OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 27 November 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 27 November 2019

CONTENTS

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
30th Meeting 2019, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Sarah Boyack (Lothian) (Lab)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)
*Kenneth Gibson (Cunninghame North) (SNP)
*Graham Simpson (Central Scotland) (Con)
*Alexander Stewart (Mid Scotland and Fife) (Con)
*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kate Forbes (Minister for Public Finance and Digital Economy)
Liz Smith (Mid Scotland and Fife) (Con)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 27 November 2019

[The Convener opened the meeting at 08:30]

Decision on Taking Business in Private

The Convener (James Dornan): I welcome everyone to the 30th meeting in 2019 of the Local Government and Communities Committee. I remind everyone present to turn off their mobile phones.

Agenda item 1 is consideration of whether to take item 3, which is consideration of a draft letter to the Standards, Procedures and Public Appointments Committee on the Scottish Elections (Reform) Bill, in private. Do members agree to do so?

Members *indicated agreement.*

Non-Domestic Rates (Scotland) Bill: Stage 2

08:30

The Convener: Agenda item 2 is consideration of the Non-Domestic Rates (Scotland) Bill at stage 2. I welcome Kate Forbes, the Minister for Public Finance and Digital Economy, who will speak to and move amendments on behalf of the Scottish Government. I also welcome her officials.

Section 1—Overview of Act and interpretation of references to other Acts

Section 1 agreed to.

Before section 2

The Convener: Amendment 1, in the name of Andy Wightman, is grouped with amendments 5 and 84.

Andy Wightman (Lothian) (Green): This group of three amendments deals with two distinct issues. Prior to 1956, there were owners' rates and occupiers' rates. Currently, the liability for rates lies with the occupier. Amendment 1 would transfer that liability to the owner, who is the party that ultimately benefits from the services that are provided by local authorities and the state more widely in protecting and providing the necessary amenities and infrastructure that generate the value for the owner and the prospect of a return by way of rent. Locating the owner is easier than locating the occupier, and a charge could be secured against property for unpaid rates, if necessary. That is amendment 1.

Graham Simpson (Central Scotland) (Con): You said that tracing the owner is easier than tracing the occupier. How do you work that out?

Andy Wightman: Because the owners are all listed on a public record.

Graham Simpson: That does not mean that they are easier to trace.

Andy Wightman: They are all on a public record. People can inspect the public record to find out who the owner is and, if necessary, take a charge against the property.

Amendments 5 and 84 deal with a different problem. The committee will recall hearing evidence about phoenix companies that occupy non-domestic property. They appear and disappear, preventing challenges for recovery of unpaid rates. We also heard from Brian Murison, who is the revenues manager at Highland Council, about shell companies as occupiers. In his evidence, he argued that, collectively, they owe around £2 million in unpaid rates across Scotland.

Given that the occupier can disappear but the owner cannot, it seems reasonable to make provision to secure the liability from the owner instead in defined circumstances in which there are difficulties in securing the payment of rates from an occupier. On an initial reading of section 16 of the Valuation and Rating (Scotland) Act 1956, it might appear that councils already have the power to chase the owner when they cannot chase the occupier. However, I read that as a saving provision that was applicable only in the immediate aftermath of the abolition of owners rates.

I initially lodged amendment 5 to provide guidance on section 16 of the 1956 act, but I will not seek to move it. Amendment 84 does the job required. It provides that any council that is

"unable to recover rates ... from the occupier"

has the opportunity

"to recover the rates from the owner",

and the regulations will set out the specific circumstances in which that can happen. As I said, the intention behind the amendment is not to provide a wide power to collect rates from owners, but to provide a power to do so only in those defined circumstances in which it proves impossible to recover them from the occupier. That seems to me to be a proportionate and sensible response to a real problem that was identified by witnesses.

Annabelle Ewing (Cowdenbeath) (SNP): Was that one of the Barclay proposals? I do not remember us discussing it when those came to the committee.

Andy Wightman: As I recall, the Barclay review did not identify the issue, and when it came up in the committee the first time, members were rather surprised, because it was perhaps the first time that they had heard about it. I do not know why the Barclay review did not consider it, although perhaps that is explained by the fact that it had a very narrow remit.

Amendment 84 is a proportionate and sensible response to a real problem. I ask members to give it serious consideration.

I move amendment 1.

Kenneth Gibson (Cunninghame North) (SNP): Following on from what Annabelle Ewing said, I do not think that we should support amendment 1, for several reasons. First, I accept that it might be easier to know who the owner is, but in my constituency there have been difficulties in getting owners to repair buildings because they live in places such as the Republic of Ireland and the Isle of Man. Secondly, we are trying to implement the recommendations of the Barclay review, but the proposal was not even considered by Barclay and was not one of the review's recommendations. To bring in such a monumental change at this stage, given that we have not taken any evidence on the matter, is wholly inappropriate.

Sarah Boyack (Lothian) (Lab): I am very interested in the anti-avoidance measure that is set out in amendment 84. The issue of how local authorities can chase people who deliberately avoid paying non-domestic rates has been raised with me, and I have lodged amendment 101, which is similar, although it relates to a later section in the bill, which we will discuss later today.

I am keen to support the principle behind the amendments, because it is important that local authorities have the powers to prevent people from evading such taxes. Our discussions during the process of shaping the bill should send a clear message that that is unacceptable. I am interested in hearing the views of Andy Wightman and the minister on the difference between the effectiveness of my amendment 101 and that of Andy Wightman's amendment 84.

The Convener: The minister will have a chance to speak in a moment.

Sarah Boyack: Yes, but I wanted to flag up the fact that I would like the minister to comment on that.

I am interested in the different approaches. I think that our amendments are trying to do the same thing, but I would like to hear not only from the minister and Andy Wightman, but from any member who has views on the matter.

Alexander Stewart (Mid Scotland and Fife) (Con): My views on amendment 1 are similar to those that we have heard from other members of the committee. In some circumstances, it is difficult to ensure that the owner of a property has the feu liability. We have numerous examples of situations in which buildings have fallen into disrepair and, because the owner is outwith the country, it takes years for the community to manage that blot on the landscape. I have some difficulty with amendment 1 in that regard.

Graham Simpson: Last night, we received a late submission from the Scottish Property Federation. I was struck by its point that the proposal would be a fundamental change in the business relationship between owners of properties and people who lease them. If someone signs a lease, that can—and usually does—make them liable to pay non-domestic rates and water rates. The SPF said that there had been just over 4,000 new lease transactions in Scotland in the past year, which would suggest that the change

could have an impact on tens of thousands of leases.

Andy Wightman: Will the member take an intervention?

Graham Simpson: I have almost finished making my point.

It would be a fundamental change and one that might have unintended consequences.

The Minister for Public Finance and Digital Economy (Kate Forbes): I will speak about the point that it would be a fundamental change before moving on to the substance of the amendments.

Members are right to say that the proposed reform, which was not considered by Barclay, would mark a substantial move away from the system that has been in place since 1956. The consequences of such a move have not been assessed or scrutinised by Parliament. There are several big questions, such as whether, in some cases, making owners liable could increase rates avoidance and whether councils would find it easy to recover rates on properties that are in foreign ownership. Those questions would need to be answered before we make such a substantial move away from the rates system as we know it.

Regarding the substance of the amendments, on amendment 1, there is certainly merit in the notion that councils might benefit from additional tools to tackle rates avoidance.

Andy Wightman: Will the minister take an intervention?

Kate Forbes: Yes.

Andy Wightman: There has been a lack of clarity from members on which amendment they are talking about. Minister, you just mentioned amendment 1 in relation to avoidance. I think that you mean amendment 84.

Kate Forbes: I mean your first amendment.

Andy Wightman: Amendment 1.

Kate Forbes: Your first amendment is about transferring the rates liability on a property to the owner rather than the occupier. One of the benefits that you identified when you spoke to that amendment was that it would enable councils to benefit from additional tools to tackle rates avoidance.

Andy Wightman: It is amendment 5 that is designed to provide the tools to tackle not so much avoidance but the situation that was highlighted to the committee by two separate witnesses, whereby millions of pounds in rates are not being collected because companies are formed and wound up over and over again. Therefore, amendment 84 is about providing the opportunity, in limited circumstances, to get the rates payment from the owner.

Amendment 1 is fundamentally different in that it would completely change the whole non-domestic rates system. It is important that we understand the distinction.

Kate Forbes: I appreciate that clarity, which is helpful. As you said, amendment 1 would substantially change the rates system. It has been identified that one of the merits of doing that is that it would enable rates avoidance to be tackled. I was merely making that connection.

I cannot support amendment 1. Such a substantial change would need to be scrutinised before we could go down that route.

I will not speak to amendment 5 unless the member wants me to, because he does not intend to move it.

Amendment 84 would allow councils to recover rates from the owner of a property when they are unable to do so from the occupier. It is unclear to me from the drafting of the amendment whether the council would have full discretion to exercise that power, or whether the circumstances in which a council may recover rates from an owner should be dealt with in the regulations that amendment 84 would allow the Scottish ministers to make.

As I mentioned, we are firm believers in tackling avoidance, which is why part 4 of the bill provides the Scottish ministers with the power to propose regulations to prevent or minimise advantages that arise from

"non-domestic rates avoidance arrangements"

that are "artificial". As the bill requires us to consult assessors and local authority representatives on those regulations, the people who administer the system will have greater input than would be the case under an amendment to the bill.

In response to Sarah Boyack's question, I point out that amendment 101 is narrower than amendment 84, in that it talks only about the recovery of rates that could take place when arrangements are subsequently made unlawful by our general anti-avoidance regulations.

The Convener: Normally, we do not speak to amendments that we have not yet reached, but I thank the minister for providing clarity on that point.

I ask Andy Wightman to wind up on amendment 1.

Andy Wightman: I want to put something on the record, because some members did not say which amendment they were talking about. I accept that amendment 1 would involve a fundamental change to the rating system, and I do

not think that there is support among committee members for that.

I do not accept Mr Gibson's argument that the issue was not in the Barclay review. The whole point is that this is a non-domestic rates bill. It is the only one that we have had in 20 years, and it is probably the only one that we will get for another 20 years. The Barclay review was defined in extremely narrow terms; it asked one question of consultees. The bill gives Parliament the opportunity to amend the non-domestic rating regime more generally, if it so chooses.

As I said, I will not seek to move amendment 4.

Members: Amendment 5.

Andy Wightman: Amendment 5—I apologise.

However, I might come back to that in the light of whatever happens with amendment 84, because although the minister correctly said that part 4 of the bill deals with anti-avoidance, it is about avoiding artificial arrangements. That is good—there is no problem with that.

Amendment 84 deals with a very specific problem, which was highlighted to the committee in evidence by two separate witnesses, one of whom was a professional valuer; the other was the head of revenues at a local authority. They made it very clear that there are circumstances in which occupiers are so-called phoenix companies or, as in the case of Highland Council's evidence, so-called shell companies—typically, Scottish limited partnerships, where the director is ultimately found to be an elderly gentleman in Edinburgh who did not even know that he was a director—and councils cannot recover those rates. In those defined circumstances, amendment 84 would give councils the power to seek recovery from the owner.

08:45

To answer the minister's question regarding regulations, there might be some drafting adjustments to be done, but my intention is that the circumstances in which councils would have the power, and the way in which the power could be exercised, would be set out in regulations. Amendment 84 would make it clear that councils have that power.

I lodged amendment 84 because, although I read section 16 of the 1956 act as a saving provision, the advice that I took suggested that it could be read as a continuing power that councils still have to recover rates from owners. If that is the case, the power is not well defined. Therefore, for the avoidance of all doubt, I do not want to rely on what drafters might have thought and intended in 1956, so I am seeking to insert a new section—

Kate Forbes: I confirm that I agree with the sentiment of amendment 84, which might not be a great consolation, but the point that I was trying to make was that I would far rather go down the consultative route, which would involve assessors and local authority representatives having an input, in considering whether to provide councils with additional powers. I recognise that Andy Wightman wants to achieve that through a formal amendment. I certainly agree with the thrust of his proposal; I just do not think that an amendment is the right way to go about it. I would rather go down the consultative route.

Andy Wightman: I thank the minister for that comment. She mentioned "the consultative route", but the bill is probably the only legislative opportunity that we will have for another 20 years. I am very happy for there to be consultation on the matter, and that would not be difficult to organise between now and stage 3. I am certainly happy to consider amendments to amendment 84 that would subject the regulations to consultation. I do not see any conflict between the intention of the amendment and the need for consultation, in so far as the regulations that would give effect to the proposal, setting the commencement date and so on, can and—I agree—should be subject to consultation. I would be happy to consider that at stage 3; I agree with that point.

However, if we do not get a provision into the bill at this stage, we will never have the opportunity to address an issue on which we received clear evidence. I would not necessarily describe the issue as being one of avoidance, although, in the case of shell companies, it is avoidance, as they are intentionally winding themselves up and disappearing as legal entities. They obviously have no further liability for rates, because there is no legal person around. That is a clear problem that has been identified by councils, and we, as the Parliament, have a duty to do as much as we can to provide a remedy in the limited circumstances in which the problem arises.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Wightman, Andy (Lothian) (Green)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1 disagreed to.

Amendment 5 not moved.

Amendment 84 moved—[Andy Wightman].

The Convener: The question is, that amendment 84 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 84 disagreed to.

Section 2 agreed to.

After section 2

The Convener: Amendment 6, in the name of Andy Wightman, is in a group on its own.

Andy Wightman: As the committee is aware, recommendation 28 of the Barclay review was:

> "All property should be entered on the valuation roll (except public infrastructure such as roads, bridges, sewers"

and so on. A key argument for bringing things on to the roll is that, at the moment, with certain subjects being exempted, there is no information at all about the value associated with the properties—and, therefore, about the revenue forgone and the costs incurred by such exemptions.

For example, a £1 million a year agricultural operation on the edge of a small town is completely exempt from contributing to local authority revenue, while the schools, the pubs, the shops and cafes in the local town are all on the roll and all valued. So the first argument for this—in fact it was a key recommendation of Barclay—is that bringing all properties on to the roll improves transparency. This should not be onerous. More than 10,000 new entries have been made in the past two years in the wake of the Land Reform (Scotland) Act 2016.

The Convener: Are you speaking to amendment 6?

Andy Wightman: Sorry, convener—no, I am not speaking to amendment 6. I apologise. May I start again?

The Convener: Yes.

Andy Wightman: Amendment 6 would alter the basis of valuation of property. In the current non-domestic rates system the whole property is assessed for its rental value, which is a combination of the site and improvements to the site. This amendment provides that the valuation be split, as is done in Denmark, for example, so as to provide two values to the ratepayer. One values the unimproved site and the other provides the value of the improvements, typically buildings. This would enable authorities—if, of course, they are given back the power to set the rate—to weigh the two valuations so as to weigh the rate more on the site value than on the improvements, for example. That would avoid the current situation, which disincentivises improvements.

Of course, a weighting of 100 per cent on a site would, in effect, deliver land value taxation. A weighting the other way, of course, would be perfectly legitimate as well. So this is a reform to the way in which valuations are done and reported to ratepayers: it would make no change, in and of itself, to the rates that are set or the way that they are set. I believe that this reform would provide greater flexibility in the way that rates are applied and would be easily implemented by copying the process that is already in place in countries such as Denmark. I apologise for setting off by talking about the wrong group of amendments.

I move amendment 6.

Kate Forbes: Thank you for those opening comments. I shall start with the practical implications and then comment briefly on land value tax. I do not want to sound like a broken record, but my point about the practical implications is similar to what I said on amendment 1: it would be a fundamental change and it is unclear to me what replacing the "net annual value" of properties, which in turn is used as the basis for the rateable value, with their "value" would achieve, short of leading to an immediate and fundamental change in the tax base and the way that assessors ascribe a value to properties. I fear that this would leave assessors in the very difficult position of having to determine, without the precedent of case law, what is an appropriate way to carry out evaluations.

On land value tax, the Barclay review concluded that more work should be done to assess land values so that the debate over land value tax could be better informed, but until that information exists, any move to a land value tax that has not been properly assessed, consulted on and scrutinised by Parliament would constitute a complete and total overhaul of non-domestic rates.

Finally, my fear is that the amendment would make parts of section 6 of the Valuation and Rating (Scotland) Act 1956 unworkable, as well as a large number of other acts and secondary instruments that would have to be amended to refer to "value" rather than "net annual value" or "rateable value". In light of that, I am unable to support the amendment.

Andy Wightman: I would not say that this would be a fundamental change. Valuers undertake their valuations independently and it is not for us to tell them how to go about their business. They derive their own practice notes, they are members of international associations of valuers and they are routinely exposed to best practice globally. This is not about implementing a land value tax—there is nothing in the amendment that would require that—it is simply about providing a more nuanced valuation of sites. Of course, it would enable the implementation of a land value tax, but it does not obligate it. I shall leave it there and press the amendment.

The Convener: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Wightman, Andy (Lothian) (Green)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 6 disagreed to.

Section 3—New or improved properties: mark in valuation roll

The Convener: Amendment 16, in the name of the minister, is grouped with amendments 17 and 18.

Kate Forbes: Amendments 16 to 18 are relatively technical in nature. They relate to the mark that assessors have to include in entries in the valuation roll that relate to new builds and improved properties. The mark assists councils in determining eligibility for business growth accelerator relief. The amendments exclude from the definition of "newly built" properties those properties that are being added to the roll because they were previously exempt from being on it but are not newly built. Examples include agricultural lands and heritages and rural ATM sites. If properties of those types undergo a change in use, it may make them liable for entry in the roll. The amendments in the group will ensure that only properties that are newly in existence will warrant a mark in the roll.

Amendment 18 will ensure that the assessor will remove the mark from an entry in the valuation roll when there is a change to the entry, for example at revaluation. The purpose of the mark is to allow the local authority to identify which changes made by the assessor potentially qualify for business growth accelerator relief. Once made, the purpose has been served, as the local authority will administer the relief for as long as the person is entitled to it, so there is no need for the mark to remain in the roll.

I move amendment 16.

The Convener: As no one has any comments, do you wish to wind up, minister?

Kate Forbes: I have nothing further to say on the amendments in the group.

Amendment 16 agreed to.

Amendments 17 and 18 moved—[Kate Forbes]—and agreed to.

Section 3, as amended, agreed to.

After section 3

The Convener: Amendment 7, in the name of Andy Wightman, is grouped with amendment 8. I call Andy Wightman to move amendment 7 and speak to both amendments in the group—again. [*Laughter.*]

Andy Wightman: I apologise for that, convener. As I was saying, recommendation 28 of the Barclay review was that

"All property should be entered on the valuation roll ... except public infrastructure".

A key argument for that is that the current way in which we provide for exemptions in primary legislation means not only that no liability arises for exempt properties but that there is no information on the value that is associated with those properties. The cost of such exemptions is incurred by other ratepayers. In the remarks that I made previously, I gave the example of a £1 million a year agricultural operation that is exempt even though it relies on the same services that the local schools, pubs, shops and cafes rely on, and they are valued and on the roll. Whether they pay rates is a separate question, given the systems of relief and so on.

Bringing all properties on to the roll would improve transparency and, as I said, it would not be onerous. Over 10,000 properties were entered in the two years following the passing of the Land Reform (Scotland) Act 2016, which brought

shootings and deer forests back on to the roll, those having been removed in 1994.

Kenneth Gibson: Andy Wightman said that it would not be onerous, but that is not the evidence that we heard from the assessors, who told us that they are already under severe pressure and that they have difficulty in recruiting new assessors. What would be the cost of the exercise and what would be the purpose in financial terms, given that ministers have made it clear that they would provide 100 per cent exemption for such buildings in any case?

Andy Wightman: I have not made an assessment of the costs, but I am putting the evidence of what has happened in the past two years, when over 10,000 properties have been entered on to the roll. If such properties are deemed to be worthy of having no liability for rates, that is better put into practice by the granting of relief. It then becomes a conscious decision that has to be justified and is open to scrutiny.

Amendment 7 would bring on to the roll almost all properties that are currently exempt. The exception would be those that are covered in subsection (3) of the proposed new section, which cannot be included for various reasons.

Annabelle Ewing: On that point, I note that fish farms would be brought on to the roll. Salmon companies pay rates on land, properties, processing plants and so forth. My understanding is that the offshore cages and so on are leased from the Crown Estate. That is the current arrangement. What reflection have you made on the benefits or disadvantages of what you propose with regard to the Crown Estate and of changing that arrangement and potentially bringing those things into the rates system without—it would appear—any consultation with relevant stakeholders? That would be a double whammy. Is that what you intend to do?

09:00

Andy Wightman: I do not really understand the point of your intervention. They are tenants of the Crown in the same way that all—

Annabelle Ewing: Excuse me, could I perhaps—

The Convener: No, it was an intervention. This is not a debate.

Annabelle Ewing: I know, but the member said that he did not understand.

The Convener: Andy Wightman started to answer. If he lets you intervene again, please make it short. Andy, on you go.

Andy Wightman: Thanks, convener.

Obviously, the fish farms are tenants of the Crown and, just like tenants in offices up in Tollcross, they pay rates. That is what occupiers do. The fact that the landlord is the Crown is neither here nor there—the landlord could be anybody.

Annabelle Ewing: Will Andy Wightman take an intervention on that point?

Andy Wightman: Okay.

The Convener: Annabelle, you will get a chance to come in after he has finished.

Annabelle Ewing: The member indicated that he would take a brief intervention.

In Andy Wightman's scenario, the offshore salmon farms would pay rent to the Crown Estate, which is the current arrangement, plus they would pay rates. Is that what he is advocating?

Andy Wightman: All tenants of non-domestic property pay rent to the landlord—that is an obvious statement—and they are liable for non-domestic rates. I do not understand what the issue is. Just because someone pays rent does not mean to say that they do not pay rates. I have dealt with amendment 7, so I will move on.

Amendment 8 is an alternative way of moving towards the same objective, though we may never get there. One of the problems with exemptions, as opposed to reliefs, is that they are set out in primary legislation and, therefore, they can be removed only by subsequent primary legislation; that is what amendment 7 seeks to do, but I do not anticipate support for it. Having exemptions in primary legislation that require further primary legislation to amend them is, in many ways, a clumsy way of proceeding. If amendment 7 is not agreed to—I do not expect it to be—we will lose the opportunity to review those exemptions for perhaps another 20 years, or whenever we get another non-domestic rates bill.

Amendment 8 would allow exemptions that are currently set out in primary legislation, of which there are quite a lot, to be removed by secondary legislation. Some exemptions are set out in primary legislation and some are in secondary legislation; those that are set out in secondary legislation can of course be easily removed or amended, but those in primary legislation require further primary legislation to remove or amend them. Amendment 8 would provide a power to the Scottish ministers to make regulations that would remove any exempt subjects that are currently exempt by means of primary legislation. Amendment 8 would not, in itself, remove the exemptions, but it would allow for that possibility in the coming years.

I move amendment 7.

Graham Simpson: Will Andy Wightman take an intervention?

Andy Wightman: I have just finished.

The Convener: If you have just finished, that is great. Let me clarify that interventions should be short and to the point. If members catch my eye, they can get in and make their contribution, if it is relevant.

Graham Simpson, do you want to come in?

Graham Simpson: I was going to ask Mr Wightman a question, but I will just make my point. Amendment 8 is better than amendment 7, as it would potentially tackle the serious issue of consultation that was raised by Ms Ewing. It would allow ministers to at least consult on such issues, whereas amendment 7 is all-encompassing.

Sarah Boyack: I have a similar point. I totally understand where Andy Wightman is coming from with amendments 7 and 8, given that it was one of the recommendations of the Barclay review, and I get the fact—raised by Kenneth Gibson—that there is an issue of priorities and timing.

However, equally, this is our chance to amend non-domestic rates, and I am tempted by amendment 8 as a way to do that by giving the Scottish Government the capacity to do it at a later point. It does not need to be done by Christmas. Representations could be made and consultation could be done. The principle is good.

I raise the matter of clarifying the issue of ATMs. We see their removal right across the country, with the result that people are losing access to cash machines. There is also the issue of free cash machines. I would not want to do anything that inadvertently hastened the decline and removal of ATMs, but my understanding of amendment 8 is that we would be able to craft what is exempted and things would not automatically move on to paying rates. However, the amendment would enable the system to be transparent in a way that it currently is not.

For those reasons, I am keen to support amendment 8. It is not a bad thing that the committee has two choices, but amendment 8 is better because it allows the Government to do a proper consultation while, equally, we will get progress and the issue will not be parked for a decade or two.

Kate Forbes: I will speak to amendment 7 first. I agree that there is merit in having better information on the properties that Andy Wightman identified, which are currently excluded from the valuation roll. However, in line with Barclay, I do not believe that the administrative and associated financial burden on assessors and businesses would be worth while when we have no intention of levying rates on those subjects. Barclay proposed that, in the interests of transparency, rather than exempting properties from the roll they should be entered into it with 100 per cent relief but, because of state aid restraints, that is not feasible for some properties, particularly in agriculture and fisheries.

As such, removing the exemption would have significant cost implications for the agricultural sector, it could easily cause the further deployment of offshore wind to cease and it could present unnecessary risks to rural communities—for example, those that rely heavily on local bank cash machines. I do not think that those inevitable consequences are a price worth paying for the amendment, particularly for the agricultural sector, which is already facing huge uncertainties as a result of Brexit. Therefore, I encourage the committee not to vote for amendment 7.

There is no reason to resist or reject amendment 8, but we do not see a need for it because ministers already have the power to set exemptions by order. I do not think that the amendment adds anything new.

Andy Wightman: My understanding is that ministers cannot remove an existing exemption from primary legislation. That is the point of amendment 8. You appear to be arguing that you already have that power. That is not my understanding, but I stand to be corrected.

Kate Forbes: As I say, I am fairly equivocal on the amendment. I do not see a need for it because exempted classes can already be set by order, but it is right to say that we cannot exclude existing ones, which is what I think Andy Wightman's question was. If members wish to support amendment 8, we have no concerns about that.

Andy Wightman: That was helpful. To clarify amendment 8, my understanding is that ministers have the power to make new exemptions under secondary legislation if they wish, but they do not have the power to remove existing exemptions that are set out in primary legislation. The amendment provides the power to remove existing exemptions by regulation.

I press amendment 7.

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Wightman, Andy (Lothian) (Green)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 7 disagreed to.

Amendment 8 moved—[Andy Wightman]—and agreed to.

Section 4—Entering of parks in valuation roll

The Convener: Amendment 19, in the name of the minister, is grouped with amendment 20.

Kate Forbes: Amendments 19 and 20 address the committee's request in its stage 1 report that the Scottish Government

"elucidate its policy more fully"

on section 4, with the aim of making the rules on the entering of parks in the valuation roll more straightforward and easier to understand.

Amendment 20 is quite technical and I will endeavour to explain it. Proposed new subsections (1ZA) and (1ZD) of section 19 of the Local Government (Financial Provisions) (Scotland) Act 1963 seek to ensure that, where a part of a park is to be entered on the roll, a separate entry should be made for that part and the remainder should remain exempt. In other words, it is not the Government's intention that the presence of, for example, a cafe in a public park should lead to the entry of the whole park in the roll. That is consistent with the Barclay review's recommendation that parks should remain exempt from being rateable.

Secondly, proposed new subsections (1ZB) and (1ZC) of section 19 of the 1963 act set out the conditions under which a park, or a part of a park, becomes rateable. The first reason, which is set out in subsection (1ZB), is that the park is occupied by someone other than the council or other public body that controls the park. The second reason, which is set out in subsection (1ZC), is that the park, or part of the park, is occupied by the council or other public body that controls the park and—critically—that payment may be required

"for access to facilities ... or for goods or services provided on it."

Taken together, those two subsections will ensure that all commercial activity in parks will be rateable, as was recommended by the Barclay review.

Another key objective of the Barclay review was to level the playing field. Subsections (1ZB) and (1ZC) will ensure equality of treatment across all activities, both commercial and charitable, and both inside and outside parks. All non-exempt properties, including those that are used for charitable purposes outside parks, are currently rateable, so it is only fair that comparable properties inside parks should be rateable as well. Registered charities and community amateur sports clubs that fall to be entered on the roll as a result of section 4 will be eligible for 80 per cent mandatory relief, with a 20 per cent discretionary top-up by the council, as is normal. Further, 100 per cent discretionary relief is available for non-profit recreational activity. Certain properties that will be added to the roll as a result of section 4 of the bill are likely to be eligible for that relief.

I hope that that helps to explain what the Government is endeavouring to do with this significant redraft of section 4.

I move amendment 19.

Amendment 19 agreed to.

Amendment 20 moved—[Kate Forbes]—and agreed to.

Section 4, as amended, agreed to.

After section 4

The Convener: Amendment 85, in the name of Sarah Boyack, is in a group on its own.

Sarah Boyack: Amendment 85 concerns an important issue in my local area, which I would like to address in this debate on non-domestic rates.

In the past few years, we have seen a significant expansion in the availability of private student residences. Historically, universities and colleges provided their own in-house accommodation, but recently there has been a big shift towards private providers. Such accommodation is very expensive, but students often have no choice but to take it because of the shortage of housing in Edinburgh. Access to accommodation is particularly challenging for students from overseas, who often do not know the area until they have settled into their courses.

Students are rightly exempt from paying council tax. That policy should be defended, and I have no intention of seeking to change it. However, I question why companies are able to make profit from renting out student accommodation when they should be expected to make a contribution to our councils for the local services that are provided. In addition, companies should make that contribution without passing it on to the students to whom they rent.

I especially want to raise the issue of the use of private student accommodation that is let out in the summer for tourists' use. Again, the companies that rent out such properties are making profits but are not making any contribution to the cost of providing local services. As it is drafted, amendment 85 would leave to the

Scottish Government the details of how such entries in the roll would be implemented, and I believe that consultation on those would be necessary. However, I feel that we should debate the issue as we discuss the extent to which non-domestic rates are levied and who should be required to pay. I will be interested to hear members' thoughts on the amendment.

I move amendment 85.

09:15

Graham Simpson: Sarah Boyack raises an interesting issue. A number of such developments are cropping up in Edinburgh, Glasgow and other cities. The residences are privately run—not that that matters—and for most of the year they are rented out to students. When the students are not there, they are let out to tourists, so they become bona fide businesses that are competing with other businesses in the self-catering sector. The idea that they should not pay non-domestic rates for the part of the year when they are businesses seems to be wrong. There could be unintended consequences, in that those businesses could hit students for their increased bills—that is a danger. However, I think that it is worth supporting amendment 85 at this stage, although it may need some further work. I am prepared to support it at this point, and we can see where we go from there.

Kate Forbes: I welcome Sarah Boyack's explanation of the policy intent behind her amendment, and I certainly sympathise with what she is trying to do. I will run through a few of my thoughts. The Barclay review recommended that charity relief be reformed with regard to student accommodation, although it did not distinguish between accommodation that is let by institutions and accommodation that is provided by the private sector. At the time of the review, the Scottish Government rejected that recommendation, in part because of issues with the practicability of distinguishing commercial from non-commercial use. Amendment 85 does not seek to distinguish between those two types of use—instead, it seeks to make private sector and other landlords liable to be rated while providing an exemption for the institutional providers.

My concern relates to the analysis of any unintended consequences for students in particular. I am concerned about the potential impact on students, who may find that their accommodation choices are reduced or become less affordable, as landlords may have little option but to pass on their costs to students in the form of higher rents. I am therefore unable to support amendment 85 without having undertaken a little more analysis, and perhaps some consultation, on what the consequences would be. I would be happy to have a conversation in advance of stage 3 to see whether further analysis could be done at that point on the effects of the amendment. At present, however, there has been too little analysis of the potential unintended consequences to enable me to support it.

Sarah Boyack: I appreciate, and very much welcome, the minister's comments. I would be the last person who would want to deliver the unintended consequences to which Graham Simpson and the minister referred. As the issue was raised earlier, it would be an omission not to discuss it.

I would be interested in amending my amendment at stage 3, and crafting it in a way that takes into consideration the summer issue in particular. I would be happy to come back and have a look at it during the next few months. A question that arises is what the process would be in terms of the Government bringing forward regulations and the detail that follows. As I understand it, there are issues to do with how it relates to the system for houses in multiple occupation, through which money is paid. I want to distinguish between the private sector and accommodation that is owned by universities or colleges. I think that there is merit in us taking the issue further, to stage 3.

The Convener: Do you want to press or withdraw the amendment?

Sarah Boyack: I would like to press it at this stage.

Amendment 85 agreed to.

Section 5 agreed to.

After section 5

The Convener: Amendment 21, in the name of the minister, is grouped with amendments 22, 24 to 30 and 32 to 37.

Kate Forbes: The amendments all relate to reforming the appeal system. I will first speak to the amendments that I have lodged and then turn to amendment 36, in the name of Alexander Stewart.

The amendments have been informed by the final report of the Barclay implementation advisory group appeals sub-group, which was published on 10 October, and they are quite technical.

Amendment 21 requires, at revaluation for a given property, the assessor to enter in the valuation roll information, including the valuation, that has been agreed in writing between them and the proprietor, the tenant or the occupier beforehand, whether or not the agreement was reached before or after publication of the draft roll. The only exception is if,

"since the agreement was reached, there has been ... a material change of circumstances."

Amendment 22 introduces a requirement for assessors to publish a draft valuation roll before they make up the final roll. It is intended that Scottish ministers will specify a date for publication of the draft roll. The amendment also requires that assessors send to the proprietor, tenant or occupier of the property a draft valuation notice that contains the details that are listed in the draft roll. The amendment also allows ministers to specify by regulations under the negative procedure any other information that is to be included in the notice.

Amendment 22 also provides that

"A person who receives a draft valuation notice can make representations to the assessor"

about the content of the notice. However, the assessor is not bound by the contents of the draft roll or draft notice when making up the final roll, as there may be a need to amend the draft roll before it comes into force—for example, if new information that would affect the valuation has become available. That provision links with other amendments in my name to allow the proprietor, tenant or occupier to make representations once the draft roll is published about what the entry in the roll should be.

Amendment 24 seeks to ensure that a person may not lodge a proposal to alter an entry in the valuation roll following revaluation if there has been a prior

"agreement in writing between that person and the assessor ".

The amendment is based on a recommendation of the appeals sub-group that pre-agreements should be binding on a person in that situation, so that a proposal cannot be lodged by a person against a pre-agreed value.

Amendments 25 to 27 allow the assessor to adjust the valuation roll entry for a property when a proposal has been lodged, either in accordance with the proposal or in the manner that the assessor sees fit. That does not require the agreement of the proposer, as the assessor's role is to provide an accurate valuation with the information that is available at the time that the entry is finalised. There may be information that suggests that the alternative value that is requested in the proposal is incorrect. If the person's proposal is not accepted, amendment 32 provides that the person can appeal.

Amendment 28 allows Scottish ministers, by regulations, to set fees in relation to the lodging of proposals, as recommended by the Local Government and Communities Committee in its stage 1 report. Amendment 28 is a direct response to the committee's report. Amendment 29 provides that those regulations will follow the affirmative procedure.

Amendments 30, 32 and 33 will ensure that, when a person has lodged a proposal, only that person may appeal to the valuation appeal committee, for example to prevent the situation in which the assessor discusses and agrees a proposal with a tenant and the owner seeks to appeal. If the owner wishes to be involved, they would have to get involved at the proposal stage.

Amendments 34 and 35 aim to ensure than an appeal can only

"be made on the same basis as the proposal",

to prevent an appeal from being made on a completely new basis that the assessor has not considered.

Amendment 37 will mean that complaints to the valuation appeal committee under the Lands Valuation (Scotland) Act 1854 can be lodged only by a person who is not the proprietor, the tenant or the occupier of the property.

As members will know, complaints are a means—separate from appeals—by which to have an entry in the roll reviewed or to raise the absence of an entry. The ability of third parties to continue to raise complaints is unaffected by the amendment. The purpose of the amendment is to avoid the risk that proprietors, tenants and occupiers may attempt to circumvent the new proposal stage that is being introduced, and any fees that are attached to it, by complaining to the valuation appeal committee about their own property's value, rather than going through the normal route of lodging a proposal.

Andy Wightman: I am listening carefully to what you are saying, minister. In relation to amendments 32 and 33, you said that, if an occupier or tenant lodges a proposal, the proprietor cannot appeal. In those circumstances, how would the proprietor know that the tenant had lodged a proposal? At the moment, they can appeal. If the Government removes the right to appeal, what would happen?

Kate Forbes: An owner can get involved at the proposal stage and they will know that an evaluation is due. We are moving to a new two-stage system, where someone can propose and appeal, which, incidentally, formalises what already takes place informally. The hope is that the system does not create something new, but that it formalises the current system.

The current situation of owners choosing not to get involved may present challenges in the future. However, I would hope that an owner would be interested in the business rates that their property is liable for and the valuation of that property. It is

really a question of whether the owner chooses to get involved with the process at all.

The amendments merely try to avoid additional delays and bureaucracy so that where an assessor has agreed a proposal with the person—a tenant or an occupier—the owner cannot then say further down the line that they fundamentally disagree with that proposal and appeal in that way. The parties that are involved in the proposal are the same parties that have to be involved in the appeal. A new individual cannot be introduced at that stage. If we do not make that clear, it would completely undermine the proposal stage because someone could always be sure of overturning a proposal at appeal. Does that help?

Andy Wightman: My point was that the opportunities for the proprietor to be involved are being restricted. Is there not an argument that the proprietor should be made aware that a proposal is being made? If they are not aware of that, they lose their one opportunity to have discussions on the matter. I will let you take that question away. It is just a concern that I have.

Kate Forbes: I will take that away for consideration. We can think about how we notify owners that a proposal has been lodged. It is a fair comment.

Mr Stewart's amendment 36 would place a requirement on Scottish ministers to consult local authorities, assessors, business sector representatives and such other persons as we consider appropriate before making regulations to set fees in connection with appeals. We have taken a consultative approach throughout the bill process and will continue to do so.

I would be happy to support Mr Stewart's amendment, but if he wishes to bring it back at stage 3, I would be keen to work with him to adjust certain elements. I would expect the Government to consult representatives of assessors and the business sector, but I am not convinced that that needs to be done with individual local authority assessors.

If Mr Stewart chooses to move amendment 36, we will support it, but if there is anything that we can do to fine-tune it for stage 3, I would be keen to work with him on that.

I move amendment 21.

Alexander Stewart: I thank the minister for her positive comments on amendment 36. I will move the amendment because, as the minister has outlined, it will ensure that there is an opportunity to gather evidence on the impact of the policy change for individuals and organisations. That is important. I would be more than happy if the amendment were agreed to at this stage. I would also be happy to have some discussion with the minister before stage 3. If there are things that we can fine-tune, doing so would be advantageous for the bill and the sector. It is all about ensuring that we have that constructive co-operation and consultation to ensure that we provide organisations, individuals and the business sector with the best approach.

09:30

Andy Wightman: I agree with the comments that have been made by the minister and Mr Stewart, but I note that subsection (c) in amendment 36 says that, among those who are to be consulted are

"representatives of the business sector".

I remind members that these are not business rates; they are non-domestic rates. I am a board member of the statutory corporation that owns the building in which we are sitting, which pays £7 million in rates. The words in subsection (c) should really be "representatives of ratepayers", because occupiers that are businesses make up less than two thirds of all ratepayers.

The Convener: I am sure that that is something that we can clarify and amend at stage 3, if necessary. Minister, would you like to wind up?

Kate Forbes: I appreciate Alexander Stewart's commitment to work with me to adjust amendment 36 slightly.

Amendment 21 agreed to.

Amendment 22 moved—[Kate Forbes]—and agreed to.

Section 6, as amended, agreed to.

Section 7—Proposals to alter, and appeals against, valuation roll

The Convener: Amendment 23, in the name of the minister, is grouped with amendments 31 and 52.

Kate Forbes: These three amendments are, like others, extremely technical in nature.

It might be helpful if I explained that, as some members might know already, some subjects are valued by what are called designated assessors. There are five such assessors in Scotland who, in addition to their day job as an assessor, have responsibility for valuing certain subjects that could broadly be described as the former public utilities. For example, the Fife assessor is currently the designated assessor for water subjects in Scotland. Once a valuation has been determined for all water subjects in Scotland, that information is entered on the Fife assessor's valuation roll. In short, unlike the assessor regime, the designated

assessor regime takes a subject-based approach rather than a geography-based approach.

The three amendments in this group refine the drafting to provide that a new proprietor, tenant or occupier can make a proposal to the assessor or the designated assessor, as appropriate; that appeals against a valuation determined by either an assessor or a designated assessor can be lodged with a valuation appeal committee, and it will always be a committee for the area where the lands and the heritages are entered in the valuation roll; and that an assessor information notice can be issued, as appropriate, by an assessor or a designated assessor. That, in short, is what the amendments relate to.

I move amendment 23.

Amendment 23 agreed to.

Amendments 24 to 26 moved—[Kate Forbes]—and agreed to.

Amendment 27 moved—[Kate Forbes].

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division—I ask Kenneth Gibson to please put away his Etch A Sketch.

For

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Wightman, Andy (Lothian) (Green)

Against

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 27 agreed to.

Amendment 28 moved—[Kate Forbes]—and agreed to.

The Convener: Amendment 86, in the name of Sarah Boyack, is grouped with amendments 87, 97, 65, 98, 99, 68, 100, 71 and 72.

Sarah Boyack: The Delegated Powers and Law Reform Committee picked up the question of whether ministers currently have too much power. My amendments in the group propose to limit the powers of ministers by removing their ability to make extra regulations. I have attempted, with support from the drafters, to try to deliver on that aim. Specifically, my amendments seek to limit the extent of the powers that can be exercised by the Scottish ministers.

I am conscious that the Scottish Government has lodged amendments on the matter. Without making too many predictions, I guess that the minister will say that the Government's amendments are better drafted. I am keen to have a discussion about the differences between the two sets of amendments. My amendments have been drafted so as to remove the power to make provision for "such other matters", which appears in sections 17 to 21. The amendments together provide an appropriate constraint on ministers' powers. They are relatively straightforward. I will say no more, at this point.

I move amendment 86.

Kate Forbes: I thank Sarah Boyack for speaking to her amendments and outlining her reasons for wishing to restrict use of ancillary powers. I think that we are all agreed on the issue; as Sarah Boyack said, the Scottish Government has submitted its own amendments in response to the legitimate concerns that the DPLR Committee raised. I thank that committee for its thorough scrutiny of the delegated powers in the bill.

I think that we are all agreed that the bill will amend what is a very complex rating system. That creates a risk that a change to one part of the system might have unintended consequences in another part. The bill will introduce a considerable number of new elements into the rating system—one example is the introduction of a civil penalty regime. Ancillary provisions might therefore be needed as those new elements are created, or as experience is gained and those elements are further developed.

We considered that it was prudent to allow some flexibility in how the ancillary powers in the bill are used, while being mindful of the narrow context within which each of the powers must operate. Such flexibility will enable unforeseen issues to be dealt with without the need to return with primary legislation as a result of the powers being too rigid. Of course, all uses of powers are, quite properly, subject to parliamentary oversight, which allows Parliament the opportunity to stop any use that it feels is inappropriate.

Amendments 86 and 87 relate to section 7(4) of the bill, which will insert new provisions in the Local Government (Scotland) Act 1975. The Scottish Government's view is that it will be clearer, for the reader, to have the full powers set out in the 1975 act, which currently lacks that. The DPLR Committee acknowledged that point. If Sarah Boyack's amendments were accepted, that would leave the reader seeing a power in the 1975 act and noting that it lacks the usual incidental powers. The reader might easily miss the fact that there are incidental powers available for use from the act that introduced the power.

With regard to amendments 97 to 100, the Scottish Government considers that the innovative nature of the civil penalty regime will make it extremely difficult to anticipate what types of provision might require to be made as the regime beds in. It is arguable that it is not within the powers to make further provision about civil penalty notices and appeals against the penalties that are set.

In the Scottish Government's response to the DPLR Committee's stage 1 report, we said that we would lodge amendments. I believe—the matter is open to members' opinions—that amendments 65, 68, 71 and 72 strike an appropriate balance between the need to allow flexibility in how powers can be used to respond to a new and complex process, and the need to maintain limits that are tied to the purposes of the act. The amendments have regard to the DPLR Committee's views on where the balance should be struck. In conclusion, I note that although our amendments and Sarah Boyack's amendments endeavour to do the same thing, they go about it in slightly different ways.

Andy Wightman: I have not closely studied the Delegated Powers and Law Reform Committee's report, so it is not clear to me exactly where it recommended that there should be modifications. It would be helpful if Sarah Boyack could say whether her amendments respond directly to the recommendations of the committee or are additional.

Sarah Boyack: My amendments are intended to respond to the committee's report. It is up to you whether we have done that effectively enough.

The Convener: It is certainly not up to Andy, because he has not read the report.

Minister, would you like to respond?

Kate Forbes: I will not, unless Andy Wightman wants to hear the exact quotation from the Delegated Powers and Law Reform Committee. However, I think that that might absorb time.

Andy Wightman: No.

The Convener: I call Sarah Boyack to wind up.

Sarah Boyack: Because I was not on the committee at stage 1, it is quite hard to get into some of the issues. However, the key issue at this point involves scrutiny, transparency and the need to get the balance right between giving ministers full powers and ensuring that they do not have additional powers that are beyond what is needed.

The one issue on which I would seek comment from the minister concerns the extent to which our amendments overlap and would achieve the same thing. Perhaps the minister could intervene to clarify that.

Kate Forbes: I firmly believe that our amendments seek to do the same thing, but in different ways. They have been drafted differently.

The situation is complicated. Essentially, the Delegated Powers and Law Reform Committee was concerned about duplication between pairs of provisions. In some cases, Sarah Boyack's amendments would add in additional information to remove that duplication, and our amendments would remove sections in order to achieve the same thing.

Make no bones about it: we have gone about doing the same thing but in slightly different ways. I know that the Delegated Powers and Law Reform Committee considered the amendments. I hope that it had no concerns about the amendments that I have lodged, and that they would achieve the ambition.

In their drafting, my amendments and Sarah Boyack's take slightly different approaches to dealing with duplication between pairs of provisions. Her amendments would add things, in some cases, and my amendments would remove things, in some cases.

Graham Simpson: Could I add something?

Sarah Boyack: I would be happy to hear Graham Simpson's views, because he is on the Delegated Powers and Law Reform Committee.

Graham Simpson: I cannot speak for everyone on the Local Government and Communities Committee on this matter, but my view is that the committee would be happy with the Government's approach. As the minister said, Sarah Boyack's amendments seek to do the same thing as the Government's amendments, but in different ways, so I suggest that she not press her amendments. I assure Sarah Boyack that the Delegated Powers and Law Reform Committee will consider the bill again after stage 2 and will, if it still has concerns, report back to this committee and the minister.

Sarah Boyack: That is helpful. I am conscious that the minister's amendments went to the Delegated Powers and Law Reform Committee, but mine did not. With that in mind, I seek to withdraw amendment 86. If I think that it is necessary to do so, I will bring the issue back at stage 3. At this point, however, I am happy to support the minister's amendments and not move the rest of mine.

Amendment 86, by agreement, withdrawn.

Amendments 29 to 35 moved—[Kate Forbes]—and agreed to.

Amendment 36 moved—[Alexander Stewart]—and agreed to.

Amendment 87 not moved.

Section 7, as amended, agreed to.

Section 8 agreed to.

09:45

After section 8

Amendment 37 moved—[Kate Forbes]—and agreed to.

The Convener: I call the minister to speak to amendment 38, which is in a group on its own.

Kate Forbes: Amendment 38 will exclude a change in rent, in valuations generally or in values generally from the definition of "material change of circumstances" in the Local Government (Scotland) Act 1975. That will restrict the circumstances in which general economic factors can be regarded as being relevant to a change in valuation, which reverts back to the situation that existed prior to 1984.

The recommendation was set out by the Scottish Assessors Association in a letter to the committee dated 25 October. The basis for the recommendation was that a move to three-yearly valuations, coupled with Barclay's recommendation to move to a one-year tone date, would ensure that valuations are much more closely aligned to current market values. The association concluded that it no longer sees the need for appeals that are based on a material change of circumstances related to economic changes.

A number of written submissions in response to the committee's call for evidence on the bill also called for the definition of "material changes of circumstances" to be reviewed in order to improve consistency of interpretation.

Scotland was unique in the United Kingdom in having opened the door to changes in rental values being considered to be a material change of circumstances, as it explicitly allowed such changes to be considered in the Rating and Valuation (Amendment) (Scotland) Act 1984. With the significantly reduced period between valuations that the bill will introduce, the need for reviews of rateable values will be removed. Appeals are often resource intensive for all parties, so I believe that the time has come to undo the change that was made in 1984.

Amendment 38 agreed to.

The Convener: I suspend the meeting to allow members a short break.

09:48

Meeting suspended.

09:53

On resuming—

The Convener: Amendment 9, in the name of Andy Wightman is grouped with amendments 10, 11 and 12.

Andy Wightman: Amendment 9 is a significant amendment. As members know, non-domestic rates are a local tax. For well over a century they were under the full control of the level of government to which they belonged—the county, region, district and unitary authorities. In the 1990s, the UK Government took away the rate-setting power from local government and centralised the power with the Secretary of State for Scotland, from whom, by virtue of devolution, the Scottish ministers have inherited it. As members know, the rate is now set by a negative instrument that is considered by the Scottish Parliament's Local Government and Communities Committee. I believe that that is fundamentally wrong. It is a local tax. It belongs to local government and to councils, which should be given back the powers that were removed from them 25 years ago.

I consulted on the issue and other measures over the summer of 2019 and received a range of views. Local authorities, and the Convention of Scottish Local Authorities in particular, have long argued for the repatriation of rates. However, there were two issues that arose in responses and amendment 9 seeks to deal with both of them.

First, such a change will take time—I never envisaged that it would happen overnight—and there are consequential issues to sort out that need not detain us today. I have framed amendment 9 in such a way that the change can take place as late as 2024. That allows four or five years for it to be implemented. I am open minded about whether that date could be changed, but the significant point is that time has been allowed to deal with it.

As I said earlier, it is the first time in the history of 20 years of devolution that we have primary legislation on non-domestic rates, which is the second largest tax revenue under the control of the Scottish Parliament. We may not have another bill for another 20 years. If there is a desire—I believe that there is such a desire within all political parties, if not by all parties—to increase the fiscal autonomy of local government and return to local authorities what was theirs in the first place, the passage of the bill presents the opportunity to do something about that.

Secondly, some councils told me that they do not want to set their own rate. That is fine. Proposed subsection (3) would allow any council that does not want to set the rate to ask Scottish ministers to do so on its behalf. Amendment 9 is a

fundamental amendment that would return us to the situation prior to 1994.

Amendment 10 is much the same, but it introduces a halfway house, in that there would still be a national rate, but there would also be regional rates. The councils could set a rate, but ministers would also set a national rate, which would be subject to the approval of Parliament. That is the only real difference between the two amendments. That is what happens in Northern Ireland, for example, where councils set one part of the rate and the Northern Ireland Executive sets the other part.

Amendments 11 and 12 are entirely different. Amendment 11 makes provision in the circumstances that there is a regional rate and amendment 12 makes provision in relation to the current situation. Amendments 11 and 12 are about the fact that the Community Empowerment (Scotland) Act 2015 introduced amendments to the Local Government (Financial Provisions etc) (Scotland) Act 1962 that allow councils to introduce new non-domestic rate reliefs. Crucially, those have to be paid for by the councils themselves.

The committee made a visit to Kilmarnock where we had a discussion with local ratepayers, councillors and council officials who expressed a desire for more autonomy on the detail of how rates were applied in their town, for example, in order to give reliefs—or even perhaps, to raise more—in specific circumstances, for specific subjects, in specific areas. They found that their powers were too blunt to enable them to incentivise the reforms and activities that they wanted to see happening in the town.

Amendments 11 and 12 would allow councils to raise the rates in a similar way to the way in which they can provide reliefs, but only up to the amount being relieved. For example, if the council wants to provide a relief scheme that is worth, say, £500,000—the ratepayers would be relieved of the liability to pay £500,000—at the same time, the council could introduce a scheme to increase the rates on other subjects, up to the same limit. It would be net cost neutral for council revenues.

The only difference between the amendments is that amendment 11 responds to the eventuality of there being a regional rate, as proposed by amendment 10, and amendment 12 applies to the current non-domestic rating system.

I move amendment 9.

Graham Simpson: I will talk about amendments 9 and 10, which are slightly different. To take amendment 9 first, Andy Wightman is trying to empower local authorities to set their own rates. He used the word “incentivisation”, and if councils were to be given that power, they would have the opportunity to set rates that can incentivise companies to come into their areas. Of course, they could do entirely the opposite. That is possibly what some businesses are concerned about. Councils could set colossal rates, which would drive businesses away. However, it is up to councils to make those decisions, so I am attracted to the amendment. We have always been a localist party, so a number of our councillors are quite keen on this idea.

10:00

Kenneth Gibson: Will the member take an intervention?

Graham Simpson: I certainly will.

Kenneth Gibson: Was it not the Conservatives that brought in the pooling of rates on an all-Scotland level? I am not sure about the phrase

“We have always been a localist party”.

In fact, it was your party that changed the previous regime.

Graham Simpson: Thank you for that, Mr Gibson. Certainly in my time we have been a localist party and, when I was the local government spokesman, I drew up a manifesto for the local government elections that covered exactly that kind of point, but I will take Mr Gibson’s history lesson on board.

However, the business community has raised a lot of concerns about amendment 10. The idea of having a national and a regional rate is pretty scary to businesses, and committee members will have had a number of submissions on that. That goes too far.

At this point, we are supportive of amendment 9 but not supportive of amendment 10 or the other amendments.

Annabelle Ewing: My recollection from the committee is that COSLA was not seeking the power for councils to set non-domestic rates at this point. Its point was that it did not want this discussion to sit outside the wider discussion on a local government fiscal framework. It wanted the discussion to sit within those wider parameters, and therefore said that it believed that non-domestic rates should be considered as part of that. I am a wee bit confused as to why, given COSLA’s clear position in evidence before us, Mr Wightman feels that he has some other objective in mind at this stage.

Sarah Boyack: The amendments are timely but, like many of the amendments to the bill, they are quite difficult, because they are adding issues at stage 2—before Andy Wightman jumps up and down, I say that that is not a criticism; these are all valid discussions.

I would be interested to see the comments from different parties in Andy Wightman's consultation, and their nuances, because my challenge is that I have not had much time to consult my party colleagues about the bill and have had different views from different people. Whether to pool non-domestic rates or give local authorities much more freedom is clearly an issue, and I can see a debate on that across the parties.

Andy Wightman, when you close, can you talk a bit more about the significance of the 2024 date in amendment 9? You talked about having five years to implement regulations. What scope is there for having a proper discussion and consultation on that? Annabelle Ewing's point on the wider issue on local government is right; we need a consultation that joins up the dots. The problem is that the bill does not give us that and we do not have other opportunities to discuss the issues.

As the Local Government and Communities Committee, we are in pole position to join those dots, but the bill does not let us. To what extent does the committee have an opportunity to discuss that and take evidence on it before stage 3?

I am less keen on amendment 10 for other reasons. There would be a national rate and potentially an additional rate on top of that. To what extent can that proposal be seen as an opportunity for local government to raise more money? As I understand it, such a measure has led to a 20 per cent increase in the rates collected in Northern Ireland.

I am very persuaded by amendments 10 and 11, and I will support them. I like the idea that, where councils—if I understand this correctly—have collected the rates and have got their pooled rates back, they are then able to make adjustments so that, if they are carrying out a town centre improvement or regeneration project, for instance, they can lower rates in one area as long as they collect the revenue elsewhere. That gives councils more flexibility and lets them target and—hopefully—bring about more regeneration, if that is one of their priorities.

There are quite a few questions in there, but that is partly because of the nature and scale of the amendments, which could have a pretty big impact.

Kenneth Gibson: We have heard a lot of good points from everyone who has spoken, including Andy Wightman. However, I have concerns. I represent an area where, unless we have a very strong reorganisation of the local government funding formula, the measures could be extremely harmful. That is because many people in areas such as North Ayrshire and North Lanarkshire shop in Glasgow and, all else being equal, there would be a huge increase in the rates gathered in the cities and a huge fall in other local authority areas, unless the entire redistribution model is examined. That is a major concern, and that is why Annabelle Ewing's point is so valid. COSLA needs to consider the matter in the round. We would have to have a starting point whereby, if the rates poundage went down by several million pounds in one area, the formula was adjusted. We could perhaps then move forward.

The proposals represent such a fundamental realignment of local government finance that having it in an amendment to a bill on non-domestic rates is inappropriate. The matter has been discussed for a number of years, and it will continue to be discussed, but I do not think that we should support such a move until we can sit down and consider the whole thing in the round.

Alexander Stewart: Like others, I can see some merit in amendment 9, which attempts to bring localism back into the mix. Once again, I am quite supportive of that.

Amendment 10 is a step too far. The model would disadvantage individuals and organisations. We can see the anxiety and fear on that point from some of the submissions that we have received, and the proposals could have a major detrimental effect on the business community in some sectors and in some locations. I would not be in favour of amendment 10.

Kate Forbes: I have serious concerns with the amendments. My principal concerns relate to the policy, but it is important also to highlight my concern with the drafting of amendments 9 and 10. They are technically problematic, in that they refer to and rely on amendments to section 7 of the 1975 act that have not been lodged, and amendments 11 and 12 are predicated on amendment 10 passing. Those challenges are passed on. Given the way in which the amendments are drafted, it is simply not apparent what would be required of local authorities, and the legislative implications remain unclear. In that sense, the amendments present a serious risk to the operation of the non-domestic rates system.

My primary concerns go well beyond the technical challenges in the amendments. I respect Andy Wightman's view that powers over non-domestic rates should be returned to local authorities, but it is important to recognise that, as Annabelle Ewing said, neither local authorities nor ratepayers currently support such a change, and there has been no substantive consultation or scrutiny of the proposal. The Barclay review ruled out such a change, highlighting that

"ratepayers value this consistency"

and that

"such consistency would be lost".

As Annabelle Ewing mentioned, COSLA has been explicit on the matter, including in evidence to the committee, recommending that discussions on the devolution of non-domestic rates should not be considered outside the discussions to develop a fiscal framework for local government. It is also worth noting that organisations such as the Scottish Retail Consortium consider it

"a retrograde step, anomalous with the thrust of the reform agenda of predictability and competitiveness."

The natures of the economy and local economies have moved on quite considerably since 1975—not that I remember that year—so simply reinstating local rate-setting powers without giving significant thought as to how that might have an impact on individual local authority finances would not be wise. It is not clear how much flexibility individual councils would have in reality as a result of these amendments. Some will have scope to adjust rates to suit local circumstances, but others will in effect be obliged to match or undercut rates that are set by neighbouring, potentially larger, councils and accept the significant revenue risks of doing so.

I do not believe that a change of such magnitude should be taken forward without genuine consultation.

Sarah Boyack: There are periodic reviews of local government finance and, since joining the committee, I have started reading through them. Almost every Government has a review and then it gets parked. Given that there is a plea to have a joined-up approach to both council tax and non-domestic rates, what are your proposals to allow us to come back to the issue? The Barclay review was tightly constrained and you have been arguing that we should not add anything else to the bill, so when will there be a golden opportunity to come back and discuss the issue?

Kate Forbes: That is a fair question, but I do not think that this is the time to make these amendments. As you say, the Barclay review had a very specific purpose and we should not make an amendment without proper scrutiny and consultation.

The local governance review has to be done in partnership with COSLA. It must be part of the conversation about what local government finances look like in the round, including council tax, non-domestic rates and grant mechanisms. That review is on-going and COSLA is involved, and it is for COSLA as a partner in the review to inform what local government finances look like. Making these amendments to the bill would undercut that process and a change of such magnitude should be subject to analysis and scrutiny.

In that vein, I do not support the amendments.

Andy Wightman: I will make a few points in response to members. It has been COSLA's long-standing position that it wants the repatriation of non-domestic rates. Annabelle Ewing is correct that, in evidence to the committee—although I cannot remember the person who gave the evidence—COSLA said that it does not see that happening now. I am not envisaging it happening now either. It should take place in the context of the development of the fiscal framework that I understand the Government is committed to designing and implementing in co-ordination with COSLA. It should also take place in the context of appropriate adjustments to the settlement formula; I will come back to Kenneth Gibson's point on that.

Amendment 9 would place the commitment to repatriate non-domestic rates in the bill, but I am very relaxed about when that should be done by. If someone thinks that 2030 is better than 2024, that is fine, and we can have that discussion. If we do not make provision for it, COSLA's desire for it not to happen now will be met, but COSLA's longer-term desire and long-standing position is that non-domestic rates are local taxes that should be set by local councils.

If the UK Government said that it was going to set taxes that are devolved to this Parliament, I think that most parties would be quite aggrieved. Non-domestic rates are a local tax and they should be set by local councils. Amendment 9 is seeking to make such a provision, but its implementation would be delayed to give plenty of time to deal with all this, which relates to Sarah Boyack's point. It could happen by 2024, or even by 2025, 2026 or 2028, to allow sufficient time for further discussions with COSLA about the knock-on implications of the provision, which are not particularly profound.

Kenneth Gibson talked about the change to the funding formula. At the moment, councils keep the rates that they have raised—there is a complicated system whereby they provide the net difference between that amount and the predicted amount to the Scottish Government and it is redistributed as part of the settlement. The fact is that whether councils are currently in receipt of high revenues or low revenues from non-domestic rates is already taken into account in the funding formula and, fundamentally, there would be no change to that. The only change would be that councils would be able to set their own rate.

I ask Sarah Boyack to support amendment 9 because, if we do not commit to making the change, it will probably be 20 years before we can revisit the question.

10:15

Kate Forbes: On Graham Simpson's point, and Kenny Gibson's, did the consultation response identify simple things such as whether setting rates at council level would exacerbate income inequalities because wealthier councils would be able to raise more and poorer councils would raise less? Have all the potential unintended consequences been thought through sufficiently for us to take this step?

Andy Wightman: Perhaps not fully and sufficiently, but the point is that the existing funding formula takes account of the fact that some councils, such as the City of Edinburgh Council, have high non-domestic rate revenues, while others have low ones. All that the amendment does is to say that rate setting shall be done by the councils to which the rate belongs. There will be impacts over time—10 or 20 years—from how the power is used, but that is fine. In a similar way, we do not consider the impact on the UK as a whole when we set the devolved taxes, although perhaps we should—I do not know. However, it is a matter of principle that local government should set the rate for taxes that belong to it.

Annabelle Ewing: The member mentioned that it is a matter of principle, but I am finding the process a bit odd. Normally, there are discussions among relevant stakeholders who reach an agreement, followed by a consultation and then the legislation is drafted as well as it can be. That is as opposed to having a series of potential unintended consequences that nobody has looked at in detail. I am curious as to why you would seek to go about the process in completely the reverse order, locking in a position when, as you have just admitted, you have not fully dealt with unintended consequences, and pre-empting the discussions that are currently taking place, as the minister mentioned.

Andy Wightman: I am not doing anything in reverse. I am seeking to use a legislative opportunity—possibly the only one for another 20 years—to make a change that is broadly supported by many political parties and is a longstanding position of COSLA. If we do not make that change in primary legislation now, we will not have the opportunity unless the Government introduces legislation at some point in the future, which it has given no indication that it intends to do.

Sarah Boyack: I get the point about it being a huge change and that it is, in principle, the right way to go. Are there any opportunities in the process for the committee to pause for breath and get comments before stage 3? Andy Wightman has done his own survey, which is useful in informing him, but it does not inform the rest of us and we have not seen how it worked. When we have had complex and difficult legislation in the past, there has been an opportunity to pause for breath before stage 3.

I am not arguing for or against what Andy Wightman is trying to do. It is totally legitimate for members to come up with important and radical changes and, in the past, we have bought ourselves extra time. However, there needs to be equivalence, with our local government colleagues being party to the discussion. I take the point that it could be 20 years before we look at the issue again. Does the committee have scope to have a pause for breath on the bill? There are several amendments that I think are totally correct but which are difficult to resolve in the timescale that we have. Can the convener give me a helpful comment on that?

The Convener: We could have an evidence session on the area between the present stage and stage 3 if we thought that that would be helpful. There is scope for further evidence to be taken.

Kenneth Gibson: We would have wanted the evidence session before we got to this stage, if we had thought that the issue would be brought forward. If we are going to pluck rabbits out of hats, what was the point of all our scrutiny of the bill prior to reaching this stage?

Andy Wightman: Have I just been intervened on twice? I have lost track.

The Convener: Do not worry about how many times.

Andy Wightman: Am I winding up? I think I am.

In answer to Sarah Boyack's question, the convener has helpfully said that it is open to the committee to take further evidence between stage 2 and stage 3. Committees have done that in the past. In response to Kenny Gibson's point, I say that we are scrutinising the bill as presented by the Government and, as I have argued, it seeks to implement the primary legislation that is required to deliver on the Barclay recommendations that the Government has decided to implement. The Barclay review was a very narrow review, as the committee discovered when it questioned Mr Barclay prior to the bill coming before Parliament. It was very narrow and it asked one question. This is the legislative opportunity. It might be the only one for the next 20 years, so there should absolutely be discussions about this.

There are two answers to that. One is that this amendment is designed to provide the time to have those discussions and that debate. We could do something around commencement, for example: we could change 2024 to 2026. The point is that, in principle, councils should have

these powers returned to them. This is not a radical change, it is just giving councils back what a centralising Government at that time sought to remove. I understand Graham Simpson's point that, with his presence in the Conservative Party, it has moved on since those days.

Kenneth Gibson: Dark days.

Graham Simpson: Such a radical.

Andy Wightman: The Government then sought to remove powers. I remember the 1990s, when the Government was trying to fetter the freedoms of local government in many ways, such as rate capping. I think that we have moved on from those days and that parties, generally speaking, understand the need to empower the local state and give it the responsibility that virtually every local government system in Europe has. This is the opportunity to do it. I am very mindful that we need to address some technical issues with amendment 9, but if we do not commit to doing this now—

Graham Simpson: Will the member take an intervention?

Andy Wightman: Yes, I am happy to.

Graham Simpson: I take the convener's point that the committee could, if it so chose, take some evidence on this. My view is that if this amendment does not pass today, the committee will not bother to take evidence. If it is in the bill, we might; if it is not, we will not. I guess that that point is directed at Sarah Boyack.

Andy Wightman: I thank Graham Simpson for using the opportunity to intervene on Sarah Boyack.

Finally, I think that there might have to be technical amendments to amendment 12, in terms of timescales, if members were minded to support it. However, I do not think they are, so I will leave things there.

The Convener: I take it that you are pressing the amendment.

Andy Wightman: Yes, I press amendment 9.

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 9 agreed to.

Amendment 10 not moved.

The Convener: Amendment 14, in the name of Andy Wightman, is in a group on its own.

Andy Wightman: As members will be aware, taxes can be regressive, flat or progressive. With regressive taxes, the tax rate falls as the tax base increases in value. The council tax is a good example: proportionately the rate paid on high-value properties is lower than that which is paid on lower-value properties.

A flat tax such as VAT has one rate. A very wealthy person pays no more VAT than a very poor person. That is one reason why flat taxes and indirect taxes are not a very good idea—they end up being regressive in the bigger scheme of things, because poorer people pay more as a proportion of their income. Flat taxes include VAT at 20 per cent and non-domestic rates at 49p in the pound, or whatever the rate is currently.

For progressive taxes, of which income tax is a good example, the rate increases as the tax base rises. Of course, how progressive we make such taxes is a matter of political choice.

Amendment 14 would move non-domestic rates from being a flat tax to being a progressive tax. One of the problems of having a flat tax is that, if that one wants to exempt or relieve low-value properties, one has to do so through complex systems of relief, which, generally speaking, have to be applied for. A progressive system would mean that there could be a tax-free allowance: for example, we could say that no rates would be charged on the first £10,000 or £20,000 of rateable value. That approach would have the same general effect as relief schemes, but it would be simpler to implement.

Amendment 14 is fairly straightforward. It would introduce into statute the principle that non-domestic rates have to be progressive; exactly how progressive would be set by regulations. As the committee is aware, currently, an instrument that is subject to negative procedure on setting the rate is laid before Parliament each year. If amendment 85 were to be agreed to, each year Parliament would consider a similar instrument that would set the figures that are shown in the text of the amendment in steps 1, 2 and 3. Those figures are not to be debated, as such; they are merely a baseline that we could start with, and they could be amended. The critical point is that, from year to year, the figures would be amended

in the same way as we do when we pass the resolution that sets the rates of income tax, in different bands, and the thresholds for that tax.

I do not think that I need to say much more. I will leave my remarks there, convener.

I move amendment 14.

Kate Forbes: If the approach that is proposed in amendment 14 were to apply, owners of properties with a rateable value of less than £60,000 would see their aggregate rates liability fall by a total of £747 million. That would mean either that three quarters of a billion pounds would be taken directly out of funding for vital local government services or that ratepayers with properties with a rateable value of more than £60,000 would need to compensate for that reduction by paying higher rates.

Non-domestic rates is a property tax. We endeavour to make it as progressive as possible, with the small business bonus scheme protecting businesses that occupy the smallest properties and the large business supplement applying to those that occupy the largest ones.

The approach in Mr Wightman's amendment 14 would present challenges, if it were implemented. I give the example of a prosperous tech company that operates from premises that have a lower rateable value than the premises of another company that has a bigger high street base. In that case, we would be cutting the rates liability of the first company further and increasing that of the one with the bigger high street base, which might have lower turnover.

Although amendment 14 is certainly better than the previous one that I have seen on the same subject—which would have seen the Scottish Parliament building attract a rates liability figure that contained 43 zeros—it would still place an iniquitous liability on those who occupy the largest properties. As a result, I cannot support amendment 14.

The Convener: I call Andy Wightman to wind up and to press or seek to withdraw amendment 14.

Andy Wightman: In response to the minister's last point, I stress that the previous amendment on the matter contained an error that generated some entertaining headlines.

The minister said that the Scottish Government is trying to make the current system as progressive as possible by introducing measures such as the small business bonus scheme and the large business supplement. However, that is not how to make a tax system progressive. Generally speaking, we do not do that with income tax: we do not get people to pay and then give them money back. Instead, we make the system progressive by having a set of bands, with thresholds, and rates within each threshold.

The minister mentioned numbers in relation to the impact of the figures that are set out in the amendment. I made it very clear that those figures are just a starting point and that the actual rate would be set each year. We could set figures X, Y and Z and then one would not make any calculations about the impact of such a change. The rate would be made each year, as the rate instrument was laid.

Annabelle Ewing: Will the member take an intervention on that point?

Andy Wightman: I will not, at the moment.

I understand why the minister has made that point, but I would be grateful if we could park that. It is not strictly relevant, because in my view the figures that are set out in the amendment are not baked in, but can be thought of simply as X, Y and Z.

My fundamental point is that if we want to make the system progressive, we are not going about it in the right way. The easier way to do that would be to provide a series of bands—three or four—and set rates. That would make the system progressive and give effect to the same policy intentions that lie behind initiatives such as the small business bonus scheme. For example, there could be a zero-rate band.

10:30

The minister talked about a tech company on the high street and all the rest of it. Those differences already exist, because we are dealing with a property tax. I understand the point that such a system would increase the differences; that is what a progressive tax system does.

Kenneth Gibson: The committee heard in evidence about an issue with the small business bonus scheme itself, which I raised with the minister when she appeared before the committee. It is the issue of the cliff edge, whereby the scheme acts as a disincentive for many businesses to move into larger premises because they would lose the small business bonus benefits and have to pay higher rates. Would amendment 14 help or exacerbate that situation?

Andy Wightman: Kenneth Gibson raises an important point. That is one of the criticisms—there are many, in my view—of the small business bonus scheme.

My amendment 14 would be independent of such relief schemes, which are in the gift of ministers to introduce in regulations. In a sense, therefore, one should not consider amendment 14 in the context of existing relief schemes. It is

legitimate to do so, but we are dealing with primary legislation.

In principle, a progressive system prevents such cliff edges, because there is no sudden move from 100 per cent relief to only 25 per cent or zero relief. In essence, the small business bonus scheme is designed as a progressive relief system in reverse—it is not progressive enough, because it still has those cliff edges. There are cliff edges in progressive tax systems, but the cliffs are not so big, and the bands and thresholds can be set in such a way as to ensure that they are not huge.

The key value in my amendment 14 is that if we want, as a matter of policy, to give relief to properties of—for the sake of argument—below £10,000, the easiest way to do that would be to put them in a zero rateable tax band. That is a better approach than putting in place a complicated series of reliefs that mean that businesses and ratepayers have to fill out forms and submit them to the council, which then has to tell the Government how much the reliefs cost and the Government pays the money to the council.

Kate Forbes: I will make two brief points. The small business bonus scheme is currently the subject of a review—I will come on to that later in relation to another amendment. The premise of non-domestic rates is that rateable value is based on the notional rental value of the property. Progression is linked to the ability to pay.

To give one example, a highly prosperous tech company that is based in very small premises could pay almost nothing in rates, whereas a business that might be making far less money but which occupies far larger premises might have to pay an amount that it finds far less affordable. The system can never be fully progressive in the way that we might imagine the income tax system is. Our relief system currently endeavours to be as progressive as possible at the edges. However, to go down Andy Wightman's suggested route of a banding system would undermine the whole notion of basing rateable values on a notional rental value.

Andy Wightman: The valuations would continue to be made on that basis—I am not proposing any changes in the valuation methodology. My amendment 14 concerns a proposal to change the way in which the rate is structured.

The minister is correct to use the example of a small tech company, but that is an issue that arises under the current rates system. Indeed, it is currently an issue with income tax, which does not take account of the fact that somebody who earns £40,000 a year might have four children and care for two adults, and have much greater household expenditure than someone else who earns £40,000 who lives on their own with no dependants.

All those tax systems are subject to limitations with regard to those who are liable to pay the tax. The critical point is the design. In broad terms, we should move away from flat taxes and towards progressive taxes.

Annabelle Ewing: Will the member take an intervention?

Andy Wightman: I have completed my comments, so I am happy to take an intervention.

Annabelle Ewing: I am just wondering what fiscal modelling you have carried out on the fiscal impacts of your proposal.

Andy Wightman: There is no fiscal modelling to be done. As I made clear at the outset, the figures in my amendment are just baseline figures—they could be X, Y and Z instead. [*Interruption*.] I do not know why Annabelle Ewing is sighing. The actual rate would be set by a statutory instrument each year.

It is the responsibility of Government, which sets the rates, to do financial modelling of the impact of its proposals on tax. My proposal merely sets a framework within which, instead of there being a flat tax, there would be a progressive tax. As I said, the figures could be X, Y and Z. I am not proposing the rates: they would be proposed annually. I am providing a framework within which the rates would be set.

The Convener: Thank you, Mr Wightman. I am happy to move on and ask whether you want to press or seek to withdraw amendment 14.

Andy Wightman: I press amendment 14.

The Convener: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Wightman, Andy (Lothian) (Green)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 14 disagreed to.

The Convener: Amendment 13, in the name of Graham Simpson, is in a group on its own.

Graham Simpson: Amendment 13, which relates to the large business supplement, follows on from the recommendation in the Barclay review, that in order to make Scotland the most competitive part of the UK in which to do business, we should align the rate with that in England.

The large business supplement is paid by all properties with a rateable value over £51,000. The rate in Scotland is 2.6p while the rate in England is 1.3p. The Barclay review said that the rate in Scotland should be reduced so that it is in line with the rate in England. The Barclay review report states:

"our decision to recommend the supplement is reduced is in the context of current Scottish Government policy to ensure that Scotland is the best place to do business in the UK ... Several consultation responses raised the issue of the rate of the Large Business Supplement. Most noted the difference with England. In talking to ratepayers and business groups, we have noted a widely held perception that the difference in Large Business Supplement means that Scotland is not as competitive a place for businesses as England currently is. A large majority of the tax base—in terms of tax revenue received at least—sees their ... bills determined by a higher tax rate in Scotland than they do in England".

The Scottish Retail Consortium has said of amendment 13:

"Of the 22,000 premises affected some 23% are retailers ... costing these retailers alone £13.95 million extra annually. This higher rate makes it more expensive to operate on our high streets and retail destinations and raises the hurdle for attracting commercial investment. This amendment appears to seek to place a cap on the large business rates supplement"—

it would do that—

"so that it is no higher than that which applies down south".

Annabelle Ewing: Will the member take an intervention?

Graham Simpson: I am just closing. Amendment 13 is also backed by the Scottish Wholesale Association and the Confederation of British Industry Scotland.

I move amendment 13.

Annabelle Ewing: I tried to intervene, but Graham Simpson did not want to take the intervention.

I am curious; it appears to me that here, in this devolved Scottish Parliament, under amendment 13 we would actually be saying, on an issue that is devolved, "No—we don't want this power any more. Thank you very much, but we're going to hand the power to set maximum thresholds back to the Westminster Parliament." I find that absolutely astonishing.

Kenneth Gibson: Yes—it is a complete nonsense. At the end of the day, of course there is a strong argument for reducing the level of supplement, but the current or a future Scottish Government might wish to do that, or to increase it. That would depend on Scottish circumstances. We should not be tied to what is done south of the border. That is the whole premise of devolution. I oppose the amendment on that basis alone.

Andy Wightman: Amendment 13 is not about handing powers back to Westminster. If we agree to it, we will still have the power to change things in the future.

My problem with amendment 13 is twofold. First, the rate for the large business supplement is subject to secondary legislation, which means that it is subject to periodic parliamentary scrutiny. I understand that ministers may, if they wish, introduce other supplements by regulation. That is flexibility in the system. Secondly, I think, as a matter of principle, that it is a poor idea to set out such constraints in primary legislation, particularly if the constraint is tied to the legislative provisions in another jurisdiction.

Sarah Boyack: For me, it is a question about the point of devolution. This is a choice that we should make in Scotland. We should have a debate about this. Amendment 13 should not be included in the bill.

I take Graham Simpson's point about the pressure in the retail sector, but one of the things that we are not really looking at is online retail and the need for a fairer tax system in that regard. Amendment 13 would not solve that.

Kate Forbes: The Barclay review did not recommend giving control of the large business supplement cap to the UK Government. Who knows what might happen after 12 December? Who knows what we will be connected and linked to? That highlights the core principle that is at play here and the problem with the proposal. Although Barclay called for a reduction in the large business supplement when that is affordable, and the Scottish Government committed to that, I would not support tying our tax policies, particularly with regard to something like the large business supplement cap, to UK Government decisions.

I cannot support Graham Simpson's call for control of a maximum threshold to be handed to the UK Government. In fact, his amendment 13 would restrict that threshold to the rate that is set by local authorities to fund local economic development projects.

The rates should be controlled in Scotland and should not be determined by whatever rates are set—or not set—south of the border.

The Convener: Mr Simpson, would you like to wind up?

Graham Simpson: No. [*Laughter.*] I certainly appear to have wound up Annabelle Ewing—not for the first time.

Annabelle Ewing: And others.

Graham Simpson: And others—yes.

My amendment 13 is not about handing power back to Westminster—of course it is not, and members are aware of that. However, having heard the comments around the table, I think that the point has been made that we do not want Scotland to be uncompetitive with the rest of the UK. I accept that the issue is probably a budgetary matter and not a matter for the bill. Therefore, I will not press amendment 13.

Amendment 13, by agreement, withdrawn.

The Convener: Amendment 39, in the name of Alexander Stewart, is grouped with amendment 88.

Alexander Stewart: Amendment 39 will bring additional scrutiny and transparency to the valuation process. Although the non-domestic rates system predates devolution, there is a strong argument that members of the Scottish Parliament should have a role in the system.

The Barclay review urged Scottish assessors to improve and standardise their processes on rate payments, and ministers have been keen to highlight that the bill will not deliver as it should, specifically in relation to a more frequent evaluation cycle, without administrative reforms.

An annual report that was collated by ministers and presented to the Scottish Parliament would give MSPs an opportunity to scrutinise the operation of the non-domestic rates system. That, in itself, would enable there to be additional scrutiny of the operation of the rates system.

I move amendment 39.

Sarah Boyack: Like amendment 39, amendment 88 is concerned with the importance of additional scrutiny and of reporting back to Parliament. I reflected on the issue and thought that a three-year period would probably be appropriate. I note that issues came up in our stage 1 report about pressures on the system. Further, we are dealing with a new piece of legislation, and there might be additional issues that arise as a result of that. It seemed to me that, in terms of ensuring that there were reports back from assessors and in relation to issues around capacity and numbers, input from the Scottish Government to collate the information and present it to the Parliament would be helpful with regard to transparency.

I had not seen Alexander Stewart's amendment when I lodged mine, but I thought that a three-year period would be appropriate, because that would give us a bit of time to consider the impact of the legislation and make it a priority for our committee or another committee to consider the issue.

10:45

Andy Wightman: Amendments 39 and 88 are useful and raise some good points. I will preface what I say by reminding the committee that valuers are professionals and they undertake their valuations on the basis of professional standards.

The issue concerns me a little bit. Of course, if you go to the Scottish Assessors Association website, you can see from its practice notes how it values everything from crematoria to nurseries, bowling greens and whatever other properties it values.

Some of the issues that come before this Parliament and some of the concerns that members have relate fundamentally to valuation methodologies, rather than to any legislative provisions or Scottish Government policy. I am persuaded that it would be useful to make a statutory requirement that valuation boards provide a report to be laid before Parliament—not annually, but certainly periodically—which would, among other things, flag up issues, problems and all the rest of it. I presume that that information is probably already feeding through to Government, but it is not visible to members, and it would be helpful if it was.

I am not clear—perhaps Alexander Stewart could reflect on this when winding up—what amendment 39 would do. It says that there should be a duty to report

"as soon as practicable after the end of each financial year ... on the effectiveness of the valuation process".

It is not clear to me how the

"effectiveness of the valuation process"

would be assessed. I presume that if I was a professional valuer, I would, on completing a valuation, submit a report saying that it was effective. It is not in clear what is being sought in the amendment, and perhaps Mr Stewart can come back on that.

Sarah Boyack's amendment 88 is not similar but rather different from amendment 39. Its subsection (1) would restrict reporting to

"a report to Scottish Ministers on the number of assessors and depute assessors holding office".

That would be a straightforward report, because there are 10 assessors and two depute assessors, or whatever the numbers are, so that provision appears to be overkill.

Amendment 88's subsection (2)(b) says:

"The Scottish Ministers must lay a report before the Scottish Parliament that—

(a) collates the reports"

and

"(b) considers whether there are—

(i) sufficient assessors ... to enable the fulfilment of the legislative functions of assessors, insofar as they relate to non-domestic rates".

Assessors do not just deal with domestic rates; they deal with council tax and maintain the electoral roll.

I am not entirely clear what either amendment is trying to do. However, I have said that there is merit in valuation boards laying a report before Parliament, maybe every three or five years. That would give boards the opportunity to highlight issues that have arisen in the valuation process, which would be beneficial to members. However, neither amendment does that.

Graham Simpson: Amendments 39 and 88 call for duties to report on two different things, but they are essentially about one thing: transparency. I am certainly happy to support both amendments, but they probably need a bit of work. Perhaps Alexander Stewart and Sarah Boyack could get their heads together before stage 3 and come up with a joint proposal.

Sarah Boyack: I would certainly be happy to do that. I take the points made by Andy Wightman and Graham Simpson. I would also be happy to work with the minister. If members are happy to push through the amendments, we could come back and take a final view on the matter.

The issue is transparency and proportionality, so I appreciate Graham Simpson's comment.

Graham Simpson: I will finish on that note.

Kate Forbes: My initial thoughts were that the Scottish Government was being drawn into matters that are best left to local authorities to review and determine. However, I think that Sarah Boyack's amendment 88 in particular has merit. I appreciate Alexander Stewart's amendment 39, but I think that, on balance, I would support Sarah Boyack's amendment and not his.

I would be happy to meet both members to work on and adjust whichever amendment is agreed to. However, it is important to identify that assessors are independent professionals. Their role is to carry out valuations in accordance with law. They are independent of Government, which has no remit—nor should it—to intervene in that process.

The process of valuation is obviously extremely complex and technical and should remain under the purview of rating experts, surveyors and solicitors.

It is not necessary for reporting to be annual, which is why, on balance, I support Sarah Boyack's amendment 88. Annual reporting would mean a considerable amount of work for little gain, whereas reporting every three years would be more relevant to the nature of non-domestic rates.

We support amendment 88, but if both members are willing to work with me, we could fine-tune the proposal and make adjustments to it.

Alexander Stewart: We have had a useful discussion. My goal was to bring additional scrutiny and transparency to the process, which would be valuable and is what Barclay wanted. I appreciate that the professionalism of the assessors is important to the process. There is merit in looking at the issue. I hear what the minister is saying and I acknowledge Sarah Boyack's point about time being required. I am live to the discussion and I am more than happy to have further discussions as we progress the bill, so that we get more transparency and scrutiny, the Scottish Parliament gets a role and MSPs have an input to the process. That is what is expected of us.

Amendment 39, by agreement, withdrawn.

Sarah Boyack: I will not move amendment 88 on the basis that there is ministerial and cross-party support for us to lodge another amendment at stage 3.

Amendment 88 not moved.

Before section 9

The Convener: Amendment 3, in the name of Andy Wightman, is in a group on its own.

Andy Wightman: In its annexes, the Barclay review report contains a number of issues that Barclay looked at but did not make formal recommendations on. One of those is in annex C7, which is titled "Ensuring that every ratepayer pays something".

The principle is straightforward—it is one of accountability. Barclay describes "rates deserts", which are locations where nobody contributes anything to the costs of running and delivering the public services that the owners and occupiers of property depend on, including the roads by which their customers reach them and on which they make deliveries, the amenities that enhance property values, and the planning and infrastructure that enable their workers to have housing.

The principle that everybody should pay something, albeit a modest amount, is important in building the link between non-domestic property occupiers and the councils that provide the services on which they rely.

Relief schemes such as the small business bonus are separate from all this, but if their effect is to take thousands of people out of a system so that they pay nothing whatsoever, they will begin to undermine the important relationship of accountability between non-domestic property occupiers and local authorities, which has existed for well over a century.

Amendment 3 would insert a "mandatory minimum payment". It does not seek to eliminate any relief schemes, although its effect would be to adjust from 100 per cent to 97.5 per cent the relief that is available under the small business bonus scheme. It would ensure that every ratepayer would pay something. As the amendment is drafted, that amount would be

"2.5 percent of the valuation of the lands and heritages",

so a property with a valuation of, say, £10,000 a year would be liable for £250. I am open to debate on exactly how that would be set—it could be a flat rate—but I am more interested in a discussion on the principle, which I advocate. Everybody paying something is an important principle for the rates system and amendment 3 would give effect to that.

I move amendment 3.

Graham Simpson: Andy Wightman mentioned relief schemes, and I think that amendment 3 would meddle with relief schemes.

Some businesses do not pay anything under the small business bonus scheme, but Andy Wightman is suggesting that everyone should pay something. He is suggesting too fundamental a change. It would be a massive change to the system and its introduction could be damaging to some businesses, so I am not supportive of it.

Annabelle Ewing: I agree with that. I am supportive of the small business bonus scheme. From my constituency, I absolutely know the difference that it makes to allowing shops to continue to exist. The committee has referred on many different occasions and in many different contexts to the state of high streets, and amendment 3 would damage rather than help the high street. I do not know what modelling Mr Wightman has conducted; he did not refer to anything specific. I will not support amendment 3.

Alexander Stewart: I concur. Amendment 3 would be detrimental to a number of businesses on our high streets. We should be doing all that we can to encourage, support and rejuvenate those locations within our communities and constituencies, so that they can flourish. The provision in amendment 3 would be a real burden. It would jeopardise development opportunities and the business community's ability to move forward, so I cannot support it.

Kenneth Gibson: Once upon a time, amendment 3 would have been quite a good suggestion, but we are many years past that. The retail sector in particular is under severe pressure, so it is the wrong measure at the wrong time. We also have to consider that it would impact on charities and others, and we should bear in mind Sarah Boyack's earlier point about online retailing. Amendment 3 would only exacerbate online retailers' advantage over high street retailers. I therefore oppose amendment 3.

Kate Forbes: Amendment 3 would create a rates liability for more than 142,000 properties. I am very supportive of the small business bonus scheme. I see its impact at not only the ministerial level, but the constituency level, in allowing small businesses in particular to reinvest.

It is perfectly legitimate to have questions about the small business bonus scheme and to ask whether it is achieving its aim of revitalising local economies, which is why we commissioned the Fraser of Allander institute to review the scheme. It is accepted that improvements can be made to ensure that the scheme supports small businesses. It would be wise to wait for the outcome and recommendations of that independent review, rather than consider the imposition of a minimum rates liability on the properties that benefit from the scheme.

There are other rates relief schemes in operation. For example, the business growth accelerator relief, which encourages investment in property stock, and 100 per cent relief for telecoms masts, to encourage improvements in digital connectivity in Scotland. All those areas would be subject to a rates liability under amendment 3. The reason that those reliefs exist is to incentivise investment and support particular policy decisions to aid high streets and the small businesses on them.

Consequently, I do not support amendment 3.

Andy Wightman: I am slightly bemused by committee members' responses to amendment 3, including the claim that it would bring about a massive change. It would be an incredibly minor change to the rating system. As I made clear at the outset, amendment 3 is about a principle of accountability.

The minister talked about the small business bonus scheme review and wanting to wait. Again, we will wait and the ship will sail, the bill will be passed and we will have missed another legislative opportunity to put in place the principle that every ratepayer should pay something.

I am not a fan of the small business bonus scheme in the way that it is designed. Some of the wealthiest people on the planet who own land in Scotland are paying nothing as a consequence of

it. In Lothian region, there are plenty of premises that, after the rates thresholds have gone up, have become vacant and been let again at a higher rent despite the fact that the owners are paying no more than they were before. The problem is that those higher thresholds get capitalised into the value of the property for the owner. That is always the problem: when we relieve fixed assets, such as property, of a liability to pay tax, it ends up being incorporated into the rent and enriching the owner.

11:00

Notwithstanding that point, there is a review under way and I agree with the minister that we need to wait for its outcome. However, amendment 3 is not directly related to that review. Whether there should be reliefs or not is one question. I am proposing a minimum payment that everyone pays on an annual basis, to remind them that they depend upon the services of local government. I am introducing that simple principle.

Annabelle Ewing made a point about the impact of that change. The figures that were given by the Barclay review show that it would raise about £30 million. I do not think that paying £250 a year for a property valued at £10,000 is going to break the bank. If we set the rate too low, the principle might be observed, but the costs of collection would outweigh the revenue that was generated, so we cannot do that. I am open to how one decides that value, but I am more interested in the principle. I will press amendment 3.

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Wightman, Andy (Lothian) (Green)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 3 disagreed to.

Section 9—New or improved properties: rates relief

The Convener: Amendment 89, in the name of Sarah Boyack, is in a group on its own.

Sarah Boyack: The business growth accelerator relief, which reduces rates for businesses that have invested in improvements, has been applied in different ways across Scotland. Amendment 89 seeks to highlight the different ways in which it is implemented. I want there to be a requirement for the Scottish ministers to give greater clarity, partly to encourage people to use the business growth accelerator relief and partly to raise awareness among local authorities and businesses about how it works.

Amendment 89 seeks to provide more clarity about and increase the awareness and raise the profile of the business growth accelerator relief.

I move amendment 89.

Kate Forbes: I will identify my current concern and then offer Sarah Boyack the opportunity to consider the matter ahead of stage 3. We agree that reliefs should be accompanied by appropriate guidance for councils and ratepayers alike. We publish non-statutory guidance for all reliefs, which is compiled with the involvement of officers from COSLA and the Institute of Revenues Rating and Valuation. The guidance is updated regularly.

The complexities of the business growth accelerator relief, which amendment 89 relates to, lie in the identification of eligible properties. That goes back to a previous amendment. We introduced section 3 to provide for assessors to mark the valuation roll for newly built and improved lands and heritages. Assessors operate independently of ministers and it is a matter for the assessors to interpret and apply valuation legislation. The Government has no locus either to intervene in that process or to issue guidance to assessors.

Section 9 allows the Scottish ministers to make regulations creating relief for newly built and improved lands and heritages. The mark is there to provide councils with a means of identifying the properties that will be eligible for relief. The intention is that the regulations will specify amounts and durations of relief.

I am open to being persuaded that there is a need for statutory guidance to be issued to local authorities in that scenario. It would be unusual in the context of how we approach guidance for other reliefs, bearing in mind the important distinction between Government intervention and the independence of assessors.

Although I cannot support Sarah Boyack's amendment 89 as drafted, there are some points that could be explored further in relation to how we issue guidance, perhaps leading to a more nuanced amendment.

Sarah Boyack: If no member has a comment to make, I would be happy to seek to withdraw amendment 89 and to bring it back at stage 3, following discussions with the minister.

Amendment 89, by agreement, withdrawn.

Section 9 agreed to.

After section 9

The Convener: Amendment 90, in the name of Sarah Boyack, is grouped with amendments 91 and 92.

Sarah Boyack: Amendments 90 to 92 are intended to address two of the major challenges of the day: the climate emergency and the challenge of encouraging businesses to adopt business strategies that would be good for our economy. The Scottish Government's programme for government uses the tags of making Scotland "greener" and "fairer", and that is what my amendments attempt to do.

We need much more joined-up government, including in relation to how we craft and implement our tax policies. Amendment 90 aims to encourage the owner, company or tenant to be more sustainable, and it gives examples of how they could be incentivised to do that through a reduced NDR payment. I am arguing not that businesses would automatically be exempt from payment, but that they could be offered a discount. I have left it to the Scottish Government to determine the level of the discount and the details of the scheme.

In amendment 90, I have listed as potential sustainable business practices

"reducing waste ... reducing greenhouse gas emissions ... procuring goods which are ... produced locally to the lands and heritages"

and

"environmentally sustainable".

I have also included the use of energy from

"zero emission sources, as well as energy saved through energy efficiency measures."

I have provided for the Scottish Government to produce regulations and to detail how those regulations would be implemented, including the periods for which relief would be available and who would be eligible. Given the climate emergency, it could be determined, for example, that such relief would be available for the next five or 10 years, to stimulate action, or a longer period could be stipulated. It would be up to the Government to consider the detail of that.

I have proposed that the regulations would be subject to affirmative procedure, so that they would be given full consideration by Parliament.

In amendment 91, I have set out my proposal for enabling those who practise positive business practices to qualify for rates relief. I have suggested that positive business practices would include

"not using zero hours contracts ... the payment of a living wage ... practices which have a positive effect on the ... local economy ... environment"

and

"the use of district heating."

Amendment 92 would add a new section containing provisions on the contribution that was made to the net zero emissions target,

"including through investment in district heating".

I have deliberately future proofed the wording so that other zero carbon investment that would achieve the same aims could be covered. I am very conscious that promoting low-carbon heat is currently a key objective, but that a range of alternative technologies and approaches might be developed in the future.

Although we have innovative low-carbon heat networks in Scotland, they have been slow to get off the ground, they are expensive to construct and they do not make huge profits, particularly if they provide heat that businesses and households can afford to use. Moreover, local authorities face major disincentives in promoting heat networks because of non-domestic rates.

Interestingly, that issue was raised by a Glasgow Scottish National Party councillor, who said:

"District heating systems have clear potential to deliver cheaper, cleaner energy into people's homes ... But the way district heating systems are treated in the local tax system acts as a deterrent to them being used more widely ... under present rules, installing district heating systems brings in significant new non-domestic rates and that adds unduly to the cost of heating homes."

She said that the Scottish Government agreed to a specific rates rebate for the Commonwealth games village, but that

"until district heating systems are competitive with conventional gas heating we won't be able to move forward.

We need the government to cut through this problem if district heating systems are to contribute to the city's drive to achieve carbon neutrality."

I do not think that that is an issue only in Glasgow; it is one that affects the whole of Scotland.

I hope that colleagues will support my amendments, which address issues that are at the forefront of the challenges that we face in Scotland and provide incentives to deliver the change that we need now, and not in a generation. Crucially, they have been crafted to give ministers flexibility in how to proceed with the proposed approach.

I move amendment 90.

Andy Wightman: I have a couple of brief comments to make.

I have a lot of sympathy with the intention behind the amendments, but I think that ministers already have the power to design and introduce relief schemes if they so wish. Therefore, if they were minded to introduce relief schemes along the lines that Sarah Boyack has proposed, they have the power to do so. Maybe the minister can address that point. Notwithstanding that, there is always some benefit in drawing specific attention to ministers' powers to achieve certain things in order to encourage them to do so.

Sarah Boyack talked about flexibility in terms of the rates relief and periods of eligibility, and that will be critical. Ultimately, as is set out in amendment 90, we want everyone to reduce waste, reduce greenhouse gas emissions and procure goods in a more environmentally sustainable way. If the relief was granted, however, no one would pay rates and public revenues would fall. It is arguable that the rates bill for Parliament, for example, would collapse, because we have reduced waste and greenhouse gas emissions, we do local procurement and all the rest of it.

That is not an argument against the scheme; it is a point to strengthen Sarah Boyack's point that we will have to design it carefully. There will have to be an incentive to achieve certain outcomes, which, after they are achieved, would mean that the relief was withdrawn. As we have just discussed when we were talking about the small business bonus scheme, once a relief is introduced and people are paying 50 per cent less tax or no tax, it is politically challenging to tell them that they will now have to pay it.

Those are just some observations.

Graham Simpson: Amendment 90 is a positive idea that we could have rates relief if we do things such as reduce waste and greenhouse gas emissions and so on. We would all support that. However, I take Andy Wightman's point that people could do all those things and end up paying nothing. However, the amendment says that ministers should make the provisions through regulations. This is one of those amendments that is good but probably needs more work, so I think that we can support it at this point, with that proviso.

The same cannot be said of amendment 91, which deals with the same idea but in relation to positive business practices. How on earth do you define a "positive business practice"? What Sarah Boyack considers to be a positive business practice might not be what I consider to be a positive business practice.

Sarah Boyack lists a few things in amendment 91. It is quite a bizarre mix, going from zero-hours contracts to the use of district heating. Members will have different views on zero-hours contracts, but places such as ski centres in Scotland would say that they need people on zero-hours contracts. For them, that is a positive business practice, but for Sarah Boyack it clearly is not. There are issues with amendment 91, so we cannot support it.

Amendment 92 falls into the same category as amendment 90, so we are happy to go along with it.

Annabelle Ewing: I am interested in Sarah Boyack's approach, but I see that there are a number of practical difficulties with it. This goes back to the idea of using stage 2 of the bill process to come up with all this stuff without any detailed consultation or working through the issues carefully and comprehensively. I am concerned about tagging stuff on at stage 2, because I have a host of questions about these amendments.

What is "fairness", and fairness for whom? Who will assess compliance on all this? What is the machinery for that and what impact will it have? What council money will have to be behind it? The idea is not a bad one, but I do not think that tagging it on at stage 2 without all that work being done is the best way to go about it.

Taking the approach would have many implications for people who are trying to run a business, particularly a small business. Launching it without the Federation of Small Businesses and others having the opportunity to give a detailed response is not really a fair way to proceed. At this stage, therefore, I would find it difficult to support the amendments in their current form.

Kate Forbes: I will speak to all the amendments, and the principles that I will identify are relevant to each of them.

I do not think that anybody would dispute the sentiment behind the amendments. Indeed, I say to Andy Wightman that the Government already uses non-domestic rates to support renewables, including through district heating relief, 60 per cent relief for small-scale hydro schemes and relief for renewable energy generation where there is a community interest. Those reliefs are unique, or are more generous than any equivalent reliefs in the UK.

The Scottish Government is, of course, a strong proponent of fair work. That includes the living wage, which we support through the Scottish business pledge, to encourage fair practices by all businesses.

11:15

We also have the new legally binding annual targets on climate change, with the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 setting a target of net zero emissions by 2045. It is important that we look at every aspect in considering how we will support those ambitions. However, I do not believe that primary legislation on non-domestic rates—which are, as has been said, a property-based tax—is the best way to address our wider ambitions. Apart from anything else, such a system would be hugely burdensome in practice and open to abuse.

Andy Wightman: Can the minister clarify whether I am correct in arguing that, as a matter of law, ministers—if they wish to do so, for the sake of argument—already have the powers in existing legislation to introduce relief along those lines?

Kate Forbes: Yes, we already have the powers to create reliefs along those lines and other lines as we wish. I opened my comments by talking about district heating relief and small-scale hydro scheme relief.

There is another element. Committee members have already expressed frustration when I talk about reviews that are further down the line, but I note that we have committed to a review of plant and machinery valuations, with a particular focus on renewable energy sector valuations. I expect that the review will explore a number of concerns in detail and will make proposals about how we support renewable energy through reliefs or otherwise.

Non-domestic rates reliefs are typically administered on the basis of objective evidence-based characteristics of the property, such as its rateable value or the purpose for which it is being occupied. One example is the small business bonus scheme, which is based primarily on rateable value, whereas nursery or charity relief requires the property to be used wholly or mainly as such. Some reliefs are location based, and even those are based on objective facts and evidence.

I come to the points that were raised by Graham Simpson and Annabelle Ewing. To administer reliefs on the basis of a subjective or transitory feature of the property or occupier, such as positive or sustainable business practices, would increase the administrative burden substantially. In addition, such concepts are ultimately subjective, so even if councils were able to gather information on such practices—potentially at a significant time cost to them—there would be different interpretations across local authorities.

Councils would also need to be significantly resourced to increase their policing, because otherwise the provisions would be ripe for abuse. For example, an occupier could procure local goods on the day that they applied for and were assessed for the relief and then source those goods from sweat shops during the rest of the year. They would still be eligible for the relief in those circumstances. Similarly, an occupier could provide evidence that they were meeting the living wage at a certain point, and councils would struggle to verify the evidence and to monitor the situation over time.

I could go into further detail on an operational level. Businesses would be required to provide evidence frequently to councils on their practices. Those considerations would need to be assessed and costed, and local authorities would need to be consulted on the implications for workload.

I would like to think that we are trying to address some of Sarah Boyack's concerns through alternative measures that are already in place, but I cannot support the amendments, for the reasons that I have highlighted.

Sarah Boyack: I appreciate colleagues' comments, but nobody has really disputed the fact that we need to act. As I understand it, the evidence is out there. For example, some people are putting in district heating systems and are having non-domestic rates applied, which puts them off developing such schemes.

The minister commented on my amendment 91 about progressive business practices. She said that someone could pay the living wage on one day and not do so for the rest of the year. However, there are already schemes in which people sign up as living wage employers, and they do not let people sign up for only one day. There are alternative ways in which people could demonstrate that they have met the requirements that would not be time consuming for councils and would be possible to apply.

I have not really heard why the objectives behind the amendments are wrong. They address two of the key issues of the day with regard to fairer and greener businesses and they are practical. For those reasons, I will push them. I press amendment 90.

The Convener: The question is, that amendment 90 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

Gibson, Kenneth (Cunninghame North) (SNP)
Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 90 disagreed to.

Amendment 91 moved—[Sarah Boyack].

The Convener: The question is, that amendment 91 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 91 disagreed to.

Amendment 92 moved—[Sarah Boyack].

The Convener: The question is, that amendment 92 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 92 agreed to.

Amendments 11 and 12 not moved.

The Convener: This is an appropriate point at which to conclude today's meeting, as consideration of the next section would take up considerable time. I apologise to Liz Smith—we thought that we would get to it a bit earlier than we did. Due to other circumstances, we have to finish the session at a quarter to 12, so we would not be able to give the next section our due diligence.

That concludes today's meeting. Any remaining amendments to the parts of the bill that we have not reached today should be lodged by 12 noon tomorrow.

11:22

Meeting continued in private until 11:49.

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