



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DEVOLUTION (FURTHER POWERS) COMMITTEE

Thursday 25 June 2015

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DEVOLUTION (FURTHER POWERS) COMMITTEE
19th Meeting 2015, Session 4

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

COMMITTEE MEMBERS

- *Linda Fabiani (East Kilbride) (SNP)
- *Rob Gibson (Caithness, Sutherland and Ross) (SNP)
- *Alex Johnstone (North East Scotland) (Con)
- *Alison Johnstone (Lothian) (Green)
- *Lewis Macdonald (North East Scotland) (Lab)
- *Stewart Maxwell (West Scotland) (SNP)
- *Mark McDonald (Aberdeen Donside) (SNP)
- *Stuart McMillan (West Scotland) (SNP)
- *Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Colin Faulkner (Scotland Office)
- Rt Hon David Mundell (Secretary of State for Scotland)
- John Swinney (Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Devolution (Further Powers) Committee

Thursday 25 June 2015

[The Convener opened the meeting at 09:00]

Scotland Bill

The Convener (Bruce Crawford): Good morning, ladies and gentlemen. I welcome committee members and members of the public in the gallery to the 19th meeting in 2015 of the Devolution (Further Powers) Committee. I ask everyone to ensure that their mobile phones are switched off, please.

Agenda item 1 is the Scotland Bill and the proposals for further devolution. Our first panel is from the Scottish Government. We have with us John Swinney, Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy; Sean Neill, from the Government's fiscal responsibility division; and Stephen Sadler, from the elections and constitution division.

Do you wish to make an opening statement, Mr Swinney?

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): I will make a few brief opening remarks. I welcome the opportunity to be with the committee this morning to provide evidence on the Scotland Bill and the aspirations for further devolution.

The Scottish Government is clear that the Scotland Bill, which was published on 28 May, falls short in a number of key areas in implementing the conclusions of the Smith commission. Other than modest changes to social security provisions, the measures that are reflected in the bill are pretty much identical to those that were published in January.

It is particularly disappointing that the bill as introduced does not make significant improvements to the draft clauses that were published in January, despite what I would consider to be active engagement and suggestions from both the committee and the Scottish Government.

I spoke to the Secretary of State for Scotland last week, and I will be meeting him later today to discuss ways in which we can collectively move ahead on the current provisions in the bill and deliver a fully coherent package of measures, with

the aspiration of delivering improved policy outcomes for the people of Scotland.

The Scottish Government has been active, as has the committee, in engaging with stakeholders. I have been struck by discussions where key voices have been telling me that the bill is inadequate across a range of areas, particularly in relation to social security and employment support. There is a real risk that the service that people receive will be less effective as a result of our not having a coherent package of measures and interventions available to us.

It will not have escaped the committee's notice that the United Kingdom Government has so far not approved any Opposition amendments to the bill at committee stage in the House of Commons, including amendments based on the Scottish Government's proposals, which reflect issues and concerns raised by the committee in its interim report.

I record my thanks to the committee for its work on the bill, and I look forward to our discussion this morning.

The Convener: Thank you for that, and for the material that your Government has sent to us over the past couple of weeks.

You have outlined where things have fallen short, in the Government's view. It would be helpful to hear from you about what progress you consider has been made on amending the bill to bring it into line with the committee's unanimously expressed views—views held across all five parties—as outlined in our interim report. As a minimum, we thought that the bill should reflect the spirit and substance of the Smith agreement.

Please let us know where you think progress has been made and what actions the Scottish Government itself has been taking since the publication of the bill. That would be helpful.

John Swinney: Since the publication of the draft clauses in January, the Government has made a range of suggestions in areas where we believed that the draft clauses needed to be revised in order to deliver the substance and spirit of the Smith commission agreement. Since the publication of the bill, we have continued that effort and have set out a range of areas where we believe that that should be done. Our thinking on that is very much in alignment with the conclusions in the committee's report, which I think has been widely commended as a constructive and dispassionate analysis of the areas where changes are required in order to bring the Scotland Bill into line with the spirit and substance of the Smith commission report.

In the bill as introduced, a number of changes have been made to the draft clauses that were

published in January. I have to say, however, that, with one exception, those are mainly drafting changes, just to sharpen the text and assist with definitions.

Welfare is the only area where there has been any meaningful change in the substance of the draft clauses, with the addition of a power to create benefits to top up reserved benefits, although—on my reading of the bill—not in respect of mitigation of sanctions undertaken as a consequence of the wider UK approach to welfare reform. That is the only area where there has been any meaningful change from the propositions that were outlined in January.

The Scottish Government has been in regular discussion with the UK Government on these questions, both at official level and at ministerial level. The committee will probably be aware that I speak weekly to the Secretary of State for Scotland. I met him on 8 June and, as I said, I will see him later on today. In all those discussions, I make the case for the UK Government to recognise that there are significant deficiencies in the bill in relation to the delivery of the Smith commission report. I simply leave it with the secretary of state to make the necessary changes that I think are required to bring the bill to the point where it can implement properly and fully the outcome of the Smith commission deliberations.

The Convener: I know that Tavish Scott is particularly interested in the amendments.

Tavish Scott (Shetland Islands) (LD): I will follow up on the convener's line of questioning. I would like to understand more about the engagement that you have been describing, Deputy First Minister. As a committee, we have been very interested in intergovernmental relations and how they will work in future, and that engagement is a bit of a model for them.

Presumably, you would accept that the BBC agreement on the memorandum of understanding shows some progress, because that was agreed between the secretary of state and one of his Cabinet colleagues.

Can you describe for the committee—if not today, perhaps in writing—the number of meetings that have taken place between opposite numbers in London and Edinburgh to sort out, for example, the social security points that you raised as well as other issues? Can you also detail for us—again, perhaps not today, but in writing—the number of actual meetings that have taken place at official level as well as at ministerial level?

John Swinney: I do not have all of that detail in front of me—

Tavish Scott: Of course.

John Swinney: —but I am very happy to prepare that information for the committee and to share it.

In terms of ministerial interaction, clearly there have been discussions between the First Minister and the Prime Minister, discussions between me and the Secretary of State for Scotland, and discussions between the Cabinet Secretary for Culture, Europe and External Affairs and the Secretary of State for Culture, Media and Sport. We have had correspondence, certainly, with Department for Work and Pensions ministers on social security issues, and a further session of the joint ministerial working group on welfare, which involves DWP ministers, the Secretary of State for Scotland, Alex Neil, Roseanna Cunningham and me, is scheduled for later on in July.

At official level, we are in contact with UK officials to discuss things several times a week, and have been doing that consistently since the publication of the Scotland Bill—and, indeed, prior to then. Not all of those discussions will involve meetings—there are a lot of telephone conversations and teleconferences—but there has been regular dialogue to take matters forward.

Tavish Scott: In the context of parliamentary oversight, it is important to recognise how much is going on. If it is possible to provide the committee with details of that engagement, that would be helpful.

John Swinney: We will certainly do that.

The Convener: Linda Fabiani has a supplementary.

Linda Fabiani (East Kilbride) (SNP): Yes. It is directly related to one of the issues that the Deputy First Minister raised and concerns the creation of benefits and welfare. The Smith agreement was quite clear about the Scottish Parliament having the ability to create benefits in areas of devolved responsibility. The bill talks about benefits that are to be devolved under the bill, and I see that the Scottish Government has proposed a new clause—clause 23A. Is that in recognition of that point in the agreement? What difference do you think clause 23A would bring? Would it better meet the spirit and substance of the Smith agreement?

The Convener: Linda, I think that it would help us—it would certainly help me—if you could explain a bit more about what clause 23A is, because I do not have that information in front of me. You do not need to read out the whole thing, but can you give us a general idea of what it is about?

Linda Fabiani: The Scottish Government is proposing a clause that would give the Scottish Parliament powers to create new benefits in areas

of devolved responsibility. My question is whether that looks back to the Smith agreement, given that the bill suggests that the Parliament can create benefits only in areas that are devolved under the Scotland Bill itself.

John Swinney: That is the purpose of proposed new clause 23A, which the Scottish Government has put forward. It was clear to me that in the Smith commission there was a desire for the Scottish Parliament to have the ability to create new benefits—indeed I would say that that was a much-celebrated element of the Smith commission report. There was a fine point on whether that ability would apply to devolved areas, such as health, housing or education, or across the board. In my understanding of the Smith commission report, the approach that should be taken forward in the legislation was accepted, and we have proposed clause 23A on the basis that it is necessary for the legislation to clarify that point absolutely. Once the bill is enacted, if the Scottish Government or Parliament were to propose such a benefit, we would have to be absolutely confident that we had the legislative authority to take that forward.

Let me give the example of my experience of finding an alternative to council tax benefit. When council tax benefit was reduced by the UK Government, we had to be very mindful of acting within our competence. That case related to legislation for local taxation, and we could not put in place a benefit provision because we did not believe that we had the legislative competence to do so.

Proposed new clause 23A will be vital in providing legislative clarity to ensure that the Scottish Parliament is able to legislate within its competence on such questions.

The Convener: I need to bring that alive so that I understand it. Paragraph 54 of the Smith commission proposals says quite clearly that

“The Scottish Parliament will have new powers to create new benefits in areas of devolved responsibility”.

As I understand it, the Scotland Bill gives those powers in relation to the responsibilities that are to be devolved under the bill. That means that, if we wanted to introduce a new housing benefit, we would not be able to do so, even though housing is devolved, because there is no element in the bill that relates to housing. Is that right?

John Swinney: That would be my reading of it.

The Convener: Are there any more questions about welfare, or can we move on to another area?

Linda Fabiani: I am happy to listen.

The Convener: Deputy First Minister, can you describe where we are in relation to the fiscal framework?

John Swinney: I cannot recall whether I have rehearsed this with this committee before, although I have certainly done so with the Finance Committee, but I met the Chancellor of the Exchequer in March to discuss the design of the fiscal framework. At that stage, the chancellor and I agreed that exploratory work would be undertaken by our respective officials, recognising the fact that the United Kingdom Government was about to go into an election campaign and ministers would find it difficult, if not impossible, to interact—this was about 10 days or so before the pre-election UK budget.

Officials were instructed by both Governments to undertake preparatory work to establish the fiscal framework. That work has been on-going, both during the UK election and thereafter. I met the chancellor and the Chief Secretary to the Treasury on 8 June to discuss the next steps in the process. I have a discussion with the Chief Secretary to the Treasury scheduled for the week after next, and that will be the first of the substantive discussions to take forward the contents of the fiscal framework. A great deal of work has been undertaken to explore the scope of the fiscal framework and the issues that must be covered in it, and ministers will now begin to discuss that and consider how best we can take it forward.

09:15

Alex Johnstone (North East Scotland) (Con): Do you have any indication of a timescale for the fiscal framework?

John Swinney: The chancellor and I agreed that we would aim to conclude the process by the autumn, to enable the later parliamentary consideration of the Scotland Bill to be informed by the contents of the fiscal framework. I have been clear to Parliament, the committee and the United Kingdom Government that we could not propose a legislative consent motion to Parliament without an acceptable and agreed fiscal framework being in place, given the significance of the financial implications of the fiscal framework's contents, which are not in the bill. There is a need for us to make as much progress as possible as timeously as possible, and work is now under way to conclude the process by the autumn.

Alex Johnstone: I have enormous respect for the fact that a great deal can be achieved by work that is carried out at ministerial level in discussions on the fiscal framework. However, some of us are concerned about the fact that success at that level might have the effect of excluding the committee

from analysing the process as it develops. Is there an opportunity within the timescale for the committee to know more about what is going on and to consider what is being proposed?

John Swinney: Mr Johnstone raises an absolutely fair and substantive point. This is difficult territory to navigate. As I am sure that he will appreciate, there is an aspiration on the part of both Governments to ensure that our respective Parliaments are given as much opportunity as possible to shape the contents of the fiscal framework, and for the discussion to be undertaken in a transparent fashion—the chancellor and I discussed that at our meeting on 8 June. However, as I think Mr Johnstone accepts, given the premise of his question, there must be space for meaningful private negotiation to be undertaken in order to address some of the difficult issues that will be in the fiscal framework.

Both Governments agreed that we could not provide a running commentary on the negotiations. I do not think that the committee would expect us to do so. However, where we have evidence, analysis and information that inform the discussion and can be shared with the committee, it is fair and reasonable that we share those with the committee. Also, once we make a bit more progress with regard to the range of topics and the subjects that will be contained in the fiscal framework, we will be in a stronger position to share that information with the committee, in order to give the committee our sense of the ground that will be covered in the fiscal framework.

I do not want my comments to be perceived as in any way closing down dialogue with the committee on this question; I am simply exploring some of the challenges that exist around the sharing of that information while negotiations are under way.

Alex Johnstone: On a specific issue within that process, where are we with regard to the issue of borrowing powers, and how is dialogue about that likely to proceed during your discussions with ministers?

John Swinney: The issue is a material and substantial part of the fiscal framework, because it relates to a number of key considerations around the necessity for appropriate resource borrowing to be available to the Scottish Government, given the fact that we will be responsible for raising a larger proportion of the resources at our disposal. There will clearly be volatility in the estimates, and in that performance. Resource borrowing will be a significant consideration in that regard. There will then be issues around the extent of our borrowing for capital investment purposes and the whole question of any limits or parameters that may exist. Those are points of substance that I expect

to discuss with the United Kingdom Government, but we are at nothing like an advanced stage in those discussions—I would say that we were at the early stage of those discussions.

Alex Johnstone: Would it be fair to assume that the level of revenue borrowing that is necessary as an outturn would be to some extent conditional on the outcome of the Scotland Bill process and the implementation of new powers? If you have additional powers, the level of revenue borrowing will be necessarily commensurate with that.

John Swinney: That is a very material consideration, because in the Calman proposals, if I can call them that, in the Scotland Act 2012, the volume of income tax that would be under the control of the Scottish Government would be something of the order of £4.5 billion—it is about £4.3 billion on 2013-14 numbers—but under the Smith commission proposals, it would be £10.9 billion. That contrast between the Calman proposals and the Smith commission proposals entirely makes the point that Mr Johnstone advances.

Lewis Macdonald (North East Scotland) (Lab): I will pursue similar questions, Deputy First Minister. Nothing has yet been said about the basis for assignment of VAT. Is that part of the discussions?

John Swinney: It will be part of the discussions.

Lewis Macdonald: So it will be part of the wider fiscal framework discussions.

Generally, there has been agreement in broad terms between the Government and this committee on tax issues. One of the features of the bill that is new is that clause 12 provides that there shall not be different rates of income tax for different types of income. Did you discuss that with the UK Government in advance? Are you relaxed about it? What is your Government's response to it?

John Swinney: In this part of the discussion, our approach on that question and on all questions has been to ensure that the Scotland Bill translates the Smith commission's report in spirit and in substance. Broadly speaking, I would say that the provisions on tax pretty much do that. The Scottish Government has had little to add or change about the UK Government's position on the tax provisions as advanced in the Scotland Bill because we believe that it translates appropriately the Smith commission report into legislation.

Lewis Macdonald: So clause 12 as it stands is broadly in line with your expectation.

John Swinney: Yes.

Lewis Macdonald: That is helpful.

One other area where the Scottish Government is seeking amendment to allow it to draw revenue is in relation to onshore oil and gas extraction—fracking. I guess that many people might be surprised that you have made a bid for the Scottish Government to be able to access land rental charges from fracking. Is that something that you want to comment on today in the wider context?

John Swinney: It is purely for policy completeness. If the power is devolved, it should be done properly.

Lewis Macdonald: The way in which the legislation has been drafted means that it excludes only that element of land rental—of royalties, if you like. Given the provision that exists for royalties in relation to offshore oil and gas revenues, do you consider that adding the same for onshore—as you say, for completeness—is a strong indication of a policy preference to see fracking in Scotland in future?

John Swinney: I think that the Scottish Government's position on fracking is quite clear: there is a moratorium in place and we are undertaking evidence-based research on the question to ensure that the public debate and any consideration of the issue is well informed by the evidence. However, as Lewis Macdonald will know, the policy function is being devolved to the Scottish Parliament, and we believe that in that case it should be devolved completely and not in a half-hearted fashion.

Lewis Macdonald: You would accept that land rental is a taxation element relating to the regime as opposed to a licensing element.

John Swinney: It is for policy completeness. My objective is to make sure that, where a policy area is being devolved, it is being devolved in a complete fashion to enable the Scottish Parliament to exercise responsibility fully within the scope of the power being devolved.

Mark McDonald (Aberdeen Donside) (SNP): In relation to the fiscal framework, Deputy First Minister, what discussions have you had on the no-detriment principle—or principles? Obviously, there is a general view that the first no-detriment principle is that, when a power is devolved, that should have no adverse impact on either the UK Government or the Scottish Government—that is fairly well established and well accepted. However, there has been a degree of debate around the second no-detriment principle and how it can work in practice. Has that formed part of your discussions at all?

John Swinney: The discussions on the fiscal framework are at a very early stage and the pace of those discussions will increase really quite significantly over the summer. There will be initial,

official, substantive discussions next week and, as I said in one of my earlier answers, I will see the Chief Secretary to the Treasury the week after next to discuss the substance of some of the questions involved.

Mark McDonald is absolutely correct that there are essentially two elements to the no-detriment provisions, one of which is about the primary aspects of no detriment whereby a power is transferred and the implications of that are clear at the point of transfer. I think that there is a very clear understanding of the principle behind that, which is that it should be done on a no-better-off, no-worse-off basis.

On the secondary no-detriment principle, I think that there is an awful lot more scope for discussion and debate about what the implications are and what different elements come together to substantiate a potential secondary impact. That is a much more difficult process to determine. There is also a range of different scenarios in terms of trying to trace back what factors may have led to a particular economic or fiscal outcome. A great deal of discussion and dialogue will be required to determine the basis on which that process can be undertaken.

It is also important in the discussions about the secondary element of no detriment not to lose sight of the fact that implicit in the provisions of the Scotland Bill is an acceptance that there is a transfer of responsibility to exercise a function and that with that transfer comes a transfer of risk that might be a positive risk or a negative risk.

In that context, the purpose of many of the changes must be to enable the Scottish Parliament and the Scottish Government to retain the fruits of the achievements that are made in policy terms and the beneficial impact on revenue. However, I accept that there would also have to be the acceptance of the risk of that not being the case and there not being a gain, and the Scottish Parliament being as responsible for that as it would want to be for the gathering of the risk. Some of those issues apply very clearly to the United Kingdom Government as well.

Mark McDonald: One of the concerns that has been raised regarding the second no-detriment principle is that if it is applied too rigidly it could be seen as a constraint on the flexibility of the Scottish Government to pursue particular policy avenues.

The same issue would apply to the fiscal framework and how it is developed to enable the Scottish Government and the Scottish Parliament to have some flexibility on the direction of travel. For example, if the fiscal framework was drawn too tightly and the Scottish Parliament and the Scottish Government had to align rigidly to the

direction of travel of financial policy at a UK level, it would raise the question of why the powers would be transferred if they could not be used flexibly. Will those concerns inform your discussions?

09:30

John Swinney: That strikes me as being the central point about the consideration of the secondary no-detriment principle. If we are going through the process of transferring the powers, there has to be some form of flexibility being exercised so that the Scottish Government and the Scottish Parliament are able to take different decisions and acquire the benefits of those as well as dealing with any negative consequences. If that is not accepted, then, other than transferring power for the sake of it, I am not sure what the point of it is.

The Scottish Government must have the ability to exercise genuine flexibility and to bear the fruits of that.

Tavish Scott: I want to follow on from Mark McDonald's thoughtful questioning on that area. The logic of your answer, Deputy First Minister, would be that the fiscal framework would need to apply over the period of a Parliament—it could not be for one budgetary cycle, which is a year. Would you agree that the very flexibility that Mark McDonald rightly argues for could only be judged over a Parliament or an extended period?

John Swinney: The question is: to what extent are such questions able to be judged?

Let me go back to one of the discussions that I had on the block grant adjustment in relation to land and buildings transaction tax. One proposal that was put to me was that, in applying the no-detriment principle, a calculation would have to be made of the likely pattern of the tax change over the period from now until 2029-30 and then, once that had been modelled, a block grant adjustment would be indexed to neutralise any positive effect.

What that would have meant is that the Scottish Parliament would be no better and no worse off at the moment of the devolution of the responsibility but, equally, the Scottish Parliament would be no better or worse off by the exercise of that policy over a period extending to 2029-30. I resisted that proposal, because it would have taken me back to the point that Mr McDonald raised, which is: other than allowing us to legislate for a different form of land and buildings transaction tax, what precisely would be the point?

That proposal was taken off the table, but I remind the committee that the block grant adjustment that was made for land and buildings transaction tax was a one-year adjustment for

2015-16, because we were unable to agree an indexation mechanism that moved forward, despite the fact that I offered several different alternatives. What I was not prepared to accept was that model, which was described to me as a "constraining model". That title said it all; it rendered null and void any possible gain—or any possible loss that we might have had to deal with—as a consequence of exercising the responsibility.

That brings us to the fundamental point about what the purpose is of devolving a power if it is not to devolve the responsibility for the potential benefit or liability that is a consequence of the actions that we take under that power.

Tavish Scott: I agree, but in the conventional political sense the fiscal framework would last a Parliament, because, by definition, the Government—whether in London or Edinburgh—could change after the Parliament has come to an end. I know that you will argue that your Government will go on for ever, but let us agree, for the sake of political convention, that Governments can and do change. Therefore, is the logical judge of a fiscal framework the length of a Parliament, meaning that the questions that are being asked about no detriment would need to be considered over that period of time in the wider sense?

John Swinney: I know that, sometimes, Governments change hands.

Tavish Scott: No need to rub it in, John. [*Laughter.*]

John Swinney: It is inconceivable in a Scottish context nowadays.

I really do not think that we are talking about a fiscal framework that is for one parliamentary term or session; we are talking about a fiscal framework that regulates the fiscal relationship between the Scottish Parliament and the United Kingdom Parliament for the foreseeable future.

Tavish Scott: Or has the flexibility built in, as was discussed earlier.

John Swinney: Clearly, there must be a necessity to adapt, but I do not think that that is something that we would consider as being relevant just for one parliamentary term.

The Convener: I think we have done enough on the tax and fiscal area now. Let us move on to a new area, with some questions from Stewart Maxwell.

Stewart Maxwell (West Scotland) (SNP): I wish to ask the Deputy First Minister about the issue of vetoes and where we are on this question or disagreement between the Scottish Government and the UK Government. Could you

tell the committee, for instance, how many areas the Scottish Government thinks the UK Government has a veto in under the Scotland Bill as published? If possible, could you list those areas for us?

John Swinney: As I calculate them, I think that there are eight vetoes within the Scotland Bill. There are two in relation to universal credit, and there are a range of others on fuel poverty support schemes, obligations on suppliers to reduce carbon emissions, home heating costs and some other issues.

Stewart Maxwell: Given the range of areas where the Scottish Government believes that the UK Government still holds vetoes, what negotiations have been undertaken to resolve the disagreements over those eight vetoes, as the Scottish Government sees them?

John Swinney: We have made our position very clear. We have made it clear in correspondence, in alternative clauses and in other submissions. One of our problems is that the United Kingdom Government does not consider the terms in which the provisions are expressed as a veto.

Alex Johnstone: And rightly so.

John Swinney: I hear a sedentary comment from Mr Johnstone, who specialises in sedentary comments—

Tavish Scott: Well, he is sitting down.

Duncan McNeil (Greenock and Inverclyde (Lab)): Ho, ho, ho.

John Swinney: —which are anathema to me, Mr McNeil. [*Laughter.*]

Let us explore the terms of the veto—as I consider it to be—in the clauses on universal credit. I observed the second reading debate in the House of Commons when I was there a couple of weeks ago. A lot was being made of the fact that the clauses state that consent cannot be unreasonably withheld. One of the Conservative members of Parliament, Bernard Jenkin, pointed out that the terminology—that consent is

“not to be unreasonably withheld”—

is a justiciable term.

Bernard Jenkin is probably right about that, but I do not think that that is a good explanation; I think it is a very bad explanation. It suggests that, if we are so concerned about the stance being taken on operational matters by United Kingdom ministers and we want to pursue a particular issue, we have to go to the courts. What an absolutely ridiculous line of argument—and it rather makes my point that the provision is a veto.

With devolution, power is transferred, and we are able to exercise that power and that responsibility according to our judgments, our accountability to the Parliament and our accountability to the electorate of Scotland. However, here we have a situation in which we have to secure the consent of the UK Government to do certain things. The consent might not be unreasonably withheld, but I can think of numerous occasions on which we have tried to make progress but have had this or that argument or issue of timing put to us and—before we have known it—significant time has elapsed and we have not been able to advance the policy that we wanted to take forward.

Notwithstanding the fact that there might be muttering from the member by my side here, I think that there is a veto, because the UK Government can prevent the Scottish Parliament from exercising our responsibility if it chooses to do so.

Stewart Maxwell: I have one final question, for clarity's sake. As things currently stand, who decides what would be defined as being unreasonably withheld?

John Swinney: Because the consent lies with the UK secretary of state, that consent could be given only by the UK secretary of state. The UK secretary of state holds the power, and it is their power to give if they reasonably consent to that.

Stewart Maxwell: So, in effect, it is the secretary of state.

John Swinney: That is why it is a veto, Mr Maxwell.

The Convener: The member who was muttering wants to be heard now.

Alex Johnstone: However we define the process—which is currently described in the Scotland Bill in a form of words that the cabinet secretary does not approve of—and whatever words we build the process around, it is necessary to have a process by which responsibilities can be passed on; yet, there is no form of words that could not be construed, in the same Machiavellian fashion, as a veto. Surely, therefore, we are genuinely dancing on the head of a pin here.

John Swinney: Machiavellian?

Alex Johnstone: Indeed.

John Swinney: My goodness, Mr Johnstone. We have reached a new low today.

Tavish Scott: I think that there is much lower to go yet. [*Laughter.*]

John Swinney: The way that I explained the situation to Mr Maxwell is the clearest way to think about it. The power to decide whether a change

happens rests with the UK secretary of state, who is under an obligation not to withhold consent unreasonably. However, in my experience—I have been a minister for eight years, not for 20 minutes—there are lots of arguments that can be made to present that consent as being reasonably withheld.

That approach constrains the Scottish Parliament's ability to exercise powers that, I believe, the Smith commission intended to be devolved to the Scottish Parliament for it to exercise. On 18 May, we put forward revised welfare clauses that were designed to address that particular issue, and they have been published.

Duncan McNeil: All roads go back to a concern about the process and procedures that the committee highlighted in its report, and, in its response, the Scottish Government recognised that there needs to be an overhaul. It is not simply about devolution; the challenge is much greater because we are sharing powers, and we need some architecture to carry that.

As a committee that is trying to undertake meaningful scrutiny of the whole process, we are flying with one wing—maybe we are not flying at all—because we are continually referring to situations and meetings that took place in the past, we have no understanding of the dispute mechanisms that are used when there is a failure to agree and we get no updates about the Scottish Government's declared position or its discussions with the UK Government to develop appropriate mechanisms to deal with the issues. The committee has no clear understanding of what information we should expect to receive in the process, which comes down to the issue of bilateral engagement and the Government's engagement with the Parliament to enable us to do appropriate scrutiny. It diminishes the process when parliamentarians cannot scrutinise it. We got into an exchange about what is a veto and what is a shared responsibility, and I think that we have a responsibility to do much better in the new politics of Scotland and the new environment that we are working in.

09:45

John Swinney: I am trying to be as helpful as I can be. The Scottish Government has given the UK Government a paper outlining a possible alternative approach to the consent provisions in the draft clauses, based on a combination of joint ministerial committees, memorandums of understanding, concordats, regular official contact and a variety of different ways in which that could be undertaken. We have not had a response to that.

Duncan McNeil: We will have an opportunity to raise that later.

John Swinney: I am simply telling you where we are. Mr McNeil has raised a number of questions about the interaction between the two Governments on these issues. There is also currently another interaction, between UK ministers and the House of Commons on the passage of the Scotland Bill. In that context, UK ministers are putting on the record their views about how some of these issues need to be resolved, and I am clearly not party to that dialogue in the House of Commons. It is Government-to-Government dialogue that I am involved in.

I can certainly assure Mr McNeil that we are trying to find a way of ensuring that powers can be devolved and that the arrangements are workable, but I would be failing in my duty to the committee if I did not point out that the clause as currently constituted is, in my view, an impediment to the Parliament exercising those responsibilities.

One of the comments that Mr McNeil made was about dispute resolution. I have been involved in dealing with an issue to do with Olympic consequential funding, which started under the previous Scottish Government and which we inherited from our predecessors. We pursued the issue and it went on and on. It must have started in about 2005 or 2006. We inherited it in 2007, and it must have been resolved by the coalition Government around 2012, or maybe slightly earlier, but it had gone on for years with to-ing and fro-ing. We could probably paper the walls of this committee room with the letters that were sent. In the end, it was resolved to our satisfaction, but what we had faced for the best part of five years, and what our predecessors had faced, was the claim that there was no issue to be dealt with. We were told, "There is no issue."

Duncan McNeil: Is that not why we need an overhaul of the system? You have made that point, but if we multiply that 100 times with shared responsibilities, where will we end up if we do not resolve the issue of how we deal with each other?

John Swinney: That is how I would illustrate the danger of the committee saying, "Well, the legislation says that consent can't reasonably be withheld." Agreement was unreasonably withheld for years over the Olympic consequential funding, but once people said, "Okay, let's get a fix here," it took about 20 minutes to resolve the issue.

The Convener: I think that we have exhausted that area. Let us move on to employment rights.

Stuart McMillan (West Scotland) (SNP): The Smith commission report clearly states in paragraph 57:

"The Scottish Parliament will have all powers over support for unemployed people through the employment programmes currently contracted by DWP".

Clause 26 of the Scotland Bill does not appear to live up to what the Smith commission proposed. The Scottish Government has made further proposals on employment support. How would either of the Scottish Government proposals result in improved co-ordination of employment policy?

John Swinney: This is an important area because it affects the journey that individuals will make from economic inactivity into employment. The requirement for that journey to be as efficient and coherent as possible is central to the achievement of many of our economic objectives.

The Scottish Government takes the view that the existing provisions restrict the powers over employability support services for those who are claiming reserved benefits. Our proposed alternative clause would amend the introductory words in clause 26 of the Scotland Bill to make provision for the power to legislate on the arrangements themselves rather than the process by which a person makes such arrangements. It is designed to give us more comprehensive and clearer access to the controls that are necessary to streamline the employment support arrangements and to ensure that the journey of an individual into employment is more coherent.

Stuart McMillan: We received the following evidence from the Scottish Women's Convention:

"It seems somewhat at odds that on one hand, the Scottish Government can create a Work Programme which best suits the needs of Scottish people, yet on the other hand the sanctions associated with that remain with Westminster. Those seeking work could be at a detriment as a result."

That evidence was also given to the Welfare Reform Committee and the comments tie in with what you said a moment ago about efficiency and coherence.

John Swinney: There are two points here. The first is about the coherence of the system, and it was made very well by a range of different organisations that are actively involved in employment support in the Scottish economy. Individuals might have to transfer from the support of one Government to the support of another on what could be a fairly regular basis. That does not make for a coherent package of support, which is why we argue as we do.

The second point is about the interaction between the sanctions regime, which is part of a benefits system that, under the Smith commission proposals, remains a reserved function, and the access to employment programmes and the way in which they are supported. I would clearly prefer for all that to be under the stewardship of the

Scottish Government, but if there is an interaction with the benefits system, some of the issues become more complex to deploy. There is a lot of substance in the points that Mr McMillan raises.

Stuart McMillan: I have a final question, convener.

The Convener: Can you make it quick, please? We still have some areas that we need to cover.

Stuart McMillan: Sure. How does the Scottish Government's alternative clause distinguish between the contracted and non-contracted programmes?

John Swinney: That essentially relates to the fact that some parts of that journey will be under the control of the Scottish Government and the programmes that we support, and some parts of it will remain part of the reserved responsibilities.

Stuart McMillan: Thank you.

Lewis Macdonald: The Scotland Bill proposes to replace references to legislation from the 1970s and the Disability Discrimination Act 1995 with reference to the equalities legislation of the past decade that substantially replaces them. Why does the Scottish Government not support updating the references to reserved areas under equalities legislation?

John Swinney: Further discussion of the purpose and effect of that aspect of the drafting will be required, but we are still concerned that the references are included in a bill that is intended to deal only with additional devolution.

Lewis Macdonald: Why is that an issue? The Scotland Act 1998 is the founding document of this place and of devolution in Scotland. Why would you resist updating references to other legislation in such an important area?

John Swinney: We are in active discussion with the UK Government to ensure that the drafting of the bill properly reflects what we consider to be the approach argued for in the Smith Commission.

Lewis Macdonald: I understand that you are resisting the reference to part 1 of the Equality Act 2010 with regard to a socioeconomic duty on public authorities. Does that come under the same category? Is there a reason why you are resisting that reference?

John Swinney: It is the same argument.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): Good morning, Deputy First Minister. In evidence to the Rural Affairs, Climate Change and Environment Committee on 17 June, the Crown Estate explained that the Scotland Bill had been drafted to allow Scottish ministers not to be bound by the requirements of the Crown Estate

Act 1961. Why does the Scottish Government believe that that provision does not deliver on the Smith report, and can you explain how the Government's proposed amendments will make for a more robust system?

John Swinney: Our amendments take a simpler approach to the devolution of Crown Estate responsibility than that taken in the draft clauses proposed by the UK Government. Our amendments seek to ensure that the legislation focuses on devolution of the responsibility, not devolution of a scheme. I consider that the design of a scheme and the approach to be taken are matters to be determined by the Scottish Parliament. Our approach is essentially consistent with how we believe that devolution provisions have been drafted since 1998—perhaps I should say since the early drafts in 1997. We need to devolve this function and allow the Scottish Parliament to design the approach that we take.

Rob Gibson: The management and revenues of the Crown Estate are both parts of what Smith envisaged we should control. Are you clear that the amendments lodged so far would devolve both management and revenue?

John Swinney: Yes.

Rob Gibson: On the distribution of revenue, within the powers given would you be able to decide on other bodies to use, gather or keep that revenue?

John Swinney: We have gone for a simpler approach to give Parliament maximum flexibility to determine and decide what further changes are deployed as a consequence. The danger of the current provisions is that there is a restrictiveness within the scheme that is not consistent with the principle of devolving that responsibility. We would be in a stronger place if the power could be exercised in a more comprehensive way by the Scottish Parliament.

Rob Gibson: Should such matters be included in the memorandum of understanding on this issue? Is that another argument why such memorandums are important in ensuring that the system can work?

John Swinney: There is an important question about whether a function or a scheme is being devolved. If the function is being devolved, it is up to us to design the scheme. If the scheme is being devolved, it will determine the basis on which some provisions are taken forward. It is up to this Parliament to decide how we intend to progress and advance those questions. An open approach is therefore essential in order to give Parliament as much flexibility as it chooses to exercise.

10:00

The Convener: In the past couple of days, there has been a lot of nonsense about the Crown Estate and the keeper of the privy purse. I want to clear up an issue that might—unlike the issues raised in the past few days—be relevant. I just want some clarity on this point. It is possible that the devolved Crown Estate in Scotland could make shedloads of money—more than people may have expected. Is there any prospect of a detriment being applied that would lead to any additional resources that come from the Crown Estate being removed from the Scottish block grant?

John Swinney: That point has been missed in all the discussions about the keeper of the privy purse. If the Crown Estate is devolved and the revenues flow to the Scottish Government, a block grant adjustment will be undertaken as a consequence. That is the starting point: there will be a block grant adjustment—unless all my numbers have come up—at the point of devolution.

There is then the question that the convener raises, which is similar to some of the points that Mark McDonald and Tavish Scott raised earlier. What happens if there is then a financial benefit? Are we able to retain that, or does the no-detriment principle somehow apply in some of those areas? That is a very material point in the block grant adjustment discussions.

The Convener: There is no clarity on that yet, though.

John Swinney: No.

The Convener: It would be useful for us to ask the secretary of state about that. If it would penalise us, what is the point?

Lewis Macdonald: Deputy First Minister, you responded to Rob Gibson's question about the Crown Estate by agreeing that the devolution of both management and revenue is what is intended under the Smith agreement, and by affirming that your amendments to the Scotland Bill would deliver that. Do you agree that there is no reason why the scheme that is brought forward in the bill as it stands could not deliver the devolution of management and revenue of the Crown Estate in Scotland?

John Swinney: An important point has been lost here. The debate—in which a number of commentators are actively engaged—about the approach that is being taken to the Crown Estate gets to the nub of whether the Parliament should be given the flexibility to determine and decide the approach that it intends to take in exercising its responsibilities over the Crown Estate. I do not think that it is devolution for that to be undertaken

through the design of a scheme, as opposed to the devolution of the responsibilities to the Parliament for it to formulate the approach that it intends to take.

Lewis Macdonald: But if the scheme devolves the management and revenue of the Crown Estate in the terms that Mr Gibson asked you about, does it not therefore become a debate about the best form of architecture rather than the delivery of the purpose of devolution?

John Swinney: There is an important philosophical point here, which is that the terms and consequences of devolution are being prescribed by the UK Government. Mr Macdonald knows the legislative process well enough to know that, if the provisions that are currently in the Scotland Bill are enacted, there will be consequent restrictions that will be more restrictive than would be the case with the devolution of the responsibility to the Parliament to formulate its own approach and design.

Lewis Macdonald: In what area do you consider that such restrictions would be of critical importance?

John Swinney: It is not for me to work out how the provisions could be undermined. I simply want to ensure that the devolution of Crown Estate responsibility—which is what the Smith commission said should be the case—is enacted. I do not want to see devolved a set of arrangements that fetter the Scottish Parliament's ability to exercise its full devolved responsibility.

Lewis Macdonald: Arrangements that could potentially fetter that ability, but not in any way that you can define at this stage.

John Swinney: If the situation that Mr Macdonald is talking about were the case, it would run counter to the logic of the devolution of responsibilities since 1998. That is not the course that has been taken. If it were, Mr Macdonald would be arguing for a scheme of devolution for the health service, a scheme of devolution for education, a scheme of devolution for housing, and so on. What is being proposed in the Crown Estate provisions is at odds with the nature of the devolution process that has been undertaken since 1998.

Alison Johnstone (Lothian) (Green): I have a question about a specific asset in Lothian. Have there been any discussions with the Crown Estate or the Treasury with regard to the inclusion of Fort Kinnaird as an economic asset in Scotland?

John Swinney: Yes, there have. I have had those discussions myself with the Crown Estate and we have made our position clear that we think that Fort Kinnaird, as an economic asset in Scotland, should be part of the devolved scheme.

Alison Johnstone: And how is that discussion progressing? Is your position meeting an open mind?

John Swinney: Well, we are discussing it.

Alison Johnstone: Certainly, the Rural Affairs, Climate Change and Environment Committee has discussed this matter, and there is a view that, as a legal interest, Fort Kinnaird is already part of the Crown Estate in Scotland.

John Swinney: To me, that is the only logical conclusion that can be arrived at, given the current state of things. I cannot see how anything else can be argued. It is a material issue that we have to advance in the discussions. From the Scottish Government's point of view, it is illogical and inconsistent for Fort Kinnaird to be exempt from the devolution of the Crown Estate assets and functions in Scotland.

Alison Johnstone: Does it remain the position that the returns from any investments that are made in Scotland by the Crown Estate after the transfer point would flow to the UK Treasury?

John Swinney: In my view, that should not be the case.

The Convener: We have a couple of minutes left, so we can finish off the Crown Estate issues quickly.

Rob Gibson: The question about Fort Kinnaird raises the issue that the decision to exclude Fort Kinnaird is a policy decision, not the result of a legal need. If that is the case, is it possible to argue that, in fact, the revenues that are generated from Fort Kinnaird could be assigned to the Scottish consolidated fund?

John Swinney: A proposal of that type begins to tamper with the overall principle of the devolution of the Crown Estate functions. It gets into the mechanics of the scheme in a way that restricts and undermines the principle of the devolution of the Crown Estate assets in Scotland, which, for as long as I can remember, many colleagues of all political persuasions have argued for.

The Convener: We will have to conclude at this stage. If members have any further questions, we will put them to you in writing. It would be helpful if you could respond to them as quickly as possible. I thank you for the constructive way in which you and your officials have engaged with the committee.

10:08

Meeting suspended.

10:14

On resuming—

The Convener: Welcome back. Our second panel of witnesses are in place, so we can resume the meeting. The panel consists of David Mundell, the Secretary of State for Scotland; Professor Adam Tomkins, who is a constitutional adviser; Colin Faulkner, deputy director, constitution and Scotland Bill; and James Dowler, manager, Scotland Bill. Welcome to you all.

I believe that the secretary of state wants to make an opening statement.

Rt Hon David Mundell (Secretary of State for Scotland): Yes, convener. I am delighted to be here and I want to make a very short opening statement.

I very much welcome the opportunity to attend the committee this morning as the UK Government moves forward in implementing in full the all-party Smith commission agreement. It was a manifesto commitment of the UK Government and that is what we are doing at the earliest possible opportunity. I was glad to meet the convener and other members of the committee at one of my first meetings as Secretary of State for Scotland and I want to continue the productive discussions as the bill passes through the House of Commons and the House of Lords.

Throughout the process, I want to ensure that the committee is fully aware of the UK Government's thinking, and I will be happy to return to the committee as appropriate. The committee's interim report was thorough and has already contributed to the quality of debate in both Parliaments. I look forward with interest to the outcome of the further engagement work that the committee is carrying out over the summer.

The bill has four days at committee stage on the floor of the House of Commons before our summer recess and I anticipate that the report stage will follow that recess in Westminster. In making the Scotland Bill as effective as possible, I will continue to be constructive and to look for ways to work with members of both Parliaments and to continue working closely with the Deputy First Minister and the Scottish Government. Indeed, I am meeting the Deputy First Minister this afternoon.

I am confident that the bill reflects the Smith commission agreement, as the president of the Law Society of Scotland, among others, has confirmed. There will, of course, be questions of drafting and emphasis that should rightly be debated, and the bill's continuing passage presents further opportunity for refinement.

I am very pleased, however, that the central purpose of the Smith commission—the greater

financial accountability for Holyrood that comes with control of around £11 billion of income tax revenues and £4 billion of VAT—is not in dispute in any way. That is a hugely significant measure and one that I am committed to delivering in statute without delay.

The bill has undergone considerable refinement since the draft clauses were published in January, including confirmation that the Scottish Parliament will be able to set a zero per cent rate of income tax and a new clause to top up reserved benefits. A number of additional clauses have been added to improve the technical operation of the bill's measures.

Before I answer the committee's questions, I would like to be clear about the Government's position on so-called full fiscal autonomy, which has been the subject of amendments that were lodged at the committee stage in the House of Commons. Full fiscal autonomy was not in the Smith commission agreement. An independent analysis shows that it would be bad for Scotland, leaving us with £10 billion less to spend by 2020. The Government will resist changes to the bill that would be bad for Scotland and therefore full fiscal autonomy amendments will not be added.

The Convener: Thank you for that statement, secretary of state. We will begin with welfare.

Linda Fabiani: Secretary of state, you and other members of your Government are on record as saying that the proposed legislation matches the Smith agreement. Obviously, the Scottish Government says that it does not. You would say that the Scottish Government would say that, but this cross-party committee unanimously agreed that the draft legislation did not meet the spirit or the substance of the Smith agreement. We now hear from the House of Commons library that very important parts of the proposals on welfare are not met in the clauses.

I draw your attention in particular to the Smith agreement's call for new powers to create benefits in areas of devolved responsibility. The draft legislation is clear that it would allow benefits only for areas of responsibility that are devolved by the bill. Can you explain that difference?

David Mundell: I can clearly explain the position. I think that the House of Commons library response should be read in detail, because it does not say that the bill does not meet the Smith commission requirements; it says that some aspects of the Smith commission provisions are dealt with in the bill and some will be dealt with outwith legislation.

At the second reading of the bill in the House of Commons, I made it clear that I wanted to address the issue of benefits in devolved areas, because there is continuing discussion about how that can

be best achieved. There are those who advise that the Scottish Parliament already has powers in relation to benefits in devolved areas.

When I last appeared before the Scottish Parliament's Welfare Reform Committee, two types of benefit were suggested as examples of the sort of benefits that were perceived to be appropriate under that sort of arrangement. One was in relation to support for prisoners when they leave prison and the other related to educational matters. My view is that the Scottish Parliament already has powers over both of those types of benefit. However, I have committed—and I again commit to this committee—to ensuring that that provision of the Smith commission is met.

We are in on-going discussion with the Scottish Government on the matter, and it will be debated at committee stage in the Westminster Parliament next week, but I give this committee an undertaking that that part of the Smith commission will be met when the bill passes into legislation.

Linda Fabiani: Are you committing to making amendments to ensure that there will be powers to create benefits in areas of devolved responsibility and that, therefore, the idea of additionality for the individual will be guaranteed so that, in relation to people who have been sanctioned, this Parliament would have the right to create additional benefits without any veto being applied by Westminster?

David Mundell: I think that you are blurring the lines, as there are two different types of benefit arrangements. I understood that we were talking about the ability to provide benefits in devolved areas.

Linda Fabiani: Let us take housing.

David Mundell: That is an area in which there is an on-going discussion on how that ability can best be achieved. I am giving an undertaking that we will get a resolution of the issue, so that what was said in the Smith commission is met. There are different views as to how that can be achieved.

The ability to top up existing benefits, which I am sure the committee very much welcomes, was put in the bill as a clear reflection of the Smith agreement. That is an ability for the Scottish Parliament to top up benefits should it so decide, but it is not the devolution of the conditionality provisions in relation to universal credit and related benefits.

Linda Fabiani: The UK Government has been clear that there will be a further £12 billion in cuts from the welfare budget. Will it be made clear, prior to any devolution under the Scotland Bill, where those cuts will fall?

David Mundell: You now have 56 colleagues in the Westminster Parliament, who I very much welcomed. I am sure that they will be active in the

debate on the budget and other funding of welfare in Scotland. Clearly, they will look to ensure that they have the maximum amount of information on the impact of any Government policy that relates to Scotland.

The Convener: I want to make sure of something for the record. When we had John Swinney before us earlier, we discussed the introduction of new benefits in areas that are currently devolved, for example in housing. The Deputy First Minister's view was that, as the bill is drafted, we would be unable to introduce a new benefit in housing. If that is the case, there is a requirement for clarity between the UK Government and the Scottish Government. Will you commit to ensuring that this Parliament will be able to introduce a new benefit in future, for instance in housing, if it chooses to do so?

David Mundell: I am committed to the on-going dialogue with the Scottish Government to ensure that the Smith commission provision in relation to devolved benefits is met in full. I am very happy to discuss that. I will see the Deputy First Minister shortly and I am happy for that specific issue to be part of the agenda or as a follow-on to that. It is helpful in these discussions, particularly on such provisions, to understand what the Scottish Government wants to do and how that can be achieved.

The Convener: The issue is what Smith wanted to do.

David Mundell: I am clear on what Smith wanted. He wanted the Scottish Parliament to be able to make provisions for benefits in relation to devolved areas. That is what I am committed to delivering. If, in my dialogue with the Deputy First Minister, he talks me through his concerns in relation to housing, I would be happy to listen to that.

The Convener: I used housing as an example. You have, quite rightly, said exactly what Smith said. Unfortunately, our understanding of the bill as drafted is that it would apply only to devolved areas in the bill and not areas in which there is full devolved responsibility. There is a nuance there that needs to be sorted out.

David Mundell: What I am committing to is that there should be an on-going dialogue on that issue.

Linda Fabiani: On the question of additionality for the individual, Smith was clear that, when we look at the overall picture of what a household receives, if in Scotland we decided to top up or create a new benefit, it should not automatically be taken off in another element, for example, under universal credit. That was the flexibility that was desired. I hope that the secretary of state will take that on board.

David Mundell: I have heard what you have said.

Stewart Maxwell: We are getting answers on the generality of a commitment to a dialogue but I would like a commitment on a very specific question. Smith said that there should be the devolution of industrial injuries disablement benefit. The UK Government has said that it will devolve industrial injuries disablement benefit for those who are unemployed. That is different—it is a subset of what Smith said. Will you commit today to an amendment to the bill so that it does what Smith said, which is to devolve industrial injuries disablement benefit?

David Mundell: Again, I will take away what you have said. We have a debate on Tuesday in Westminster on the welfare provisions of the bill. I am sure that that matter will be raised as part of that discussion.

Stewart Maxwell: I am sorry, secretary of state, but this is really quite a simple question. You have said that you will commit to Smith in full. I have asked you a specific question. Smith said one thing and your Government has said something else. Will you commit today to revert to what Smith said? It is quite a simple question, secretary of state.

David Mundell: I am giving you a very simple answer, which is that I am taking note of what you have said. I am debating the matter in Parliament on Tuesday and we will look at the point that you have raised.

Stewart Maxwell: You are refusing to commit to what Smith said.

David Mundell: No, I am not refusing—I know that those are the sort of semantics that you want to get into.

Stewart Maxwell: It is a simple question, secretary of state.

David Mundell: I do not want to get into that sort of dialogue. The dialogue that I will get into is that you have made a point and I am very happy to look at that point.

Duncan McNeil: We heard earlier that a great deal of dialogue is going on between officials and ministers, but you give the impression that this is the first time that those two specific issues have been raised with you. Is that the case?

10:30

David Mundell: The specific housing issues in relation to the devolved benefits have not previously been presented to me. As I said, the issues that have been presented to me have been around being able to support prisoners when they leave prison and those on the educational side. I

am happy to look at specifics, because an issue that has arisen and continues to arise in the discussions with the Scottish Government is understanding what it is looking to do with the powers that are being devolved so that we can facilitate a transfer that allows that to happen. It is difficult to argue that a provision does not meet some aspiration unless we understand what that aspiration is.

Duncan McNeil: We are just trying to clarify the issue. Is it the case that at all those meetings between ministers and officials, the issues that we are discussing were not raised formally with you?

David Mundell: The housing benefit issue has not specifically been raised with the—

Duncan McNeil: Stewart Maxwell raised the issue of industrial benefit. Has that issue been raised with you specifically?

David Mundell: It has not been raised specifically with me in the terms in which Mr Maxwell presented it. I cannot say that, in the wide range of discussions with officials, the issue has not come up somewhere along the line.

The Convener: Just to clarify, on 7 June, the Deputy First Minister wrote to the committee—I assume that he sent a copy to the secretary of state—and his letter clearly contained a paragraph that talked about powers to create new benefits. It was me who introduced the issue of housing to the discussion, but we could be talking about that issue, education or issues from a range of other areas that are within the devolved responsibility. However, it is clear that the letter of 7 June brought to the attention of the committee the issue of powers to create new benefits.

David Mundell: In my opening speech for the second reading of the bill, I raised the issue of powers to create new benefits in devolved areas. We have had a lengthy discussion about that and what those powers would actually mean in practice. It is helpful to be able to talk through what the practical proposal is so that we can say definitively whether it is not met by the bill or any other legislative framework. That is why specific examples matter. As I said, I am happy to take forward with the Deputy First Minister the housing issue because it has not been raised specifically with me previously. However, let us look at it.

The Convener: Okay. Before I move on to another area, do members have any other questions on welfare? Mark McDonald does

Mark McDonald: Sorry, convener, but it is not on welfare.

Linda Fabiani: My question is on vetoes, but I do not know whether you want to deal with that generally.

The Convener: I will come back to that if somebody else wants to raise it. Mark McDonald can have a question, and then we will go to Alex Johnstone on taxation issues.

Mark McDonald: I was going to move on to taxation issues, but I want to cover a general issue first.

The Convener: Cover the general issue first, and then we will get on to the tax issue.

Mark McDonald: Secretary of state, yesterday at Prime Minister's questions, the Prime Minister said in response to my colleague Angus Robertson's raising of the Devolution (Further Powers) Committee's report:

"We addressed precisely the points made by the Scottish Parliament committee to which the hon. Gentlemen refers."—[*Official Report, House of Commons, 24 June 2015; Vol 597, c 880.*]

I am not sure whether you have seen the paper that the Scottish Parliament information centre produced, but I am sure that the committee would be happy to share it with you if you have not. SPICe produced a traffic light system after the bill was introduced to examine how areas of the bill related to the committee's recommendations. There is a lot of red in the SPICe paper, which indicates that there has not been any movement in the bill from the draft clauses in relation to the recommendations that the committee made. I hope that you will not have too much difficulty in answering my question. Given that the committee's barometer was the Smith commission proposals, can you give us a guarantee that, at the end of the current process, all the traffic lights in the report will have gone from red to green?

David Mundell: I can guarantee that all those issues will be debated and discussed. [*Interruption.*] Mr Maxwell scoffs.

Stewart Maxwell: No wonder.

David Mundell: However, Mr Maxwell and others are not the sole guardians of the Smith commission agreement or of determining whether a clause is definitively interpreted one way or another. A lot of the issues are matters of interpretation. We had a—

Mark McDonald: Perhaps I can be helpful, secretary of state. Our committee reached unanimous agreement that in key areas the draft clauses at that time did not meet the spirit or the letter of the Smith commission. The interim report that came to us following the bill's publication indicates again—there is a dispassionate analysis to this effect—that in terms of the letter and the spirit of the Smith commission, the bill does not meet requirements.

Therefore, if you and the Prime Minister are making public pronouncements and

pronouncements at the dispatch box that you are delivering the Smith commission, surely at the end of this process all those red lights will have turned to green. That is not a political analysis; it is simply the case that, if you are going to deliver Smith, that is what needs to happen. Can you give us that guarantee?

David Mundell: I am satisfied that, at the end of this process, we will deliver Smith in full. I do not have any doubt about that. I am sure that some people will not agree with us, for their own purposes, but I think that we will be able to command a widespread view that we are delivering Smith in full.

Mark McDonald: So that is a yes.

David Mundell: I am not sure who is operating the traffic lights or what the criteria will be. A number of matters are matters of debate. We have debated them significantly in the Commons. As I indicated to the convener at the start, we have allowed four full days for detailed debate of the Scotland Bill. People are putting forward arguments on why "a" should be used instead of "the" and why certain words should be removed. Debate and discussion are taking place. That is the appropriate way to proceed. I am reflecting on the first day of debate, and I will reflect on the three further days of debate.

At the end of the process, I want us to get to a position in which, outwith the immediate political bubble, there is widespread acknowledgement that the bill meets Smith in full.

The Convener: Alex Johnstone will now open up the area of taxation.

Alex Johnstone: I will do that, but first I want to comment on the traffic lights issue. It is unfair to SPICe to suggest that it was responsible for the colour of the traffic lights, given that the document that it prepared at short notice was, I believe, discussed in private by the committee and the colour of some of the traffic lights changed such that, subsequently, there were fewer green lights and more red lights on the list than in the document that SPICe originally produced.

Linda Fabiani: That is not true.

Mark McDonald: It is utterly untrue.

The Convener: Guys, can we keep this civil, please?

Alex, I do not think that that is accurate, but never mind. Will you move on to the issue of taxation and the fiscal framework, please?

Alex Johnstone: How are discussions on the fiscal framework progressing? What timescale is that process likely to follow?

David Mundell: I do not know exactly what the Deputy First Minister said in his evidence, but from our perspective the meeting that he had with the Chancellor of the Exchequer and Treasury officials to discuss how the fiscal framework should be taken forward was very productive. Other such meetings are to take place shortly.

The basis on which the fiscal framework discussions will take place has been agreed. Officials of the two Governments will work together closely over the summer to ensure that progress is made. Both Governments have agreed not to provide a running commentary on the fiscal framework, but when there are significant developments, those will be shared with both Parliaments. We anticipate that the discussions on the fiscal framework will run in parallel with the discussions on the bill.

Alex Johnstone: I have great respect for the fact that work will be done bilaterally at ministerial level, but is there any way the committee can become involved in monitoring that process as it goes along?

David Mundell: From a Scottish Parliament perspective, those are matters to be raised with Mr Swinney and the Scottish Government.

As I said, it is important in negotiations of this kind that we are not engaged in some form of running commentary, but the Parliaments here in Scotland and in London should be advised when significant milestones are reached. We certainly want to ensure that the work dovetails with the bill's passage through both the House of Commons and the House of Lords.

Alex Johnstone: What process do you envisage being required to firm up the borrowing regime? Will it be part of the current legislative process? Will it need to appear in the bill?

David Mundell: It is not possible to say, at this stage. I do not want to make any specific commitments in relation to what the legislative requirements of the fiscal framework might be.

Alex Johnstone: Thank you.

Lewis Macdonald: I asked the Deputy First Minister about the basis for assignment of VAT, and he responded that that is part of the wider discussions around the fiscal framework. Clearly, those discussions will cover many complex areas. In some areas, perhaps including the basis of assignment of VAT, there are relatively straightforward decisions in principle to be made. Does that mean that, in such areas, it is possible that an earlier decision might be reached and an earlier announcement made?

David Mundell: That is certainly possible, but VAT is part of a package of measures; the fiscal framework is an overall package. If you are asking

whether an earlier decision is technically possible, the answer is yes, but it is not possible to say at this stage whether that will be part of the package.

Lewis Macdonald: I also asked the Deputy First Minister a couple of questions about specific areas, one of which was clause 12, in which you state that the Scottish Government may not vary the rate of income tax for different types of income, with which he clearly has no difficulty. Was there a particular reason that prompted you to include that provision in clause 12?

David Mundell: We have looked to get the balance right in relation to income tax in terms of the Smith commission position overall. The overall concept of income tax is UK-wide, with the opportunity to develop distinct arrangements in Scotland. I hope that the committee welcomes the fact that we have made it absolutely clear that there will be the possibility within Scotland of a zero-rate band, which in effect allows for a de facto increase in the personal allowance, should the Scottish Government desire that.

Lewis Macdonald: That is helpful. The other area that I asked Mr Swinney about was land rental or royalties in relation to fracking, or on-shore oil and gas extraction. His response was that, for completeness, because the power to license fracking is to be devolved, the power to tax it should be devolved as well. Many people outside might be quite surprised that that was the Scottish Government's response. Nonetheless, I would be interested to know why your Government feels that the power to raise revenue from onshore oil and gas extraction should be reserved and not devolved along with the power to license it.

David Mundell: We are following what was set out by the Smith commission, and that specific proposal was not made at that time. That is why it is not reflected in the proposals that we have brought forward.

Lewis Macdonald: Clearly, it would not be relevant if the Scottish Government ultimately decided not to permit fracking, but on the basis that it is, I presume, keeping that option firmly open, what are the implications from a UK Government point of view of devolving that tax power? Would that cause you particular difficulties?

David Mundell: Again, I am not aware that that specific request has been made. We look at all the requests that we receive that go beyond Smith. That is the commitment that has been made, so if such a request was made, we would look at it.

Lewis Macdonald: For the secretary of state's understanding, I advise him that the Scottish Government is seeking amendments that would allow a land rental regime to run in parallel with that which the Department of Energy and Climate

Change operates in England and Wales. I presume that that proposal will be put forward in amendments in the next few weeks.

David Mundell: I will look out for that.

The Convener: Mark McDonald has one more question on tax.

10:45

Mark McDonald: My question is about the second principle—that of no detriment. The first principle of the transfer of powers is fairly well established and well agreed.

There are discussions to be had between the Scottish Government and the Treasury about the fiscal framework and how much flexibility will be afforded to the Scottish Parliament and the Scottish Government within that fiscal framework. With that in mind, do you have a view on your input to the discussions that will take place around how the second principle—the principle of no detriment—should apply? How much flexibility should be allowed within the fiscal framework to enable Scotland to pursue a different policy approach, should it choose to do so?

David Mundell: On your latter point, it is not the intention that the fiscal framework should constrain the powers that are being devolved in the bill. I am very clear about that. The Scotland Office is involved in the fiscal framework process and will continue to be so, arguing—as we see it—for the best interests of Scotland and to ensure that the Smith commission agreement is met in full and, as I have said, is not in any way restricted by that framework.

I am not going to get into a discussion about how the negotiations will be managed, because that would fall into the category of a running commentary.

The Convener: We will move on to the Crown Estate. Tavish Scott will kick off this area of questioning.

Tavish Scott: I want to ask the secretary of state about amendments that have been tabled to the clauses in the Scotland Bill relating to the Crown Estate. I presume that you are familiar with the amendments. Amendment 57, which would amend clauses 31(1A) and 31(1B), would require the relevant functions of the Crown Estate in Shetland, Orkney and the Western Isles to be transferred to the councils for those areas. That is very much what the Smith agreement said, and it is what the Westminster committee said. Do you have a view on that amendment?

David Mundell: I am looking at all the amendments—I am sure that that is what you would expect me to say. In the previous

Westminster Parliament, there was a committee report that was very supportive of devolution of the Crown Estate's responsibilities directly to local authorities. Nevertheless, the UK Government's view is that it is for the Scottish Government to determine the balance of powers between it and local government in Scotland. Therefore, although I am sympathetic to what the amendment is trying to achieve, I caution that it is unlikely to be agreed to.

Tavish Scott: Thank you. Amendment 23 would oblige the Treasury to make a scheme to transfer all the existing functions of the Crown Estate to the Scottish ministers. What is the Government's take on that amendment?

David Mundell: That amendment, too, is unlikely to be agreed to, but I am not going to prejudge the debate that we will have on day 4. The Treasury's power to make the scheme is subject to approval of the scheme by the Scottish ministers. It would be inappropriate for the Treasury to be obliged to make a scheme, as it may make a scheme only if the Scottish ministers agree to that. We must continue to work with the Scottish Government to ensure that we have maximum agreement around the scheme.

Tavish Scott: That allows me to raise the point that the convener and the deputy convener made when the Deputy First Minister gave evidence earlier. He told the committee that the Scottish Government has tabled a paper to the UK Government on the intergovernmental working relationships that it considers are necessary to achieve sensible outcomes not just on the matters that are currently under discussion but for the future. The Deputy First Minister said that the UK Government has yet to respond to that paper. Can you update the committee on your thinking on those suggestions?

David Mundell: We are engaged in an on-going dialogue with the Scottish Government. I want us to have much better intergovernmental working on a more general level—that was one of the personal recommendations that Smith made. We want to work in a much better way with the Scottish Government on a range of issues. I believe that we are making progress, because my approach is a constructive one to achieve agreement where we can, to recognise that, although there are many areas in which we are not going necessarily to be in agreement, we should be able to deal with the processes in a mature way. We continue to have that dialogue. For example, when I meet the Deputy First Minister this afternoon, we will discuss how we will consider proposals that have been made by the Scottish Government that go beyond Smith.

Tavish Scott: That is fair, but the committee is interested in the practical machinery. The Scottish

Government has made a series of proposals and the committee has given some thought to the matter and has made some suggestions, too. However, we have had no formal response or, indeed, an informal response—until today, if we take your comments just now as an informal response that you have placed on the record.

We are interested in the practical things that are going to be done to ensure that there is parliamentary oversight, at Westminster and here, of the relationships. It is not yet clear to us what those things would be. It would be helpful to have a formal response from the UK Government to that paper.

David Mundell: I would be happy to commit to making a formal response. There is a balance to be struck. We have to improve processes—there is no doubt about that—but we also have to improve our ways of working. I am very much committed to doing that, by improving the dialogue between UK Government and Scottish Government ministers, looking at ways to resolve issues rather than escalating them and finding ways in which we can move forward into the environment that Smith envisaged, which involves having shared responsibilities and which must be based on a different type of relationship.

The Convener: As we have gone into the area of intergovernmental relations, we will finish that off before coming back to the Crown Estate.

Duncan McNeil: It is all very well for you to say what you have said, as the secretary of state, but we have no means of evaluating whether your statement tallies with the previous evidence from the Deputy First Minister. Despite the fact that we have had responses and have seen lots of correspondence and there are lots of meetings going on, we have not moved on. However, it is interesting to note that you and the Deputy First Minister said that there will be no “running commentary”—you used the same language, so I presume that there is agreement there—on the discussions between ministers and officials. As seasoned parliamentarians, we understand the limits of what we are asking for, and it is not good enough simply to say that there will be no running commentary without the other stuff. Do you agree with the Scottish Government that there needs to be an overhaul of the existing intergovernmental relations?

David Mundell: Yes.

Duncan McNeil: Good. The Deputy First Minister said that the UK Government is working to develop appropriate mechanisms. What progress has been made by the working groups to develop those mechanisms? What stage are we at?

David Mundell: The matter is still under discussion. To be fair to the current UK Government, which has been in position for only a matter of weeks, in the very productive initial meeting that took place between the Prime Minister and the First Minister it was agreed that the existing mechanisms, which were designed in a different time, are not appropriate and that there is a need to look at the relationship between Scotland and the UK Government, as well as the relationships that operate in the wider devolved context, which includes Wales and Northern Ireland.

One of the things that was agreed—I hope it is in the public domain—was that the Prime Minister and First Minister would have more bilateral discussions because that is a more effective way of dealing with issues in relation to Scotland. There would still be a benefit in having the wider joint ministerial committee process involving Wales and Northern Ireland.

This is about evolving processes to deal with the changes that have taken place since 1999. We are committed to that. I am sure that MOUs will be produced. It comes down, however, to relationships of trust on the ground, and to being able to work together.

Although I have previously been a minister, coming into this role I am very impressed with how well officials are able to work together. I pay great tribute to the Scottish Government officials and my own officials who work very closely together and achieve a great deal—then we politicians get involved and muddy the waters.

Just to finish the point, I say that contrary to the general impression that is created, on 90 per cent of on-going issues the Scottish and UK Governments are working very closely together in the joint interests of the people of Scotland. That is sometimes difficult to grasp from media reports.

Duncan McNeil: The politicians round this table are not involved in those discussions: that is the point.

Tavish Scott: Exactly.

Duncan McNeil: You stated clearly in your introduction that you want that involvement, and that you seek that openness and seek to meet the principles of this Parliament. The Deputy First Minister also seeks to do that. Will you give us a guarantee that, when you meet him this afternoon, you will achieve some sort of resolution based on all of the work that took place while you were fighting an election, when the same officials were meeting regularly to discuss the issues?

It is time to produce some idea of what information this committee can expect, how we can evaluate your evidence against that of others

and how we can evaluate progress. Is not it time that the parliamentary process was given due respect in the discussions?

David Mundell: I hope that I have given the parliamentary process due respect. As I indicated, one of my first meetings as Secretary of State for Scotland was with the convener and members of this committee.

I am absolutely clear that this committee has an on-going role in relation to the Scotland Bill. I am not appearing today to say, "Take it or leave it". I am listening to the points that have been made.

I have indicated the timescale for the bill going through the Westminster Parliament, and the committee will have continued opportunities for involvement in that process. That is my commitment on the things that are within my control. I undertake to raise with Mr Swinney what you have said, Mr McNeil, and how we can best achieve that.

Duncan McNeil: I look forward to a swift outcome. Thank you.

David Mundell: Everybody has the same objective: we want to implement the Smith commission in full. We will have disagreements about whether the provisions are exactly as others want. The objective is the same, however, and I therefore believe that we can do it.

The Convener: I bring the secretary of state back to the issue of the Crown Estate, where this discussion began, and a question from Rob Gibson.

Rob Gibson: The Smith commission agreed to the management of the Crown Estate in Scotland being devolved to the Scottish Parliament, together with the revenues generated from the Crown Estate. The Scotland Bill removes one of the reservations on the management in clause 31(2) and that is fine. However, the reservation in paragraph 3(3)(a) of schedule 5 to the Scotland Act 1998 is not removed. Why not?

11:00

David Mundell: I will have to seek clarification from my officials in that very specific regard.

Colin Faulkner (Scotland Office): I do not have the answer off the top of my head, but we can write to the committee.

David Mundell: I will write to you specifically on that issue, Mr Gibson.

Rob Gibson: We require clarity on the legislative competence over revenues that is being devolved to the Scottish Parliament, as agreed by Smith. Can the Scottish Parliament repeal the amended Civil List Act 1952 to direct the revenues

to local authorities, harbour trusts and so on? That part of the civil list is a reservation that has not been removed.

David Mundell: As I said, I will respond in writing to those very specific points that have been raised.

Rob Gibson: We need to be in time for the Government to think about making amendments to make sure that the devolution is complete. In the complexity of the scheme, we seem to have missed that point about allowing the Scottish Parliament to decide how we move the revenues to other bodies.

David Mundell: I understand the point that you are making—

Rob Gibson: I am glad that you do.

David Mundell: It is a detail point. Rob Gibson is quite right to highlight the nature of the arrangement that is put forward. I will write to Mr Gibson and copy in the members of the committee on that very specific point.

The Convener: Before I move on to Alison Johnstone, who also wants to ask about the Crown Estate, I want to return to the issue that Rob Gibson raised about revenues, and to ask the same question that I asked of the Deputy First Minister.

We have seen a lot of irrelevant things around the keeper of the privy purse in the past week or so, but I would rather stick to things that are relevant to the matter of devolving the Crown Estate. It is something that requires clarity; the Deputy First Minister was not in a position to give us a clear answer about this. If the Crown Estate happens to make shedloads of money—more than expected—would that be subject to the no detriment principle? Would any additional resources that were raised from Crown Estate activity lead to a reduction of the Scottish block grant under the no detriment policy?

David Mundell: That would not be my understanding.

The Convener: It would be helpful if the secretary of state and Mr Swinney could discuss that this afternoon and let us know whether that is actually the situation. That was not as clear as it could have been at an earlier part of the process. If you could do that it would be most helpful.

Alison Johnstone: The committee has heard the legal arguments about why Fort Kinnaird—a large retail park in the east of Edinburgh—is not included as part of the devolution of the Crown Estate. I would like to understand whether the secretary of state has plans to review that, given that the underlying asset—the interest—is owned by the Crown. The Crown Estate Commissioners

manage that interest and it does, therefore, form part of the Crown Estate.

David Mundell: My understanding is that Fort Kinnaird is not wholly and directly owned by the Crown; it is held by an English limited partnership in which the Crown Estate Commissioners manage an interest, alongside other commercial investors. The partnership owns property in other parts of the United Kingdom.

Alison Johnstone: Is it not the case that, if it is governed by English law, such a partnership is not a legal entity; it is the partners who are the legal owners of the property? There are two partners in the partnership: the Crown Estate Commissioners, on behalf of the Crown, and the Hercules unit trust. Because Fort Kinnaird is in Scotland, the interest that the Crown Estate Commissioners have is owned by the Scottish Crown.

David Mundell: That is not my understanding or advice on the legal position. Alison Johnstone has set out some very specific points. I will have them looked at and respond directly to her and to the other members of the committee.

Alison Johnstone: Thank you very much.

There is clearly a view that the clauses that transfer the management of the estate to the Scottish ministers are overly complex. Is that an aspect of the bill that you will seek to amend?

David Mundell: I do not accept that they are overly complex, because we need to have a shared understanding of what assets and liabilities are involved, for the very reason that was given in your previous question. We want that to be clear. I do not believe that the scheme is unnecessarily complex, but as the scheme goes forward in conjunction between the Treasury and the Scottish Government there will obviously be an opportunity for further discussion and analysis.

Lewis Macdonald: The questions about the civil list and Fort Kinnaird illustrate the complexity of that area. However, I put to the Deputy First Minister the proposition that the Scottish Government's proposed amendments and the position as laid out in the bill both might achieve the devolution of management and revenues. I know that you have to reply to some detailed questions, but is it your intention that the bill as drafted will deliver the devolution of revenues and management of Crown Estate assets in Scotland, and is it your view that the alternative proposal that has been put forward might equally achieve the same end?

David Mundell: Our view is that the power of the Treasury to make the scheme, subject to the approval of that scheme by the Scottish ministers, and the way in which the bill's proposals are set out will facilitate the achievement of that end. We

believe that what was set out in the Smith commission report has been achieved by the clause and the process set out in the bill.

The Crown Estate will be the subject of significant debate on day 4 of the committee stage of the bill. As with all other aspects of the bill, I am listening to the arguments that are being made. I have indicated to Mr Scott the difficulty that the Government might have in relation to devolution within Scotland being directed by the UK Government, but I am in the mindset of listening to the arguments that are being made.

Lewis Macdonald: Mr Swinney explained his objection to the scheme as proposed in the bill by saying that the scheme remaining with the Treasury meant that the design of the devolved Crown Estate would not itself be devolved. How would the UK Government respond to that?

David Mundell: That is not my understanding of how the proposals would work. If the Treasury makes a scheme, it would have to be the subject of approval by the Scottish ministers.

The Convener: We shall have a final question on this area from Rob Gibson.

Rob Gibson: I want to come back to Fort Kinnaird and the Crown Estate interests in Scotland. The commissioners obviously look after economic assets, which are managed by the commission in that respect. That suggests that, before day 4 of the debate, we would like to know the secretary of state's position on whether excluding Fort Kinnaird is a policy rather than a legal need. If it is an issue of policy, rather than a legal need, profits from Fort Kinnaird might then become part of the funds that the devolved Crown Estate could keep in Scotland.

David Mundell: My position is that what is being transferred under the transfer scheme is the management of all the Crown Estate's wholly and directly owned Scottish assets. For the reasons that I have set out, I do not believe that Fort Kinnaird falls within that definition. Alison Johnstone has made some specific points about the legal framework of that complex, and I will take those away and look at the issue and respond accordingly.

The Convener: We shall move on to another area. I call Stewart Maxwell.

Stewart Maxwell: This morning, I asked the Deputy First Minister about the on-going difference of opinion between the Scottish Government and the UK Government about whether there are vetoes in the bill and in the original draft clauses.

The Deputy First Minister stated that, in his view, there were about eight vetoes in the bill—two on universal credit and others on fuel poverty, carbon emissions, home heating costs and some

other areas. You have said a number of times, including in the House of Commons, that with regard to universal credit, for example, there are no vetoes and that the provisions are really a timing arrangement. Will you explain what you mean by that? My understanding is that, if the Scottish Government, backed by the Scottish Parliament, wanted to take forward a policy on universal credit, and you and the UK Government disagreed with that, the Scottish Government could not go ahead with it. Is that correct?

David Mundell: My thinking begins with paragraph 43 of the Smith agreement, which said:

“Universal Credit ... will remain a reserved benefit administered and delivered by the Department for Work and Pensions”.

Therefore, we have to establish a basis on which the two Governments can operate in a shared space. The DWP administers and delivers universal credit and the Scottish Government will have certain opportunities to make changes to part of the universal credit arrangement, so we need to have a mechanism for allowing the smooth implementation of the Scottish Government’s proposals. That is what is set out in the bill.

That is why I made the point earlier that we have to move to a different type of mindset. The proposal is not to try to stop the Scottish Government doing what it wants to do; it is about having mechanisms that ensure that the DWP and the Scottish Government can work together to ensure smooth delivery. That is how I see the clause. I do not see it as a veto; I see it as a discussion on how the timing of any changes would operate so that the changes can be smoothly implemented.

Stewart Maxwell: The Deputy First Minister gave the example of the dispute over consequential from Olympics spending that rumbled on for at least six years without agreement.

You may want to call it a matter of timing, but it seems that, if the UK Government disagrees with a policy decision that is made by the Scottish Government and backed by the Scottish Parliament, it can effectively block that policy decision for six years or longer. That sounds like a veto to me.

David Mundell: I do not think that that is a realistic possibility. Within that clause framework, there are reciprocal consultation duties on the DWP. The reverse argument would be that the Scottish Government or Parliament would block proposals by the DWP because they wanted to be obstructive.

We have got to move into a new space where we have shared responsibilities and we work together to deliver those responsibilities in a way

in which one Government does not seek to obstruct the other.

I take the Deputy First Minister’s point about the Olympics consequential; it feeds into the earlier discussion about improving intergovernmental relations. In the discussions that have taken place, he has raised that matter as an example of how we need to have better processes in place.

We both want to be in a position in which both Governments commit to the process and say, “This is the way that we are going to go forward in future.” We have to have processes. However, if we do not have the right mindset, it will be difficult to achieve things within the shared space.

Stewart Maxwell: I understand absolutely what you are saying. I want to clarify again a point that I raised with the Deputy First Minister. The Scotland Bill explicitly says that consent for change should not be “unreasonably withheld”. Is it correct that you decide what is reasonable or unreasonable?

David Mundell: Unfortunately, I personally do not have that power.

Stewart Maxwell: The UK Government does.

11:15

David Mundell: I am sorry for being flippant.

That provision was included in the bill in an effort to go as far as possible in setting out in legislation that there is no intention to withhold agreement; it is simply the case that there is a need to have a process for agreeing on timing and implementation.

Stewart Maxwell: I understand what you are saying, but given that the power to decide what is reasonable and what is unreasonable will rest with the UK Government, when there is a disagreement, ultimately, it might be for the courts to decide, as you said on Radio Scotland. Does that not suggest that there is a problem? If, ultimately, it will be for the courts to decide what is reasonable and if there was a disagreement, the Scottish Government would have to go to court to try to assert its authority over a devolved matter.

David Mundell: “Ultimately” is the key word there. I do not think that there are many circumstances in which going to court is desirable. The Scottish Parliament and the Westminster Parliament have produced many pieces of legislation in relation to which people end up going to court to seek definitions. I do not want us to be in that territory.

Post Smith, we are in a new situation of shared responsibility in which the two Governments require to work together. That is what people outside this Parliament expect us to do. They do not expect us to have lengthy debates about what

“unreasonably withheld” means. They expect that, if the Scottish Parliament has determined that it wants to make a change in relation to the devolved powers on universal credit, the UK Government will implement that timeously but also in a way that does not disrupt the broader operation of universal credit across the UK. That is what the provision is intended to do, and that is what we are looking to do.

I am not looking for legal get-outs. I want to find a basis on which we can have shared responsibilities that can be delivered without politicking, without unnecessary bureaucracy and certainly without recourse to the courts.

The Convener: Linda Fabiani will ask the final question in this area.

Linda Fabiani: Secretary of state, you mentioned paragraph 43 of the Smith agreement, which is on universal credit. It says:

“the Scottish Parliament will have the powers”.

That is not an interpretation; it is an intention. Paragraph 45 of the Smith agreement says:

“The Scottish Parliament will have the power to vary the housing cost elements of UC, including varying the under-occupancy charge and local housing allowance rates, eligible rent, and deductions for non-dependents.”

As Stewart Maxwell said, you have been quoted as saying that the UK Government needs to consult the Scottish Government. I put it to you that there is a difference between having to consult and having a veto. Therefore, I was quite pleased to hear you say to Stewart Maxwell that, if the DWP wanted to make a change, the Scottish Government could block it. Are you now saying that there is a reciprocal veto that the Scottish Government could exercise, or is it still the case that, if the UK Government wanted to change the housing cost elements right across Great Britain, it could impose that change as long as it consulted the Scottish Government, regardless of whether the Scottish Government agreed with it?

David Mundell: I think that I said that there are reciprocal consultation duties.

Stewart Maxwell: That is not what you said.

David Mundell: I think that it was. I do not accept that there is a veto on either side. The point that I was making is an important one. If either Government chose to be obstructive, that would not help with the delivery of shared objectives. Therefore, that should not be our mindset. The UK Government’s mindset is to deliver in relation to the devolved responsibilities on universal credit on behalf of the Scottish Government and to implement what it wants to take forward in relation to those provisions.

Linda Fabiani: Could the UK Government decide to change the housing cost element right across Great Britain, and could the Scottish Government be unable to do anything about it even though the Smith commission agreement says that

“The Scottish Parliament will have the power to vary the housing cost elements”

of universal credit?

David Mundell: The Scottish Government will have the powers that are set out in the Smith commission report. I am absolutely clear on that.

Linda Fabiani: But would the UK Government be able to change the housing cost element across Great Britain?

David Mundell: Universal credit will remain a reserved benefit, and that—

Linda Fabiani: What about the housing element?

David Mundell: The devolved aspects are those that are set out in the agreement.

The Convener: We have probably got as far as we can on that, Linda.

Can we move on to a slightly different area, secretary of state? The committee has taken a significant interest in permanence. Under the doctrine of sovereignty, sovereignty lies with the Scottish people and not with Parliament. That is well recognised as the Scottish concept of sovereignty. It has been reaffirmed in various ways including the claim of right and indeed the establishment of the Scottish Parliament. Can you confirm that you agree with the concept of the sovereignty of the Scottish people?

David Mundell: My position, having listened to the debate, is that it is inconceivable that the Westminster Parliament could abolish the Scottish Parliament on a whim without the consent of the people of Scotland and hope to retain the United Kingdom. It is absolutely inconceivable that that could happen, and that is why, having listened to the debate, I do not believe that it is necessary to set out all sorts of preconditions about how the Scottish Parliament could be abolished. I do not think that it is conceivable that the Scottish Parliament could be abolished without the consent of the people of Scotland and there could still be any hope that we would retain a United Kingdom.

The Convener: Okay, but that was not really my question. I asked you whether you believe in the sovereignty of the Scottish people.

David Mundell: I believe that it is for the people of Scotland to determine how they are governed.

The Convener: All 11 members of the committee and all five political parties that are

represented on it share that view, but we also believe that there should be a referendum before this Parliament is ever disestablished, because it was a referendum that created it in the first place.

David Mundell: I do not think that that is necessary. I simply think that the political situation in Scotland has moved on. It is inconceivable that this Parliament could simply be abolished by the Westminster Parliament on a whim, as I think Mr Angus Robertson has said, and that that would have no consequence for the continuance of the United Kingdom. I just do not accept that that could happen. If we reached a referendum in that regard, the existing constitutional arrangements would have broken down in any event.

The Convener: That begs the question why we had a referendum in the first place. Westminster could have just decided that we were going to have a Scottish Parliament.

David Mundell: You and others clearly argued that view. As I recall, it was part of the proposal that was put forward in the 1997 general election that there should be a referendum. You will accept that the Scottish Parliament could have been established without a referendum being held. That is a matter of fact.

I think that the clause clearly sets out the permanence of the Scottish Parliament. I think that it is unnecessary to have a lot of preconditions around the abolition of the Scottish Parliament because I do not believe that it is conceivable that the Scottish Parliament could be abolished and the United Kingdom could remain intact.

The Convener: Eleven members of this committee, of all shades of political opinion, believed that that should be a part of the process. Neither this committee, nor you, secretary of state, can determine what shapes of Government might appear at Westminster in future. Everything is conceivable, if we cannot conceive of what Governments might be in place in future. We will come back to that issue because it is a pretty fundamental thing that the committee believed in.

Another part of that is Sewel, which Lewis Macdonald wants to pick up on.

Lewis Macdonald: It may be hard to imagine abolition of the Scottish Parliament, but it is quite easy to imagine a UK Government seeking to change the human rights arrangements that apply here in Scotland. That has implications for the Sewel provisions, which are covered by the bill. What is your view about how the Sewel convention, as it currently exists, applies to any change to human rights legislation in Scotland? How could the Scotland Bill be amended to ensure that the Scottish Parliament consents to any fundamental change in its founding charter?

David Mundell: First, I am satisfied that the Sewel convention, as is, is set out in the bill. We have had the debate about that. I am clear that the intention of the Smith commission was to set out the Sewel convention, as is, in the bill, and I think that that has been achieved.

We have had some debate about the human rights issue and I have listened to that debate. The UK Government's wider proposals for changes to the Human Rights Act 1998 will come forward in due course. We are, however, very much aware that there are issues in relation to the Scottish Parliament and the other devolved Administrations and we will continue to work with the devolved Administrations as we progress that legislation.

Lewis Macdonald: Is it your view, in doing that, that any proposal that came forward in the area of fundamental human rights would require the consent of the Scottish Parliament?

David Mundell: We are looking at the bill at the moment. When the bill emerges, it will be clear what its specific ramifications are throughout the United Kingdom. At the moment, my position is to set out the benefits that I believe such a bill could bring not just to Scotland but to the whole of the UK. However, I am very conscious of the issues to which you refer.

The Convener: One area that the bill covers is employment programmes. Stuart McMillan will deal with that.

David Mundell: Hi, Stuart.

Stuart McMillan: Hi. Do you believe that the employment support clause in the bill matches the Smith recommendations?

David Mundell: I believe that it does, but I have committed to have further discussions with the Deputy First Minister; indeed I am meeting Alex Neil today, too. As the committee is aware, we have set up something called the joint ministerial working group on welfare, which is looking at the transfers of powers in that area and the transitional arrangements, which are very important for the implementation of the bill.

Stuart McMillan: I am pleased that further discussion will take place.

Although paragraph 57 of the Smith report does not talk about any restrictions on employment programmes, clause 26 of the bill includes time restrictions. Why is that?

David Mundell: We are in discussion about the employment programmes. They have been discussed at the joint ministerial working group on welfare and are subject to an on-going dialogue. I know the point that the member is making. Perhaps when I come back—or whenever—we will have reached a definitive view. It may be that

we will take the view that we currently take, or it may be that we will have a different view.

Stuart McMillan: I recognise that, earlier today, you said that you were in listening mode.

David Mundell: I am in listening mode.

Stuart McMillan: I welcome the fact that further discussions will take place. The committee was very clear in its report that there should be no restrictions on the type of person who could access employment services. Unfortunately, the clause in the Scotland Bill contains such restrictions.

David Mundell: Discussions are taking place on the work programme. I have committed to re-establish the joint ministerial working group on welfare, because I found it an extremely useful mechanism through which Alex Neil, Roseanna Cunningham, ministerial colleagues from the DWP and the Treasury and I can discuss matters. It also provides a forum for discussion between officials. The working relationship between officials in relation to those very complicated matters has been exemplary and a lot of very productive work has been done.

We want to ensure the smoothest possible transition. The challenge with the bill is not just in getting it through its legislative process; it is in implementation. It will be a hugely challenging task, but we are in a good place to take that forward.

The Convener: There is obviously a lot of discussion taking place at the moment on the bill between the Scottish and UK Governments. This committee would like to know a bit more about what those discussions are, when they are likely to come to an end and what conclusions are being reached. I hope that you will write to us about that; otherwise we are left up in the air as a committee on the facts and information. That would be very helpful.

You are about to meet John Swinney. If the Scottish Government agrees, it would be helpful for the committee to get a note of the outcome of the discussion. That would play us into the process more effectively.

You have made a number of commitments to write about the issues that have been raised with you today. We will write to you to pick up some of the issues that we have not managed to get to and I am sure that you will respond appropriately. In the meantime, thank you very much for the constructive approach that you have adopted as best you can in the circumstances.

I wish my colleagues a happy recess. We meet again on 3 September.

Meeting closed at 11:32.

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