of taxes and intergovernmental relations. These are separate variables, not reducible to a single index. For example, Scotland already has great spending discretion but little control over taxes. Of course, if Scotland were to become independent, it would not longer be decentralized, so the argument becomes irrelevant. If the argument is that *small* governments with fiscal autonomy, grow faster then we should be comparing Scotland with governments of the same size, whether states or devolved regions (not with “decentralized” governments that could be as big as California or as small as Prince Edward Island) but in this case the comparators are even more variegated.

The dependent variable is no easier. Rates of GDP growth are a poor indicator of social welfare. Some regions are entrepôts through which goods merely flow while others have natural resources whose value does not accrue to the population. Data at the regional level are scarce and often unreliable and attributing production to a particular region is difficult. The devolved unit rarely corresponds to the economic unit.

As for the mechanism, there are two candidates. Some argue that devolved governments cut taxes to compete and thus attract investment and productive residents. Others argue that they can increase taxes to provide infrastructure, education and other public goods that promote development. We cannot say that the same factor is the “cause” of both of such radically different outcomes; they are a matter of political choice. Indeed the evidence shows no general connection between levels of taxation and spending on the one hand and levels of GDP on the other at any level of government.

If we try to resolve these issues of definition and operationalisation by specifying them better, we end up with too many variables or “degrees of freedom” to enable any conclusions to be drawn. This is why the international studies are inconclusive.

Finally, even if we did establish a general association between fiscal devolution and economic growth, this would have almost no relevance for Scotland. Extrapolating from aggregate findings to an individual case is known as the “ecological fallacy”.

These objections apply irrespective of whether we are looking at GDP levels, economic performance, or economic growth trends.

There is a strong case for more fiscal autonomy for Scotland, to bring decisions on spending and taxation into line, to allow more innovation, and to improve the quality of policy debate here. Its effect, however, will depend on what politicians do with the powers; and in a globalized world, economic performance will depend on many factors outwith the control of government at any level.

February 2011

Written evidence submitted by Rt Hon David Mundell MP, Parliamentary Under Secretary of State

THE SCOTLAND BILL : CLAUSE 12—INSOLVENCY OF REGISTERED SOCIAL LANDLORDS

When I appeared at the Scottish Affairs Committee on 16 February, you raised a point in relation to Clause 12 of the Scotland Bill and its effects on Registered Social Landlords. This followed representations by the Scottish Federation of Housing Associations (SFHA) and I therefore committed to meeting with the SFHA.

We had a useful meeting on 24 February in their Glasgow offices, and I committed to following up with them in correspondence on some additional points they raised.

You will also wish to note that the Scotland Bill Committee in the Scottish Parliament highlighted this issue in their report on the Scotland Bill. We have committed to reviewing all the recommendations made by that Committee including those relating to this clause.

I hope the information contained assists you in the drafting of your report into the Scotland Bill and I will keep you updated on any further correspondence I have with the SFHA.

Rt Hon David Mundell MP

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