



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DEVOLUTION (FURTHER POWERS) COMMITTEE

Tuesday 23 February 2016

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Tuesday 23 February 2016

CONTENTS

SCOTLAND BILL	Col. 1
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DEVOLUTION (FURTHER POWERS) COMMITTEE
7th Meeting 2016, Session 4

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

*Linda Fabiani (East Kilbride) (SNP)

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

*Alex Johnstone (North East Scotland) (Con)

*Alison Johnstone (Lothian) (Green)

*Stewart Maxwell (West Scotland) (SNP)

*Mark McDonald (Aberdeen Donside) (SNP)

*Stuart McMillan (West Scotland) (SNP)

*Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Swinney (Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Devolution (Further Powers) Committee

Tuesday 23 February 2016

[The Convener opened the meeting at 08:30]

Scotland Bill

The Convener (Bruce Crawford): Good morning. Welcome to the seventh meeting in 2016 of the Devolution (Further Powers) Committee. I remind members to switch off their phones or at least to put them into a mode that will not interfere with this morning's proceedings. I know that some members will need to leave to undertake other committee duties later on, so I pass on their apologies now.

Agenda item 1 is an evidence-taking session on the Scotland Bill and the fiscal framework. I warmly welcome our witnesses from the Scottish Government: John Swinney MSP, Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy; Ken Thomson, director general, strategy and external affairs; and Alistair Brown, head of finance. Thank you for attending.

I appreciate that, although negotiations on the fiscal framework are on-going, you have been prepared to attend in person this morning, Deputy First Minister. I think that you would accept that the committee has been very patient so far in giving both Governments the maximum amount of private time and space to reach agreement. We respected the position that there should be no running commentary, but, as a result, to date no parliamentary scrutiny of the agreement has been able to be undertaken. I am sure you will recognise that, from both a committee and a parliamentary perspective, that is far from ideal. The Scottish Parliament has been prevented from undertaking the necessary scrutiny work because of the delay in reaching agreement. Obviously, that situation cannot continue indefinitely. I know that you have been a strong advocate of this Parliament's role in scrutinising any deal that you reach with Her Majesty's Treasury. I am sure that you have made that point to the Treasury and will continue to do so, but time is not on our side—dissolution is rapidly approaching.

That is the background. I am sure that you appreciate that we have lots of questions. We must finish our proceedings by 10 am. Would you like to make an opening statement?

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): I am grateful for the opportunity to update the committee on the negotiations around the fiscal framework and on other issues in the Scotland Bill. I place on record my appreciation for the committee's patience and forbearance around the fact that an agreement has not been able to be brought before the committee for earlier scrutiny. I intend to update the committee as far as I can this morning, and subject to the Parliamentary Bureau's agreement, the First Minister intends to update Parliament in a statement this afternoon.

Paragraph 94 of the Smith commission report recommended that the devolution of further tax and spending powers to the Scottish Parliament

"should be accompanied by an updated fiscal framework for Scotland".

Smith also recommended that the Scottish and United Kingdom Governments should jointly work to agree the framework, and I have engaged with the United Kingdom Government since March last year on this task. The joint exchequer committee has met 10 times to date, compromises have been made by both Governments and I remain fully committed to reaching a deal. Today, I can set out in broad terms where progress has been made and what further work is needed in order to reach an agreement.

On 7 October 2015, I set out to Parliament the areas where we needed to reach agreement as part of an acceptable fiscal framework. Those areas were: the block grant adjustment for tax; the implementation and on-going costs associated with the devolution of welfare benefits; and securing additional capital and resource borrowing powers.

I have made significant progress with the United Kingdom Government on a number of those issues. On the financial transfers to meet implementation and administration costs, I am satisfied that the proposals before us satisfy the Smith commission recommendation that Scotland should receive a share of the costs.

On capital and resource borrowing, again, I believe that the proposals before us ensure that the Scottish Government will receive the powers necessary to manage tax volatility and economic shocks, while securing the additional flexibility to invest in infrastructure in Scotland and so improve our economic performance.

However, so far we have been unable to reach a satisfactory agreement on the adjustment of the block grant for the new tax powers. This is due to a fundamental disagreement on the issue of no detriment. My clear position is that no detriment means that, if tax policy and economic

performance in Scotland remain the same as in the rest of the United Kingdom, the Scottish budget should be no better or worse off, either at the point of devolution or in the future, than it would have been under the current funding framework.

We accept that, if the Scottish Government changes policy or if our economic performance diverges from that of the rest of the United Kingdom, the costs and benefits of that should fall on the Scottish budget. However, if nothing changes, our budget should not change either from what it would have been without the new powers. Similarly, the UK should be no better or worse off under the arrangements. I do not think that there is any ambiguity in what the Smith commission said about those vital issues.

I have made it clear that I consider per capita indexed deduction to be the block grant adjustment mechanism that best fulfils the Smith commission's principles and is fairest to Scotland and the United Kingdom. There is a clear consensus of support among academic experts and commentators for per capita indexed deduction as the method that best meets the Smith commission's principles. Furthermore, the relevant committees of both the Scottish Parliament and the United Kingdom Parliament have now endorsed per capita indexed deduction as the most appropriate mechanism for block grant adjustment. As I said, the mechanism has also been supported by members of the Smith commission from four of the five parties that took part.

However, the UK Government does not agree with that definition of no detriment and, so far, all the options that it has proposed include varying degrees of detriment to the Scottish budget. We continue to discuss the mechanism for adjusting the block grant with the United Kingdom Government, but I will agree only to a proposal that achieves the Smith commission's principle of no detriment in a way that is effective, transparent and sustainable.

I will summarise the progress that we have made. I believe that we have reached an acceptable agreement on all issues with the exception of the key question of the method of block grant adjustment. The reason for that is that there remains a fundamental difference on the principle of no detriment. I also believe that no detriment means that our budget should not be cut as a consequence of the devolution of the powers, but the UK Government takes a different view.

As the convener said, the negotiations need to conclude soon. I remain committed to sharing as much information as I can, so that both Parliaments have time to scrutinise the framework and the Scottish Parliament can consider it

alongside the bill and the legislative consent motion.

The Convener: Thank you. There has been progress—that is good to hear—and we are now discussing indexation and block grant adjustment. Of course, no detriment had two elements to it: no detriment to the Scottish position; and—if I have got this right—no detriment in terms of the impact on the rest of the UK. Judging by what I have seen in public commentary, the Scottish Government has attempted to persuade the UK Government that there would be no detriment to the UK taxpayer resulting from the proposals that it—the Scottish Government—has put forward on methodology. Can you walk us through that to make it a bit clearer to us? All that we have seen is the public commentary.

John Swinney: There are two Smith commission principles of no detriment. The first is the principle that I outlined in my opening statement whereby, if tax policy and economic performance in Scotland remain the same as in the rest of the United Kingdom, Scotland should be no better or worse off; equally, the United Kingdom should be no better or worse off in comparison to the current arrangements.

Issues have been raised about the application of per capita indexed deduction. In certain circumstances—for example, if the UK Government were to increase taxation in the rest of the UK to pay for investment in the health service—the raising of an essentially devolved tax in the rest of the United Kingdom would create a Barnett consequential from which we would benefit. However, I accept that that contradicts the second no-detriment principle in the Smith commission's report. Therefore, we have put forward mechanisms that would temper that within the per capita indexed deduction methodology. I have accepted that, when an issue creates unwarranted gain for Scotland, that must be addressed through the arrangements that we put in place.

The Convener: This might be for the UK Government to answer but, from your perspective, why has the Treasury not accepted that modified proposal?

John Swinney: It is for the United Kingdom Government to explain its stance. I understand that the Secretary of State for Scotland is coming to the committee later on today, and I am sure that he will be happy to address that point. However, I go back to the fundamental question that we have wrestled with, which is on the principle of no detriment. Fundamentally, the UK Government does not agree with us that the principle of no detriment means that the Scottish budget should in no way be subject to a systematic reduction as a consequence of the devolution of these powers.

That is the issue that we have wrestled with throughout the negotiations.

The Convener: You might be reluctant to get into some of the numbers, but there has obviously been some public commentary. Has the Scottish Government estimated the potential impact on the Scottish budget from the UK Treasury's most recent position?

John Swinney: The United Kingdom Government's approach has involved a variety of proposals, and public assessments have been made of their implications. My estimate of the current proposals from the United Kingdom Government is that we could be looking at a reduction in the Scottish budget of in excess of £2 billion over a 10-year period as a consequence of the devolution of the powers. To me, that is not what the Smith commission recommended or what it had in its mind when it said that no detriment should arise out of the devolution of the powers. That is the fundamental issue with which we are still wrestling.

The Convener: If the differences appear quite fundamental, can a deal be done? If so, do you have any idea about how long that might take, or is that like asking you how long a piece of string is?

John Swinney: I have tried to demonstrate to the committee that we are in agreement on all other issues. I reiterate that. I would recommend the deal that is currently on the table with the exception of the position that we have reached on the block grant adjustment, which I cannot recommend. A lot of progress has been made and there have been compromises on both sides to get us to the position that we now find ourselves in. However, the discussions about the block grant adjustment have not just cropped up in the past 24 hours; they have been part of the discussion for the entirety of the 10 meetings of the joint exchequer committee. We have wrestled with the point for all that time. It is not a new issue that has just cropped up; it has been a persistent one that we have tried to resolve the details of.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Thank you for that. What you have said has been very helpful. I fully support what you said about per capita indexation, because anything else but that will erode the Barnett formula and not deliver the Smith recommendations. I repeat that simple fact—I am sure that everybody else would like to repeat it, too.

You referred to some movement that you have been able to make because of concerns about the second principle of taxpayer fairness, on which I think that the Scottish Affairs Committee also made suggestions. Is the proposal in the example

that you gave about extra spending in England on areas that are devolved the substance of that movement, or is there anything else that you have offered or could offer that is consistent with the per capita principle and which would help to allay fears—if there are any legitimate fears?

08:45

John Swinney: I make two points in response to Mr Chisholm. The first is that he is absolutely right to link the question to the Barnett formula. The principle that the Smith commission established in paragraph 95(1) of its report was that the Barnett formula should continue to determine the size of the Scottish budget. That is, essentially, the test that any mechanism must perform against.

We can work out what Barnett would give us for public expenditure, and any block grant adjustment must be tested against that line. If the line is as flat as a pancake, it meets the test. That is what per capita indexed deduction does; it is flat as a pancake with Barnett. Anything that delivers a lower line than Barnett is detriment. The proposals with which I am dealing involve detriment.

Mr Chisholm is absolutely right to link this back to Barnett, because that was the commitment that was given in advance of the referendum; it is what was taken forward by the Smith commission as paragraph 95(1) of its report; and it determines the test on which the issue has to be resolved.

Mr Chisholm's second point was about what variation could be undertaken. The Scottish Affairs Committee explored that issue very openly and effectively. It brought forward some suggestions and some questions about how per capita indexed deduction could be adapted to meet those particular tests, and I have offered those mechanisms.

If there are other ways in which I could consider adjusting that approach to try to resolve the issue, I would be happy to consider them. I do not consider the issue to be closed. If there are other ways in which we could adjust the application of per capita indexed deduction to address any potential anomalies, I would be prepared to do so within the consistency of the principles of the no-detriment approach that was set out by Smith.

Malcolm Chisholm: It seems to me that the Treasury is behaving as it always behaves. Looking ahead, does the Deputy First Minister see any way of getting out of this impasse? Many people might think that it needs attention from the Prime Minister, but he is obviously occupied with other matters. Just looking at the week ahead, are any more meetings scheduled? Is there any suggestion that the Prime Minister will get

involved? As far as negotiation with the Treasury goes, it looks as if there is an impasse.

John Swinney: I want to characterise the discussions as fairly as I can. A great deal of progress has been made in those discussions, to the point that I can come before the committee and say that all other issues are resolved. I have not got everything the way that I would like it to be, but there is a perfectly reasonable proposition on the table on all other questions apart from the block grant adjustment.

In my view, the block grant adjustment issue is at odds with the Smith commission report. I do not consider that I have the right to negotiate away what was agreed by my colleagues from all parties in the Smith commission and was set out as the Smith commission's response to the challenge arising from the demand for extra powers after the referendum.

There has been a good effort to try to resolve the issues, but there is a fundamental point of principle that we are not yet able to get across. What is the means of addressing it? I am pretty clear that we need to see movement from the United Kingdom Government on that question. I do not believe that I am in a position to move away from the principle that the Smith commission set out—the position that was in the minds of the Smith commission members when the commission formulated its recommendations.

Stewart Maxwell (West Scotland) (SNP): I think that we are going to go back round a lot of the same questions this morning, but I want to be clear about something. The UK Government's approach seems to be that it must find a formula that provides fairness for taxpayers in the rest of the UK. However, this morning, you have said that you accept that, if there was a change in income tax in the rest of the UK and the money went to health—to use the example that I think you gave—it would not be fair to rest-of-UK taxpayers if that provided additional funding through Barnett. Am I correct in saying that you have accepted the per capita indexed deduction model with adjustments that mean that you would not receive additional moneys that would otherwise have come through Barnett as a result of changes in taxation in devolved areas in the rest of the UK?

John Swinney: Yes, that is correct.

Stewart Maxwell: Maybe it is just me, but I am struggling to understand why the UK Government objects to that. That seems to meet Smith on the one hand as well as the UK Government's argument that we have to be fair to rest-of-UK taxpayers. I am struggling to understand why the UK Government has a problem with that.

John Swinney: I have two points in that respect. One is on tax policy decisions. As I said, I

accept that, where tax policy changes are driven by UK Government actions and approaches, we need to take account of that in per capita indexed deduction, and that is exactly what we have proposed.

The second point, which I suppose is the fundamental answer to Mr Maxwell's question, relates to the question of what is judged to be fair to the rest of the UK in the arrangements. The test of fairness that I am applying is the one that the Smith commission applied, which is that Scotland and the rest of the UK should be no better or worse off as a consequence of the devolution of the powers than they would have been had the powers not been devolved. That is the test that was set in paragraph 95(1) of the Smith commission report, which relates to the application of the Barnett formula. Of course, that was one of the central commitments of the vow that was made just days before the referendum. I simply want to ensure that we are consistent with what would have been delivered under the Barnett formula, and the UK Government takes a different view.

Stewart Maxwell: The Smith agreement seems clear that it should not be the devolution of the power itself that causes change and that, instead, it should be the use of the power that causes change. Therefore, the Scottish Government might be better off or worse off on the basis of that change and we would have to live with that risk, but we could benefit.

John Swinney: There are two stages. My view, which I believe is well founded, is that the Smith commission conclusion was that we should be no better or no worse off as a consequence of the devolution of the powers. The second point is that, when we exercise the powers, if there is a revenue gain, we get to hold on to it and if there is a revenue loss, we have to deal with the consequences of that. That is the principle of fiscal responsibility, and it is inherent in the Smith commission report. There is a difference between the devolution of the powers and the exercise of those powers and living with the consequences of exercising those powers.

Stewart Maxwell: Let us assume for a moment that the powers are devolved. You are saying that, if a future Scottish Government did nothing to change taxation levels relative to taxation levels in the rest of the UK, under the model that the UK Government currently proposes, the Scottish Government's budget would fall by, I think, £2 billion over a period of 10 years.

John Swinney: That is correct.

Stewart Maxwell: So, by doing nothing, we would end up in a situation in which the budget would be cut by £2 billion over that period.

John Swinney: That would be as a consequence of acquiring the powers. I do not believe for a moment that, when the members of the Smith commission argued for the devolution of the powers and the application of the no-detriment principle to that, they had in their mind that there should be an automatic reduction of the Scottish Parliament's budget as a consequence.

Tavish Scott (Shetland Islands) (LD): I agree with the tenor of your remarks, Deputy First Minister, on the process being all but agreed other than the one point of fundamental disagreement. I think that the committee very strongly understands that. Has the First Minister spoken to or discussed that matter with the Prime Minister, as Malcolm Chisholm asked?

John Swinney: There has been a discussion between the First Minister and the Prime Minister. If I am correct with my dates, that took place about 10 days ago; I will correct that if I need to, but it was of that order. Obviously, there has been more recent discussion with the Treasury. On Friday, I met the Chief Secretary to the Treasury and the Chancellor of the Exchequer at the Treasury, and I had further telephone conversations with both of them yesterday.

Tavish Scott: Is it fair to suggest to you that how the fundamental disagreement will be resolved is at First Minister and Prime Minister level?

John Swinney: Other than parliamentary scrutiny and discussion, that is the other channel that exists to try to resolve the issue.

Tavish Scott: Is it fair to assume therefore that, when the First Minister updates Parliament this afternoon, she will have something to say on the issue, given that it is the one area that must be resolved?

John Swinney: Yes.

Tavish Scott: Like other colleagues, I am trying to understand what the Treasury's position is. You are right to say that we can ask the Secretary of State for Scotland about that later today. However, at any time, has the Treasury played in the changes that are going on within England, which the chancellor in particular has been making much of? Has that had any bearing on the financial model or the specific per capita discussions that have been taking place?

John Swinney: Mr Scott will appreciate that I am trying very hard to be open with the committee without breaching the nature of the negotiations process in which I have been involved. I can surmise that the UK Government has in its mind the implications of what may be agreed in this particular discussion for other parts of the UK. I do

not think that this is a unique process in that regard.

Duncan McNeil (Greenock and Inverclyde) (Lab): I think that Tavish Scott got to the issue, but perhaps we will rerun it. An agreement is in reach but with a difficult bit to go. Do you see your role in the process as complete? Do you have space in your diary put aside this week to have further talks on the issue? What date does the First Minister have in her diary this week to meet the Prime Minister?

John Swinney: I make it clear to the committee that Scottish Government ministers, including the First Minister and me, will make ourselves available for any conversation that is required to try to advance the discussions. I do not think that anyone could lay a charge at me that I have not allocated the necessary amount of time to try to resolve the matter—at great inconvenience. If Mr McNeil consulted my constituents who were expecting to see me last Friday but did not because I had gone to London to pursue the discussions, he would understand the priority that I have given to this issue.

Duncan McNeil: I was not doubting the work that you have put in; rather, I was suggesting that you have taken the matter as far as you can. Having listened to your remarks this morning, I am looking to find out about the closing stage of the discussions and what we would expect from a negotiation such as this one. When this week will the Prime Minister and the First Minister come together to close the deal?

John Swinney: I think that discussions will be pursued to try to do that—

Duncan McNeil: Is there no date fixed as yet?

John Swinney: —but I cannot give the committee any fixed dates.

Mark McDonald (Aberdeen Donside) (SNP): It has been suggested in some quarters that a means of breaking the impasse would be for the Treasury essentially to say, "We will underwrite any shortfall in the Scottish funding, and we can review it all after a three or five-year period." What is your take on that position?

09:00

John Swinney: The question really relates to the underlying method of block grant adjustment. In all my discussions on that question, I have come ever more sharply to the view that the issue cannot be fudged or put off. If it were put off to some review at a later stage, without our knowing the anchor point for the block grant adjustment, there would be uncertainty about what the block grant adjustment would be. I do not think that that

would be a stable mechanism to fulfil the requirement that the Smith commission put on us.

Mark McDonald: Your view is that what is put in place needs to be sustainable in the long term. It cannot be something that is put in place to get the deal done but which we will come back to in five years' time when, if it has not worked as intended by Smith, we can unpick it. That would open up future risk in terms of who was going to be around the negotiating table at that stage.

John Swinney: If an issue were to be put off to a review at a later date, there would have to be a clear understanding of what would happen if agreement could not be reached at that stage. If there was no clear understanding of what would happen at that stage, that would breed uncertainty about the details of the financial framework underpinning the devolution of the powers, which would significantly increase the risk that would be carried as a consequence.

Mark McDonald: A follow-on question from that concerns what the UK Government continues to put forward. We have discussed the issue of no detriment. Has the chief secretary outlined in detail his understanding of no detriment? You have told us plainly what you see as being no detriment, and I think that that would be the committee's view of no detriment. Has the chief secretary given an understanding of how he interprets no detriment? His view of what it means is obviously at odds with yours.

John Swinney: Yes, he has given a clear explanation of his view of no detriment.

The Convener: The key issue for the committee is when more information will be made available to us so that we can scrutinise the agreement. I realise that there will be no deal until everything is sorted out and that all the information is available on the areas on which agreement exists. That may be agreement between the two Governments, but the committee has still not agreed that it is satisfied with those areas. How soon will we be able to see some of that information, so that the committee can begin to judge whether the areas that have already been agreed are acceptable?

John Swinney: I must preface my response to your question by saying that I have tried to give the committee the clearest possible sense of the remaining issue in the resolution of these matters, which is the block grant adjustment, as I have set out. I am not suggesting that there is already an agreement—as you have said, convener, nothing is agreed until everything is agreed. What I am trying to say to the committee is that, if we can resolve the block grant adjustment issue, I will be able to present an agreement to the committee quickly. However, I must be realistic with the committee and say that, if I cannot resolve the

block grant adjustment issue, I do not see how I can bring a wider agreement to the committee for scrutiny. I cannot bring part of the agreement to the committee for scrutiny, because nothing is agreed until everything is agreed.

The Convener: I understand that point. If there is no agreement on the table, will you at least publish the papers so that we can understand the detail?

John Swinney: I have publicly committed to publishing all the documentation that is relevant to the discussions before the dissolution of the Parliament.

Stuart McMillan (West Scotland) (SNP): Good morning, Deputy First Minister. I have a couple of questions regarding the fiscal rules and borrowing. I have listened to what you have said this morning, and things seem to have progressed in that area. However, one of the underlying features of the fiscal arrangements should be fairness.

You said that both sides have compromised in a number of areas. Are you in a position to provide the committee with any details about the level of compromise that has been undertaken by both sides on fiscal rules and borrowing?

John Swinney: I would prefer not to go into detail beyond what I have said, other than to say that I believe that the position that we have reached on capital borrowing provides us with increased flexibility in undertaking capital investment activity. Also, on resource borrowing, additional flexibility has been generated to enable us to deal with Scotland-specific economic shocks and tax volatility, which will be a more significant consideration for the Scottish Government in due course.

Stuart McMillan: Have discussions between the two Governments included whether the UK Government should have an explicit stance on bailing out the Scottish Government if that were required?

John Swinney: That is not terminology that I would recognise. I am very clear that we operate within obligatory fiscal rules under the current arrangements. If, with the acquisition of new powers, a different set of fiscal rules were to apply, we would have to operate under those fiscal rules and ensure that we lived within them. The parameters of fiscal flexibility, particularly in relation to resource borrowing, should be sufficient to enable the Scottish Government to exercise fiscal responsibility. We should be prepared and able to do that in all circumstances. *[Interruption.]*

Duncan McNeil: That is David Cameron on the phone.

The Convener: In our report, the committee expressed a preference for a prudential borrowing

regime. I realise that you cannot go into some of the details, but can you tell us in general terms whether we are in that sphere or whether the discussion is more about higher borrowing limits being available to a future Scottish Government? Can you go that far?

John Swinney: The borrowing arrangements, which I consider to be satisfactory, are within the context of a framework for borrowing that is not prudential.

Tavish Scott: In response to the convener, you said that you would publish all the papers prior to dissolution if there is no agreement. That begs the question whether the bill is dead. What happens at that stage? Presumably, whatever Government is elected in May would want to take the discussion forward and try to reach agreement. What is your perspective on what happens if we achieve nothing before we all cease to be elected members?

John Swinney: That is a particularly difficult question. The issue is most easily resolved by reaching a fiscal agreement. We should not delude ourselves that the issue becomes any easier the longer that it goes on. In a sense, the discussions would potentially become more prolonged and protracted.

I hope that we can resolve the issues timeously so that we can proceed to give legislative consent to the Scotland Bill. It has always been my position that that is what we should try to do, but I know that the committee will understand that that has to be on an acceptable basis.

Tavish Scott: I think that we all agree with that.

Further to Duncan McNeil's point, is this week make or break? We are all under tremendous time pressure, not least the Government itself, so is this week all that there is?

John Swinney: Throughout the discussions with the UK Government, I have stressed the importance that I attach to Parliament having the opportunity to properly scrutinise the arrangements.

I have felt distinctly uncomfortable for some considerable time about the fact that I have not been able to open up the process to scrutiny. That is not the way that this institution works—it is not the way that I have experienced parliamentary scrutiny. This is a very open institution and I have not been able to allow it to fulfil that role. The position has been profoundly uncomfortable for me for some time.

I feel that I have absolutely no alternative today but to share some detail. Some exception may be taken to the amount of detail that I have shared with the committee this morning, but I am afraid that that will just have to be lived with. I cannot see

how I can sit here and not answer the committee's reasonable questions. It is so important that Parliament has confidence in the arrangements that have been negotiated on its behalf, and that it is free, if it so judges, to say that it does not believe that the arrangements are strong enough or appropriate.

I am very mindful of parliamentary opinion. I can listen to what members have said and look at what committees have said over a sustained period, and I am aware of what Parliament expects to see from the agreement. I am confident that on all issues other than the block grant adjustment I have a set of proposals that I can defend to Parliament. However, I could not defend the proposals that have been put to me on block grant adjustment, other than the ones that I have advanced on per capita indexed deduction.

The Convener: The committee must not find itself in a situation where it is rubber stamping something at the end. Given your comments, I think that you accept that. We will need to make these points later to the secretary of state.

It is imperative that we are able to scrutinise the detail of the agreement. I speak on behalf of the committee when I say that we are all very anxious not to be in that situation of simply rubber stamping it. We need to put in front of the Parliament a considered report with lots of detail, so that parliamentarians have a chance to examine that detail.

We will leave that questioning there and move on to Linda Fabiani, who has questions on welfare.

Linda Fabiani (East Kilbride) (SNP): Deputy First Minister, it seems quite clear, both from what you have said today and from what we have heard in evidence to the committee, that neither the spirit nor the substance of the Smith agreement is being met in the block grant adjustment proposals. You said that you recognised that there had been compromises on both sides on other matters, which you feel have come together. Do you feel that, in relation to both welfare and the work programme, each of which impacts on the other, the potential agreement that you have reached meets the spirit and substance of the Smith agreement?

John Swinney: One of the issues in relation to employability support is the fact that, since the Smith commission agreement was made in November 2014 and a commitment was given to devolve employment programmes, particularly the work programme, the UK Government has changed its policy position on those programmes. In particular, it has reduced the amount of funding that is being allocated to them. That has been an issue of concern for us.

In November 2014, the devolution of employability support was seen to be greater than what is now proposed to be devolved by the UK Government when that devolution comes at some stage in the future. There is a diminished proposition on that support compared with what we imagined was the case when the Smith commission reported in November 2014. That has been an issue for discussion with the UK Government and one on which I would have to say that I have not got all that I wanted. However, I am prepared to live with the consequences of the position that we have reached on that issue.

The Convener: Have we got better than what Priti Patel put to us in a letter, which said that the budget would be reduced by 87 per cent? Is that still the area that we are in?

John Swinney: That is still roughly the area that we are in.

Linda Fabiani: So, clearly, neither the spirit nor the substance was met in that regard.

09:15

John Swinney: What I am trying to say to the committee is that, in all the issues that we have looked over, we have not managed to reach conclusions that are perfect from my point of view. However, in the round, I am prepared to say that they seem to me to be a reasonable set of propositions. We have got to that broad position on a whole host of questions, but the block grant adjustment remains the stand-out issue that is of such significance. However, I could not, in all good faith, say to the committee that I was going to hold up the deal because of the employability arrangements. I am not ecstatic about them, but I am not going to hold up the deal because of them.

Linda Fabiani: I think that you were ever reasonable, Mr Swinney.

John Swinney: As always.

Linda Fabiani: One of the things that was of general concern to the Smith commission was that there should be—to use the hackneyed phrase—no detriment to individuals as a consequence of our taking over powers on welfare. Indeed, there was a view that we should be able to create and top up. Do you feel that the potential agreement matches that?

John Swinney: On that question, we move on, importantly, to the contents of the Scotland Bill. The clauses that were added to the bill by the Secretary of State for Scotland in the House of Commons gave us the necessary flexibility to enable us to do that. I am satisfied with those legislative provisions. Clearly, we have to ensure that all the necessary financial arrangements are in place so that the powers can be exercised.

Linda Fabiani: Would it be fair to say that that is all fine as long as you get a reasonable and fair settlement on block grant adjustment that matches the Smith commission report, and that, without that, everything else is up in the air?

John Swinney: That is why it is so important that we recognise the equal significance of the Scotland Bill and the fiscal framework. We cannot give legislative consent to the Scotland Bill without having a fiscal framework that allows us to know the basis upon which we would be exercising the powers in the bill. I entirely accept the point that there has to be an acceptable fiscal framework in place to enable us to exercise those responsibilities.

Linda Fabiani: So, the headline, top stuff affects the individual issues.

John Swinney: Yes.

Alison Johnstone (Lothian) (Green): My questions follow on from Linda Fabiani's questions. Has there been any movement on welfare administration costs? It seemed that there was a considerable gulf to be bridged there. HM Treasury estimated that only £50 million was needed to cover all transition costs, whereas the Scottish Government felt that on-going administration costs for a devolved welfare system might be in the region of £200 million upwards.

John Swinney: We have reached a position on the implementation and operational costs arising from the devolution of those responsibilities that I consider to be acceptable.

Alison Johnstone: So there has been some positive movement there, which you feel would be acceptable to Parliament.

The acquisition of new powers for the Parliament involves ever closer working with Westminster. The committee spent a not inconsiderable amount of time looking at intergovernmental relations. Has your experience of that been positive? Are you content with the way that that has been going?

John Swinney: Whether it has been a positive experience is quite a question to consider. It has certainly been an experience—there is no doubt about that. It is not just about intergovernmental working but about a negotiation, and a negotiation of this nature will not be straightforward or easy.

There have been some tough issues to crack, and I think that we have managed to crack a lot of them. That has involved compromise on my part and on the part of the UK Government, which I welcome. We have got very far along in the process, but outstanding issues remain to be resolved.

I have been anxious to ensure that, where we stray out of negotiations and into intergovernmental working, we have in place mechanisms that satisfactorily and effectively ensure that we can undertake good intergovernmental working to advance issues of detail in the Scotland Bill and the fiscal framework—issues that will require a lot of joint working to implement.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): I would like to pursue the issue. Clearly, if the set-up and running costs of welfare administration are greater than you expect in any deal that can be reached, there has to be some means by which they can be reassessed, and a timescale must be set for that. Following on from what Alison Johnstone said, that and many other things beg the question of having a review period, given the agreement that could soon be reached and could be implemented within the next two or three years. Has there been any discussion of how that might take place?

John Swinney: On the nature of the fiscal agreement, I have very much had in my mind the requirement of the Smith commission that we should be agreeing arrangements and not then constantly revisiting them—I think that that is the best way in which I can summarise the Smith agreement. Therefore, I have been trying to get sustainable arrangements that do not require to be reconsidered.

For example, when I signed up to—I should not say “signed up to”; I have not signed up to anything. When we reached a point of agreement about the set-up and administration costs in relation to welfare powers, I considered that matter to be closed. That is up to me. If it costs us more, that is an issue that I must resolve, as finance minister; if it costs us less, because we have managed to operate the system more efficiently, we have got a gain out of it. If it costs us more to implement the administration of these matters, I cannot, in all good faith, go back to the UK Government and say, “Look, I need you to reopen this issue,” because we entered the negotiation in good faith and got an agreement, and that is an end to the matter.

The only question of review has been raised around making progress on the block grant adjustment. Earlier, in response to questions from Mark McDonald, I talked about what we have to be mindful of in entering into a review of block grant adjustment issues if we do not know what method would be used to resolve any disagreement about the nature of the block grant adjustment mechanism that might prevail should there be no agreement in that review.

The Convener: I am going to come back to you on that. Alison Johnstone asked you a pretty fair

question about the amounts of money that are involved in welfare administration. You have told us that you have compromised pretty significantly already on the employment programme, with a reduction from £53 million to £7 million in what is available. Obviously, some compromise has been made with regard to the administrative costs around welfare.

I am trying to get at the tone of the negotiations. You have compromised on certain issues. I think that it would be fair for the committee to know the scale of the compromise on welfare, because we have to make a judgment at some stage on those compromises. If we think that you have made a reasonable compromise, we can ask the secretary of state later on today what reasonable compromises he has made to get to a deal. It would be helpful to have more information from you on that if we are to get to that position.

John Swinney: I do not think that I have placed on the record the numbers around employability support that you mentioned. I think that I have been careful to say that there is no change in the UK Government’s policy position on the approach to employability support. I have been careful not to put specific numbers on the record, and I do not feel keen to do so today.

The Convener: The numbers that I am using are Priti Patel’s.

John Swinney: Okay. The point that I would make about welfare administration costs is that the Smith commission recommended that a share of those costs should be paid by the UK Government. That is the outcome that we have been trying to secure, and we have secured an outcome that is consistent with that definition.

The Convener: I would like to push you further, but I know that that is not going to get me any further. However, I am sure that you understand that it would be helpful to us if we could understand the tone of the negotiations.

John Swinney: I can help the committee in so far as I can say that I have not got everything that I wanted out of the process. I am sure that the UK Government would say the same thing, and that there are things that it would rather not have had to agree with me. I am sure that the secretary of state can give the committee a flavour of that.

The Convener: You have given us an indication of the areas in which you have compromised and been reasonable; we will see what the UK Government says this evening.

Alex Johnstone (North East Scotland) (Con): Deputy First Minister, I would like to say something that you might expect me to say: is it fair to say that you have built in plenty of room for compromise in your initial figures? The welfare

set-up costs were estimated to be up to £660 million. Less than two years ago, Alex Salmond was telling us that he could set up a whole independent Scottish Administration for less than £200 million. That suggests that you built in a margin that you could negotiate away.

John Swinney: The Department for Work and Pensions estimates that the set-up costs for the social security arrangements that are involved in the Scotland Bill are £350 million. What has been agreed as the UK Government's contribution towards that is less than that figure.

The Convener: Am I correct in thinking that the contribution is £50 million? That is what commentary has suggested.

John Swinney: No. The DWP estimate of the set-up costs of establishing the systems under the Scotland Bill is £350 million. The agreement that I have got to with the UK Government on the contribution to that one-off cost is less than that.

The Convener: That is helpful. Are you satisfied, Mr Johnstone?

Alex Johnstone: Indeed.

The Convener: In that case, Rob Gibson wants to ask a question about the Crown Estate.

Rob Gibson: The committee has written to the Treasury with concerns about the memorandum of understanding being too restrictive and lacking clarity. Has there been any movement on that recently? Is that part of the area that has been agreed to?

John Swinney: With regard to the provisions in the Scotland Bill, no. The United Kingdom Government has maintained its position on the Scotland Bill. The committee will be familiar with the position of the Scottish Government in that respect. On the financial provisions, we have been involved in negotiations as part of this exercise. There is a proposition on the table in relation to the Crown Estate. Again, it is not perfect, but it is something that I am prepared to live with.

The Convener: I think that we have come to the end of our discussion. Thank you for giving us your time, cabinet secretary. Obviously, our window of opportunity is closing with regard to the dissolution of Parliament. We encourage you and the UK Government to come to a conclusion as soon as you can, so that the committee can go about its job of scrutinising the fiscal framework and the remaining issues with the Scotland Bill on behalf of the people of Scotland—effectively, that is what we are doing. Again, I thank you and your officials for your time.

We will meet tonight for a video conference with the Secretary of State for Scotland.

Meeting closed at 09:29.

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