



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 22 February 2012

Session 4

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ECONOMY, ENERGY AND TOURISM COMMITTEE

6th Meeting 2012, Session 4

CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

DEPUTY CONVENER

*John Wilson (Central Scotland) (SNP)

COMMITTEE MEMBERS

*Chic Brodie (South Scotland) (SNP)

Rhoda Grant (Highlands and Islands) (Lab)

*Patrick Harvie (Glasgow) (Green)

*Angus MacDonald (Falkirk East) (SNP)

*Mike MacKenzie (Highlands and Islands) (SNP)

*Stuart McMillan (West Scotland) (SNP)

*John Park (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Crawford Beveridge (Council of Economic Advisers)

Professor Andrew Hughes Hallett (Council of Economic Advisers)

The Solicitor General for Scotland (Lesley Thomson QC)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Committee Room 1

Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 22 February 2012

[The Convener *opened the meeting at 10:02*]

Land Registration etc (Scotland) Bill: Stage 1

The Convener (Murdo Fraser): Good morning, ladies and gentlemen. I welcome members, witnesses and our visitors in the public gallery to the sixth meeting in 2012 of the Economy, Energy and Tourism Committee. I remind everyone to turn off mobile phones and other electronic devices. We have received apologies from Rhoda Grant, who is not able to join us.

Agenda item 1 is continuation of our consideration of the Land Registration etc (Scotland) Bill. I am pleased to welcome Lesley Thomson QC, the Solicitor General for Scotland, who is joined by Danny Kelly, principal deputy in the Crown Office policy division, and Ernie Shippin, deputy head of serious and organised crime division in the Crown Office. Thank you for coming. The principal purpose of having you here is to consider section 108, which has caused interest from a number of witnesses. Before we move to questions from members, I ask the Solicitor General whether she wants to say anything by way of introduction.

The Solicitor General for Scotland (Lesley Thomson QC): Good morning. I have nothing to say by way of introduction, but I am perfectly happy to assist by answering any questions.

John Wilson (Central Scotland) (SNP): As the convener said, the main purpose of this evidence session is to examine section 108. We have taken evidence from a number of organisations through written submissions and through oral presentations to the committee. One issue that is raising most concern is whether section 108 should be included. The Law Society of Scotland and other bodies have said that they do not think that it is appropriate or necessary to include the measure in the bill. I ask the Solicitor General to say why she thinks that it is appropriate to put it in the bill and whether other legislation addresses the issues that section 108 seems to address.

The Solicitor General for Scotland: I am happy to do that. I support the inclusion of the offence in the bill, and I will briefly indicate the background to my support. I will not go into detail on the purpose of the bill, as the committee will

have heard about that from many people, but my understanding of the basic premise is that we are looking for a modern, secure and accurate land register that provides a system of registration of property rights that gives certainty in relation to credit that is secured over property. That means certainty to every one of us as individuals and to businesses and the financial sector. That will inspire public confidence and be good news for the economy and for business all round. That is the background.

The other side of the equation, which is where I am coming from in my support for section 108, is that a modern and trustworthy system of land registration is attractive not only to ordinary individuals but, unfortunately, to the undesirable element of serious and organised criminality. It is well known that organised criminal groups seek to legitimise their proceeds of crime through money laundering; to legitimise their property by following all the steps that are required; and to legitimise their activities in any way that gives them the air of respectability that is accorded to those who operate in a genuine and businesslike fashion. It is important to emphasise that background of serious and organised crime because, in that environment, it is appropriate to be innovative and to take every opportunity possible to protect the legitimate system from those illegitimate activities.

I probably should not say that I have been in serious and organised crime for years, but I think that members will understand what I mean. Unfortunately, in my experience, those who make that type of illegal activity their business are innovative and focused and they know the law inside out. The challenge for law enforcement and prosecution is to be innovative. I see the offence in section 108 as another opportunity to add to the existing legislation and offences as part of the effort to disrupt and detect organised criminality.

John Wilson: You say that section 108 will “add to” existing legislation. Does the section add anything fundamental to the existing legislation on money laundering and proceeds of crime, or is including it a belt-and-braces approach?

The Solicitor General for Scotland: It is more than a belt-and-braces approach, although there will be overlaps between the legislation on fraud, money laundering and proceeds of crime and the additional offence. The offence has an additional element, although it is not unusual to have different offences to cover the same criminal behaviour. For example, for acts of vandalism, there is the common-law offence of malicious mischief and the statutory charge of vandalism. It is not uncommon to have that choice. That gives the public a focus that there is a particular type of offending. In relation to applications to the land register, that is part of the purpose of section 108.

There is a focus, which is the proposed new statutory criminal offence in relation to applications for registration. However, the offence goes further than that, because it includes the element of recklessness, although I am aware that concern has been raised about that in evidence from the Law Society.

John Wilson: I accept that section 108 is more than a belt-and-braces approach, but what evidence is there to indicate that it must be included in the bill? The committee has tried to examine the issue by asking the Law Society and others to find out whether there have been any cases of reckless behaviour—as defined in the bill—by solicitors in dealing with property transactions. Can you point the committee to any such evidence to show why you and others feel that section 108 has to be in the bill? Can we have practical examples of how the current legislation and workings of solicitors and others in the field have led you to believe that section 108 must be included to capture those individuals who are involved in criminal activity? Are we simply trying to put people off ever attempting to carry out bad practice when doing property transactions?

The Solicitor General for Scotland: Section 108 is trying to do both, and there is absolutely nothing wrong with our seeking to deter or put people off, although I understand that that is not your main point.

Is there an evidence base of much of this type of offending going uncaptured? No, I am not saying that there is a big evidence base for that, but a minority of instances have come to the attention of law enforcement agencies and the keeper that indicate that there is a certain type of activity in the category of recklessness, or the turning of a blind eye, or wilful blindness, that could be prosecuted under the proposed new offence, but cannot be prosecuted at the moment.

Section 108 targets mortgage fraud, which is a crime of intent. Someone has to intend to do something. There could be quite a lot of scope to such a crime. A lot of people could be involved and it might be difficult to show where everyone is placed in relation to proof of the crime. The proposed new offence will provide that those who might be involved at the stage of application for registration in the land register will be under an additional duty not to act recklessly. In other words, they will be under a duty not to act with an utter disregard for the consequences or with wilful blindness.

John Wilson: I was interested to hear you refer to mortgage fraud. Current United Kingdom legislation is, I assume, sufficient to deal with mortgage fraud and many of the mortgage companies are also monitoring what happens. You did not talk about money laundering, although you

mentioned it earlier. How will section 108 assist with legislation on money laundering? Do you have any examples of what you see as money laundering? In the committee's pre-meeting briefing, one of my colleagues referred to someone coming along with a suitcase of money to buy a house and making a purchase based on the fact that they have the cash. How would that be viewed by a solicitor? How does a solicitor deal with a client who comes along and says, "I want to purchase a property. I've got £150,000 in this briefcase"? How would those circumstances be dealt with under the proposed new section? Could it mean that a solicitor, acting in good faith by accepting that the client has enough cash to purchase a property and going ahead with the purchase, could be accused of acting recklessly?

10:15

The Solicitor General for Scotland: No solicitor who acts in good faith will be accused of acting recklessly. No solicitor who makes a genuine error or mistake can be accused of acting recklessly. The term "reckless" is well understood in the criminal law of Scotland. It is understood at common law and it is statutory. It involves an objective test and it will not cover people who act genuinely and who honestly follow the guidance and so on.

The money laundering legislation—the Proceeds of Crime Act 2002, supplemented by the Money Laundering Regulations 2003, which were reconsidered and revamped in 2007—is designed to ensure security for the movement of money through the financial sector and for all those who are involved in that. It places duties on a wide variety of people, including solicitors, to carry out their activities in a way that does not facilitate any aspect of money laundering.

The regulations give clear indications of the areas that are targeted, which relate in the main to identification of the client. People should know who their client is, know who they are dealing with and know what their business is. There is a lot of excellent guidance for solicitors from the Law Society of Scotland on ensuring that they comply with the legislation, which indicates what identification procedures solicitors need to follow to meet customer due diligence, if they are in contact with the client, or enhanced due diligence, if they are not in contact with the client.

Section 108 is additional to that—it is a further step in relation to the point at which contact occurs with the land register, when property rights will be legitimised and a state guarantee of property rights will be given. If the offence remains in the bill, it will indicate that all people, including solicitors, require to take into account an additional element, which is not merely intending not to make

a misleading or false statement, but not being reckless.

If the offence came into play, I expect that the normal, honest and genuine solicitor would re-examine the practices and guidance that are in place in their firm under the regulations in the light of the new offence, which imposes an additional duty not to be reckless or wilfully blind at a particular point in a transaction, and would ensure that their practices did not allow wilful blindness. I have seen some of the larger firms' guidance on money laundering, which contains phrases such as "not turning a blind eye". Some solicitor firms already operate under such guidance.

Mike MacKenzie (Highlands and Islands) (SNP): I have a general concern. At our previous meeting, I told a story about going to my bank, with which I have three accounts, to open another account last June. The bank told me that, because of the money laundering legislation, I needed to go in with my passport, my driving licence and a utility bill. I said, "Look—I opened an account with you only a month ago, when I went through that whole rigmarole. I don't have that with me. I live in a rural area and it takes me half a day to come in to see you. Are you sure that's necessary?" The person who was dealing with the matter was my cousin. Not only have I dealt with the bank in that rural area for many years, but I know almost every member of staff there.

Such requirements are an impediment. In the spirit of helpfulness, my cousin said, "Don't worry, Mike—just e-mail me scans of your passport, driving licence and so on." I said, "Look—I appreciate that you're trying to help me, but I'd really rather not do that, because I'm much more worried about the problem of identity theft. E-mails can easily go astray, and I might inadvertently hand somebody an identity theft kit."

I am led to believe that, despite the legislation that has been put in place, money laundering is increasing, not decreasing, although the burden on ordinary people doing ordinary business has increased significantly.

I am struggling to understand what extra precautions my solicitor would have to take if I were to buy a house in future, to ensure that he is not accused, under section 108, of inadvertently or otherwise assisting me in what may be illegal activity.

The Solicitor General for Scotland: You are not planning this illegal activity, are you? [*Laughter.*]

Mike MacKenzie: No. It is a hypothetical question.

The Convener: I doubt he would be telling you if he was.

Mike MacKenzie: You make a very good point, because often the people who we are trying to catch are two or three steps ahead of the rest of us and it is the honest person who is penalised. That is what gives me concern. The Law Society has made representations to us expressing their concern about the position of solicitors and I am equally concerned about the ordinary member of the public, the honest person who is going about the legitimate business of buying a house.

There seems to be no merit in making one part of the process much simpler, which is what the bill is about, if at the same time other aspects of the process are made more difficult. I recently talked to a colleague—an MSP—who was in the process of buying a house. He was having difficulty arranging the mortgage. It was not that he was not able to repay it or any of those things; it was the paperwork and the detail attached to the process that caused the difficulty.

My concern is that section 108 might make the process more difficult. Can you tell me specifically what steps an honest solicitor with an honest client would have to take to safeguard themselves from being accused, somewhere down the line, of having acted improperly?

The Solicitor General for Scotland: In the situation that you are talking about, in which you are a client well known to your solicitor and your single transaction moves in the normal fashion—you are buying another house and it is for the right price and so on—your solicitor will already have sufficient information about you from dealing with you in the past and you are not doing anything unusual in the circumstance of buying another house.

However, let us take a scenario in which you are undertaking a transaction with your solicitor who knows you very well but, instead of buying one house, you are buying half a dozen houses, the price is more than would be expected and the mortgage is coming from a variety of companies, some of which he does not know. In that scenario he would not be entitled, without any further inquiry into the situation, to think, "Ach, I've known him for years and he's a good guy—I'll let him get on with this." It is about a solicitor paying attention to the unusual and not turning a blind eye to it, either by applying knowledge to a different situation or for business reasons in current financial circumstances. It is about focusing on that particular aspect.

Mike MacKenzie: You make a number of assumptions—

The Solicitor General for Scotland: I did not mean to be rude—

Mike MacKenzie: Your comments were not taken in that way at all. It is sometimes useful to

speaking in this manner, because it sheds light on issues that are more difficult to grasp when the discussion is a bit more abstract.

I suggest that we consider two scenarios. Let us say that I fall out with my solicitor, for whatever reason. I feel that he is no longer acting for me as assiduously as he once did, so I decide to change solicitor. I am therefore not well known to the next solicitor who I phone up and ask to represent me. Beyond my giving him my passport and doing the usual things, what extra steps would he have to take?

In the second scenario, I come into some good fortune and decide that I want to invest in property, because I think that that will be a good long-term investment, and buy half a dozen or so houses—perhaps at a property auction or whatever. What extra steps would the solicitor have to take to assure himself that I was honest and legitimate?

The Solicitor General for Scotland: A solicitor in that environment would need to take whatever steps he thought were appropriate to make those inquiries in order to satisfy himself. You are talking about the steps that a reasonable and competent solicitor would take. In deciding what steps to take, a solicitor can get all sorts of advice from the Law Society of Scotland.

If the offence is to be included in the bill, I would anticipate that the Law Society—despite its opposition at this stage to the inclusion of such an offence—would review the circumstances and consider what additional advice it should give to its membership on what must be done.

I will make one further point, which I did not address earlier when you were describing your unfortunate experience of being asked questions in the bank. I sympathise, as I have been there—in fact, I was in that exact situation in 2003 or 2004 when I was going around the country lecturing on money-laundering legislation. I had to bite my tongue when I was asked to provide information. To a certain extent, that inconvenience should provide reassurance that those who are involved in serious and organised criminality or in terrorist financing do not have an easy time in getting in to our financial sector or—if the offence is included in the bill—on to our property register.

Mike MacKenzie: I have one final, brief question on the difficulty that I have with the offence. I ask you to imagine—I know that it is a big imaginative leap—that I am a hardened and practised liar. My solicitor makes what he believes to be reasonable inquiries, and I just tell him lies, because I am involved in criminal activity. What steps must he take—beyond what he currently has to do—to reasonably assure himself that I am not a criminal?

The Solicitor General for Scotland: He must take the steps that are currently in the guidance. If the offence comes in and there are additional steps, he must take those steps. If you are asking whether solicitors can protect themselves against every wicked lie that is out there, I would say that they cannot. I would not expect anyone to be able to protect themselves against those who are as deceptive and devious as you are saying that you would be in that situation.

However, there is an area in between, and it is suggested that solicitors must go that wee bit further in what they are doing and that a duty not to act recklessly should be imposed. It is important to take every opportunity to ensure that criminality does not seep any further into legitimate areas, and property is a very important legitimate area in that regard.

Mike MacKenzie: Okay—thank you.

The Convener: I know that Chic Brodie is desperate to get in—Stuart McMillan has a follow-up question on that point, but Mr Brodie has been very patient. John Park also has a question on the same point, but I will let in Mr Brodie as he caught my eye first.

Chic Brodie (South Scotland) (SNP): Thank you, convener, and good morning, Solicitor General, Mr Kelly and Mr Shippen.

A large element of the offence seems to involve the issue of recklessness and whether solicitors are acting in good faith. Can you comment on the minister's views on the number of people who were engaged in money laundering and mortgage fraud, including solicitors? Have you any indication of whether there is a growth in illegal activities among some solicitors?

The second part of my question also relates to recklessness. I can understand that someone may be—as the thesaurus says—careless, irresponsible, precipitate, rash or negligent perhaps once or maybe twice. Is there any possibility of monitoring whether someone is being negligent more often than you would expect?

It would be simple for somebody—if they were plausible—to say that they had been careless or foolhardy but had acted in good faith. What is the check and balance? How do you know whether a solicitor has been careless or has acted in good faith? What criteria persuade you that a solicitor has acted in good faith?

10:30

The Solicitor General for Scotland: Section 108 does not deal with people who do not act in good faith; it deals with people who have been intentionally false or misleading or who have been reckless.

Chic Brodie: Forgive me, but some of the debate has concentrated not on the intention behind the activity but on the recklessness of it. Somebody could be reckless but be acting in good faith. Where does recklessness cross the boundary into intentionality?

The Solicitor General for Scotland: Sorry—I understand where you are coming from. There is disagreement between where I think recklessness sits in the criminal law of Scotland and what has been said by the Law Society. I want to set out my position in relation to recklessness, so please bear with me—I might take a wee while to do that. We need to distinguish between people who act genuinely, people who act carelessly and people who act recklessly.

Recklessness is a well-recognised concept in Scottish criminal law. It is recognised both at common law, in relation to culpable and reckless conduct, and in a wide variety of statutes. When I read some of the evidence that has been given to the committee, I was concerned that there is perhaps not sufficient information about how often the concept of recklessness is used in the common law of Scotland, so I found a number of examples of recklessness across the piece to give the committee an idea. The most common of those, which probably everybody would recognise, is vandalism, whereby somebody wilfully or recklessly destroys or damages the property of another. In 2009-10, about 3,600 people behaved in that fashion, so it is a well-understood concept.

The concept of recklessness is used in section 30 of the Wildlife and Natural Environment (Scotland) Act 2011 in relation to information that is given about deer culling. It is also used in section 3 of the Computer Misuse Act 1990 in relation to any unauthorised act that can be carried out recklessly. It is used throughout the Sexual Offences (Scotland) Act 2009 in relation to a number of offences. Under section 2, for example, a sexual assault by penetration can be committed recklessly. The fact that the concept of recklessness is used in circumstances ranging from the provision of information on deer culling right through to sexual assault by penetration shows the wide scope, understanding and familiarity with the term “reckless” that already exist in Scots law.

Importantly, in relation to the type of offence that we are discussing, section 26 of the Charities and Trustee Investment (Scotland) Act 2005 is on “False or misleading information etc.” Section 26(1) states:

“It is an offence for a person to provide any information or explanation to OSCR ... If ... the person providing the information or explanation knows it to be, or is reckless as to whether it is, false or misleading in a material respect”.

That is pretty similar to the type of situation that we have with the land register and is a useful example for comparison, because many trustees in such a situation will rely on lawyers and accountants to advise them what “reckless” means.

Chic Brodie: My difficulty, which is probably down to lack of understanding, is that in such cases someone might say “Well, I filled that in, but I was acting in good faith.” It could be argued then that there was no intention to commit a criminal offence. Is it not a grey area if someone says that they acted in good faith but you say that they did not, that they were reckless and that they must pay the penalty for being reckless—as per custom and use in Scots law? As Solicitor General, do you feel that the definition is clear? It might be clear in your mind and in the minds of some lawyers, but I question whether it necessarily covers the spectrum of legal activities by solicitors across Scotland. I do not know whether you understand my difficulty. Where is the clear distinction between being careless or reckless and acting in good faith?

The Solicitor General for Scotland: There is a clear definition in Scots law—both common law and statutory law—in relation to being reckless. There is case law on that. There is an objective test for whether it would be sufficient for someone to say, “I was acting in good faith”. The test that would be applied is not whether someone stated that they acted in good faith but whether a reasonable, competent solicitor had behaved recklessly in the circumstances.

You have used terms such as “careless” and “good faith” in seeking to get to the core of the examples. I fully understand that, but what we are talking about here is reckless behaviour, which is wilful blindness to or an utter disregard for the consequences of an action.

Chic Brodie: Thank you.

John Park (Mid Scotland and Fife) (Lab): Good morning. I want to return to Mike MacKenzie’s point. Having listened to the evidence this morning, I remain quite open-minded about the issue. However, I am still unclear about what exactly a lawyer or solicitor would have to do in the future that is different from what they do now to ensure that they operate within the law. For us, that is the fundamental issue. It is all very well for us to have this discussion in Parliament and to take the bill through in the way that we are doing, but what specifically would have to happen to ensure that people in the legal profession, and those who seek a legal service, protected themselves? I give you the opportunity to answer that, Solicitor General, because your exchange with Mike MacKenzie has left me unclear about the issue.

The Solicitor General for Scotland: If you are asking me for examples today, that is not where we are. The exact same situation arose when the money laundering legislation came in. Any organisation that thinks that it will be subject to a new form of criminal control looks at what it currently does to see whether it needs to change anything. Following the money laundering legislation, people took a real look at activities in order to comply with the legislation and there was a lot of guidance and advice.

All that I am saying today is that what we have before us is an additional piece of regulation. Solicitors are already well regulated. The upside is that they are used to being regulated, so new regulation does not add anything in that regard. However, solicitors would have to ask not just whether their practices ensured that they complied with the money laundering legislation and the due diligence and enhanced due diligence that are included in that, but, now, whether those practices covered not acting recklessly. That is the difference.

John Park: I suspect that the Law Society of Scotland would say that its members are complying or likely to comply because of the steps that they already take and the hurdles that they already have to jump. It comes back to the issue of whether section 108 is going to make a difference. It will give you another lever for prosecution, but what does it mean on the ground? I think that that is the nub of the issue.

The Solicitor General for Scotland: On the ground it means that those who are involved in a professional capacity in an application to the land register have to be sure that their practices are not reckless. Recklessness is a concept that is well understood in Scots law, and there is an objective test. Also, a defence is provided within section 108 itself.

Stuart McMillan (West Scotland) (SNP): Good morning, Solicitor General. I will pick up your comments to Mike MacKenzie, when you said that there is already advice from the Law Society of Scotland, and John Park's question about what activities or actions a lawyer should undertake.

I go back to Mike MacKenzie's house buying example, although I will change it slightly. Mike goes to his lawyer and says that he has come into some money and wants to invest it by buying a couple of properties. A few months later, he goes back to his lawyer and says that he wants to buy another couple of properties. He does the same thing a few months after that. He does it in a piecemeal fashion, and the lawyer thinks, "He's obviously come into more money than I thought."

At some point, the lawyer starts to hear rumours about Mike and his activities. As a result, the

lawyer starts trying to establish the truth behind the rumours, and realises that Mike is laundering money through the purchase of properties. Mike comes back and says that he is going to buy another couple of properties. By this time, the lawyer knows that, although on the face of it what Mike is doing is legal, the money is ill-gotten gains. What should the lawyer do at that point to ensure that he or she is not accused of being reckless under section 108?

The Solicitor General for Scotland: If the lawyer reaches a point in their dealings with a client when there are suspicions of money laundering, that is when they are under a duty to report. That has been the legal position for a number of years, and lawyers are well familiar with it. If a lawyer has reasonable suspicion that their client is facilitating the passage of illegitimate money through the system by means of money laundering, they have a duty to report that and a duty to stop it.

Recklessness in relation to such activity is not what section 108 is about. Section 108 specifically relates to the point at which an application is being made to the land register. In your scenario, the suspicions that form in the lawyer's mind are based on behaviour that would already have been brought to a halt under the money laundering measures.

The additional duty and onus come in at the stage at which property is being registered and an application is being made to the keeper. The offence is not intended to be wider than that.

10:45

Patrick Harvie (Glasgow) (Green): Given the wide range of views that we have heard on the issue, is there not a case for going back and consulting on it in more depth and, perhaps, including it in the next criminal justice bill that comes along?

The Solicitor General for Scotland: In my view, no. I do not mean that to sound abrupt, but it is extremely important that every single opportunity is taken to prevent serious and organised criminality despite the inconvenience and additional measures that are then imposed on others. The bill represents an opportunity to deal with the matter at the point when the land register is being dealt with, and the keeper has indicated that the offence would be of assistance.

When it comes to serious and organised criminality, those who are best placed to know how widespread and insidious it can be are those on the law enforcement side. The provision is supported by the Crown and the Association of Chief Police Officers in Scotland—I think that the Scottish Crime and Drug Enforcement Agency

feeds into ACPOS, which is the reason why it has indicated its support—as an additional tool. It is a small measure that will not be used in a huge number of cases, but it will be helpful in relation to both deterrence and detection.

The provision will flag up offences in relation to the land register, but it is specifically designed to ensure that solicitors do not act recklessly in the sense of opening a door for those who are involved in criminality to walk through. That is it in a nutshell.

Patrick Harvie: When is it intended to commence the section?

The Solicitor General for Scotland: I do not have information on that, I am afraid.

Patrick Harvie: It seems to me that to leave it for the next criminal justice bill might not cause a delay in bringing the offence into operation.

The Solicitor General for Scotland: I do not have information on commencement. The importance of having the offence in the bill is that it is within the legislation that covers the issue that it relates to, and the offence relates to the land register.

The Convener: As I understand it, commencement is at the minister's discretion, as the bill stands. What is your view on the proposal that the offence be made subject to the affirmative procedure in the Parliament, pending the issuing of guidance to lawyers and others on what practical steps they might take to avoid committing an offence? You have heard the concerns that members have expressed this morning. Do you agree that making the offence subject to the affirmative procedure would be a practical step?

The Solicitor General for Scotland: I think that that is a matter for the minister.

We work closely with the Law Society—indeed, I am a member of it.

The Convener: So am I.

The Solicitor General for Scotland: The Law Society is extremely supportive of the fight against serious and organised crime and the putting in place of measures in relation to mortgage fraud and measures to catch the small number of solicitors who become involved in criminality. Should the offence be introduced, I would be happy to discuss with the Law Society what practical guidance and advice should be given. That would be done in any event, but it might give us an opportunity to get rid of some of the myths that surround the belief that genuine, honest solicitors might unwittingly find themselves caught up in this.

The Convener: That is helpful. I think that the committee would encourage you to explore that

further with the Law Society. Perhaps the minister could write to the committee before the provision is commenced, assuming that it is in the bill as passed, to set out what has been achieved in that respect.

Mike MacKenzie: I am perhaps beginning to regret some of our conversation so far. Given the interest that solicitors have in what we are discussing, if I attempt to buy a property in the future some of them might decline to act for me—or might even report me. There is a wee bit of humour there, but I am making a serious point. Given the difficulty of disproving the negative, if I were to find myself in such a situation, how would I be able to prove otherwise to a solicitor who had somehow formed the impression that I was not a trustworthy individual, perhaps after hearing a rumour or watching the committee proceedings? The same could apply to anyone else.

I am beginning to get the feeling that you think, perhaps with great merit, that there are some solicitors—albeit a tiny number—who aid and abet organised crime. Why are you not able to prosecute them under the current law? Is there a loophole that the section is intended to sew up? If not, why bother?

The Solicitor General for Scotland: Yes, there are solicitors who aid and abet—assist and participate in—criminality; yes, it is a small number; and yes, we will prosecute when there is sufficient evidence. The section is directed at mortgage fraud, which is a crime of intent, and the additional factor here is the element of recklessness. Although the burden of proof would not change, the offence created in the bill would, in certain circumstances, be a better—easier—offence to use. It is a small additional element.

Mike MacKenzie: I am slightly uncomfortable with this. I accept that there is a wee bit of a conundrum, but if there is evidence that solicitors are operating illegally or improperly, why are you not prosecuting them under the current law? Are you unable to do so?

The Solicitor General for Scotland: If there is sufficient evidence that someone is involved in criminal activity they will be prosecuted under the current law. I am not indicating that the section will solve general prosecutorial problems in relation to fraud. It introduces an additional offence, with an additional duty in relation to recklessness, which might make prosecutions possible in circumstances in which they are currently not.

Mike MacKenzie: Can you give me a hypothetical example of a case in which you are pretty sure, although you cannot be certain until the outcome of the prosecution, that illegal activity is taking place, but you are frustrated because the

current law does not allow you to prosecute, whereas section 108 would?

The Solicitor General for Scotland: An example would be a case in which we could not prove intent under the current law but could show recklessness. Recklessness is different from deliberate intent, in that it means behaving in a fashion that shows utter disregard for the consequences, or turning a blind eye. It is a slightly lesser test than intent.

Mike MacKenzie: Thank you.

Chic Brodie: I do not really have a question. I want to support the request that the Solicitor General get together with the Law Society.

In his evidence, the Minister for Energy, Enterprise and Tourism stated that the director of interventions at the Law Society had advised him that

“in her professional opinion the biggest issue in bringing fraudsters and their solicitors to account is that the Crown has difficulty prosecuting mortgage fraud.”—[*Official Report, Economy, Energy and Tourism Committee*, 8 February 2012; c 974.]

I do not want to return to intentionality or recklessness, but can we get some commonality of view on how we can more easily prosecute mortgage fraud under section 108?

The Convener: I think that that was a rhetorical question, Solicitor General.

The Solicitor General for Scotland: Yes.

The Convener: When we had the minister before us, he said that he would be happy to look again at the exact wording and scope of section 108. Does the Crown Office have a view on how the wording might be improved, for example to restrict the offence to fraud or for the wording to apply only to genuine mistakes?

The Solicitor General for Scotland: The offence is targeted not at genuine mistakes, but at deliberate, misleading or reckless behaviour. To ensure that the section targets what I have indicated this morning, I am more than happy to look at the wording.

The Convener: That is fine. The concern about genuine mistakes was raised by the Law Society, which felt that the wording did not cover genuine mistakes. There is a discussion or argument about the extent to which a genuine mistake might be considered reckless under the definition. We welcome your assurance that you are happy to look again at the wording.

The Solicitor General for Scotland: I make it clear that if the section would lead to someone who had behaved honestly or had made a genuine error being caught, the wording would need to be

tightened, because that is not the intention. The minister and I would be happy to look at that.

Murdo Fraser: Thank you, Solicitor General. You have been very helpful. I also thank your officials, who have got off lightly with regard to answering questions.

I suspend the committee for a couple of minutes.

10:55

Meeting suspended.

11:02

On resuming—

Council of Economic Advisers

The Convener: We will now have a complete change of subject. From the Council of Economic Advisers, I welcome Professor Andrew Hughes Hallett and Crawford Beveridge, who was appointed chair of the council fairly recently. I am delighted that you can join us. The committee and its predecessor committee have taken a keen interest in the council's work. Given that it is fairly early in the life of the new council, we thought that it would be useful to ask you to say a bit about the work that the council is doing and its value.

Before we move on to questions, would you like to say something by way of introduction?

Crawford Beveridge (Council of Economic Advisers): Yes, thank you. You are right. The first meeting of the new council took place in the middle of February, so we are not very far into things. The three big themes that we want to get through over the next few years are, as you might imagine, recovery and jobs and what can be done in that arena; internationalisation and how we can do a better job of exporting and securing inward investment in the Scottish economy; and the economic levers that exist and what opportunities there might be for changing some of those.

The council spent most of its first meeting getting up to speed through presentations from economists, who were mainly from the Scottish Government. That helped everyone to get on a level playing field. It will not be until the next meeting that we will get into serious debate on some of the issues.

Given that we will meet only a couple of times a year, whereas the previous council met three or four times a year, the arrangement of ad hoc meetings to cover specific subjects between the formal meetings has been encouraged. We had Professor Stiglitz over on Saturday, and several members of the council, including Andrew Hughes Hallett, met him for a while to cover some of the topics that we might want to deal with between the formal meetings, which are scheduled to take place twice a year. A lot of work will be done between those meetings.

The Convener: Thank you.

We do not have a set agenda for the discussion, so I intend it to be fairly free flowing. I will invite questions from members, which we will try to group by topic. If a member has a question on a particular area, we will see if other members have follow-up questions before we move on.

I will start with a general question. What is the point of the Council of Economic Advisers? I do not ask that in a derogatory fashion. What is the council there to do? It has existed for the past four years, although I appreciate that it was not under your chairmanship during that time. Can you point to any new Government policies or any changes in Government policy that have come about because of advice that the council has provided?

Crawford Beveridge: The previous council had its first meeting in September 2007 and it met 10 times between then and the last election. Over that period, we made some 57 recommendations to the Government, 46 of which were accepted and put into policy in some form or other. Those recommendations covered a wide range of issues. We discussed areas such as life sciences and education, and we spent a lot of time on things that could be done on innovation and productivity. We worked on the planning system and on bits of the environment.

Our main role is to be an advisory group. Recommendations often come out of that but, in addition, a lot happens in the conversations that take place. People's minds get changed by the diverse views that are expressed by the people who are there. The point of the council is to act as a sounding board for the First Minister and we try our best to give him some solid recommendations that he can choose whether to accept. History suggests that he will accept many of the recommendations, but we will see whether the new council is as successful as its predecessor.

The Convener: Looking forward, what are your objectives for the work programme that you have identified for the council? What do you hope to achieve? At the end of four years, what will you be able to say is different because of your advice?

Crawford Beveridge: From my perspective, on each of the three areas that I identified, we would like to make some positive recommendations that are based on all our views about measures that might be taken to help us to move ahead.

People such as Professor Stiglitz, Andrew Hughes Hallett, Jim McColl, Jim Mirrlees and I work in a highly international environment, so we get a chance to see how other people around the world are tackling issues such as jobs and the economy, what they are doing about internationalisation and what possibilities exist for the financing of Government and so on. Through the interaction of all those different views, we hope in the next round to give the Government some fresh ideas on things that it might do.

The Convener: Do you want to say anything at this stage, Professor Hughes Hallett?

Professor Andrew Hughes Hallett (Council of Economic Advisers): I substantially agree with

that. In more concrete terms, if people look back after four years and ask what we achieved, we would like to be able to say that the recession was shallower and, if we can, that we recovered.

Crawford Beveridge mentioned internationalisation, which both of us have pushed at different times. I would like us to help a wider range of firms to be more international, instead of our just concentrating on those that are already doing that. I would like us to improve on the economic levers that are available, although that is obviously up in the air at the moment. We will be happy if we can improve on our ability to find policies that will make the economy grow better.

The Convener: I am happy to throw the discussion open to members.

Chic Brodie: Good morning, Professor Hughes Hallett. It is nice to see you again, Crawford.

As you point out, the internationalisation aspect of the council's work is quite important. I have a thing about our ability to export and how to increase our exports. How are you interfacing with other countries? For example, the BRIC countries—Brazil, Russia, India and China—are growing at a substantial rate and each of them seems to have a policy of changing the structure of businesses so that many more of them are co-operatives. Overall, I believe that the ratio is about four co-operatives to one equity-based, shareholder-owned company.

What discussions are you having about the good aspects of those developing countries? How are you exchanging information with a view to persuading us to adapt or change to ensure that Scotland is much more competitive internationally and much more export minded than it has been in the past?

Crawford Beveridge: Scottish Development International and Scottish Enterprise have been doing some good work in the BRIC countries and elsewhere to try to figure out how we can deal with them more effectively. As you said, they all have their own methods: some want co-operative ventures, while others want shares in companies that are set up there. We can learn a lot from them.

Some entrepreneurs from Scotland are attending a learning journey in California this week to see whether they can draw on ways of doing business there. As you know, Jim McColl is very active internationally in buying and selling organisations. I hope that we will be able to bring back things for organisations here to consider so that they can approach the markets more strongly.

Part of the problem is that Scotland, like many countries, is made up of a lot of small businesses, and they sometimes find it hard to figure out how

to wander into Beijing and do something there. However, a lot of help is now available to them, and there are opportunities to try to make people enthusiastic enough that they are willing to take chances.

Chic Brodie: SDI is doing an outstanding job and is perhaps outperforming some other inward investment and exporting agencies on the global stage. What contact do you have with the globalscot network to gather information for the council or the Scottish Government? Is the globalscot network effective?

Crawford Beveridge: I am a globalscot. We have not particularly drawn on the globalscot network, but there is no reason why we cannot do that if we believe that it could contribute. The group in Scottish Enterprise that runs it is pretty active in getting us involved when it wants us to help it with companies in Scotland that are going to other places. Although we have not used the network yet, there is no reason why we should not do so.

The Convener: Other members want to ask questions on internationalisation.

Stuart McMillan: Good morning, gentlemen. SDI has had a good record in recent years, but could the agencies do more? Are there any particular things that they could change to make them more efficient and effective for Scotland?

Crawford Beveridge: They could always do more. Like everybody else, they are constrained from a budgetary perspective. I am sure that, if they were asked whether they could do more, they would reply, "If you gave us more money, we could start things in other places."

The one thing that I asked the SDI folks to do was to ensure that they are aligning what looks like the opportunity with where the resource is situated, because those things have changed over time. Even though about 40 per cent of Scottish exports end up in Europe, there is a bigger opportunity in other places at present. The European economy is not growing very quickly, but the Brazilian, Argentinian, Chinese and Indian economies are, so we need to ask ourselves continuously whether our resources are lined up in the right places.

Stuart McMillan: That leads me to my second area of questioning. Our predecessor committee undertook an inquiry into internationalisation during the previous session, and there were three key issues: the markets for Scottish business, the payments in other countries and regions—some have longer-term payments, so some Scottish companies might not want to invest in or export to them—and the co-ordinated approach to international delegations.

You mentioned that 40 per cent of exports go to Europe, but there is a wider world out there. To tie that into the payments, I note that, if a small business in Scotland wants to export but is not guaranteed to recoup the money in a short period—it may take six or seven months, due to the economic situation that we all face—that will surely restrict its decision to invest. How can Scottish firms get over such financial constraints, whether they want to export to countries in the euro zone, the European Union or elsewhere?

11:15

Crawford Beveridge: I will let Andrew Hughes Hallett speak to this issue, too. Under normal circumstances, when companies deal with the more unusual countries, they can ask for letters of credit that they can take to the banks, and have the banks fund them in some way. We are not in normal circumstances, so that might not be so effective at present, but, in principle, that is the route. We need to encourage the banks to open up a bit for those places from which they are sure that payment will be forthcoming, even if it will be a while before it arrives.

Professor Hughes Hallett: The previous council talked about export guarantee schemes. I do not know enough about the ins and outs of how they are used in what Crawford Beveridge called normal circumstances, so I do not know what the possible scope for such schemes would be now. However, they could be important and it was suggested that we should look into that.

The implication of Stuart McMillan's question is that we should focus on the BRICS countries—Brazil, Russia, India, China and South Africa—or countries near them, rather than on Europe, which does not look good at present. That might be a much better strategy and we have pressed the SDI people on that. The usual countries come up, such as Brazil, India and China, but others are also interesting. South America comes up, for example, and Columbia and Peru have fast-growing economies and are therefore, in this context, likely targets. I was pushing Vietnam, because it is also growing quickly. We know that it is an interesting country because the Chinese are worried about it. It is obviously an economy to push.

The other important point to note is the narrow range of firms in Scotland that are exporting. Something like 50 firms export significant amounts from home. It would be helpful to spread that activity much further.

One other important aspect of internationalisation that we do not talk about so much is the foreign direct investment that comes into the country. It helps a great deal because it

usually comes in for a reason, and one reason is to use Scotland as a base for exporting. It would be good to investigate that further; that is on the agenda, but it has not been done yet.

Stuart McMillan: Has there been a change in the approach to delegations from Scotland? Is it more co-ordinated than it was in the past?

Crawford Beveridge: It appears so to me, in that more delegations seem to be bound up with visits that the First Minister or other ministers are making anyway. That always opens a lot more doors than when someone just turns up and tries to set up meetings with people. The more that we take some of our key companies—we have quite a lot of them—and bind them to political opportunities, the better. Countries such as China, Vietnam, India and bits of South America react well to politicians arriving on the scene to try to do something. We generally get a much better hearing if we co-ordinate business delegations around such visits.

Stuart McMillan: That point was reiterated during the previous committee's inquiry. The approach at that time seemed to be quite sporadic and it was either sector specific or area specific. Many people vociferously made the point about the involvement of political leadership. I also accept that every delegation will be different so we cannot take a one-size-fits-all approach.

The Convener: With the possible exception of one, I am sure that committee members will always be interested in being involved in delegations in support of Scottish industry overseas.

Patrick Harvie: You can get to some of these places by train as well.

The Convener: Yes, or boat, possibly.

Patrick Harvie: Indeed.

The Convener: Stuart, are you finished?

Stuart McMillan: Yes, thank you.

The Convener: A couple more members want to ask questions about internationalisation.

Angus MacDonald (Falkirk East) (SNP): I will be brief. Professor Hughes Hallett has been referring to the BRICS countries: Turkey is our European version of a BRICS country. I was sent a link to an article in a Turkish newspaper—unfortunately, I have not read it all but wish I had, given today's debate—that says that Scotland is the fourth-largest investor in Turkey. It might be worth checking that out. It is worth bearing it in mind that Turkey will be the fourth-largest economy in the world by 2023. I believe that a delegation that has been organised by SDI is going out there in either June or July. There are clear opportunities in the southern end of Europe

that must be taken and Turkey is, by all accounts, the economy to watch and invest in at the moment. Is any of that in the advice that you are giving to SDI?

Crawford Beveridge: We have not talked about Turkey specifically, but we suggest that SDI look frequently at where the growing economies are and at how its resource is aligned. We need to keep pressing it on that. It is sometimes too easy to say, "Yes, but we've always had an office in Germany, so we just have to have all our resources there." If we are going to be short on resource, we need to start putting it where the growing economies are. We should not ignore the other ones by any means—they are important to us—but we must start to focus some of our resource on where the growth opportunities are.

Chic Brodie: All this—the internationalisation issue—is very important, and one of the key elements is our ability to connect with countries through direct flights. I was upset this morning when I heard an interview about what is happening in Edinburgh with reference to Ryanair, and someone suggested that Prestwick, in which I have a particular interest, is really part of Glasgow. I state, for the public's benefit, that it is not. I know that the First Minister discussed the matter in China, but in general terms, what advice has been given to the Government on our having more direct connectivity with our global enterprises?

Crawford Beveridge: You are spot on. One of the things that makes it hard even to get people to visit us is the difficulty in getting here. It is a problem that someone who has made the 12-hour flight from Beijing, California or anywhere else to London has then to hang around for another two or three hours to get a flight up here. If there are easier places to get to, many executives will go to those places. I do not know whether we are still doing this, but in the past we gave some aid to airlines to allow them to set up direct flights to see whether they could build a market here.

Wearing my old Scottish Enterprise hat, I can say that when we tried to figure the matter out, we found that part of the problem is that people who live in and around Glasgow will not come to Edinburgh to catch an aeroplane, and people who live in Edinburgh will not go to Glasgow. That means that the market is split and we cannot get the critical number that we need. We need a Shotts international airport or a high-speed link that will guarantee to get people to their planes at one of the other major airports, otherwise we will never be able to show that we have enough people. That is why people argue all the time that London is the hub and then people have to travel up from there.

I landed last night and almost every person who had been on the plane that I was on—I would say

80 per cent of them—went to the area where passengers have to go to get their bags if they have not cleared customs yet. Huge numbers of people are coming to Scotland through London, but half are going to Glasgow and half are going to Edinburgh, so we cannot get the critical mass to support the argument for direct flights. I am sorry, but that is a pet peeve.

Professor Hughes Hallett: I will add one further thought on that. Far be it from me to be provocative on the question of autonomy, but I have heard it argued that it would be possible to use air passenger duty to encourage flights to come directly to Scotland. If air passenger duty in Scotland were different from elsewhere, that would be one way—

The Convener: You mean if it was lower than elsewhere. If it was higher, that would be a deterrent.

Professor Andrew Hughes Hallett: I was trying not to be provocative.

Chic Brodie: Well, I will be. We could even scrap air passenger duty. I had a conversation about it with an airline yesterday. The increased charges are an absolute nonsense, and they impact on flights and passengers leaving Scotland.

The Convener: I am sure that Patrick Harvie is ready to explode at this point.

Patrick Harvie: I am far too used to it.

The Convener: Members have other topics to raise, but I have a final question on internationalisation. The Government's economic strategy sets out a target to increase the value of Scottish exports by 50 per cent by 2017, which is an ambitious target in the current financial climate at home and overseas. How realistic is it?

Crawford Beveridge: I will let Andrew Hughes Hallett answer in a minute. Having talked to the SDI folks, I think that the target is realistic if the resources are aligned in the right places. We have things to offer in many sectors. I do not know that we cannot do it. It is good to set an aspirational target; the target is high and everybody knows that. I hope that, if we get to 38 per cent, the newspapers do not all say that we have failed again. People are headed in the right direction. There is good reason to believe that we could do it with the effort that we are putting in.

Professor Hughes Hallett: I do not have a big problem with the target, which is only for an increase of 10 per cent a year. Many countries expand their exports faster than that. It is always a little worrying to see exports increasing fast when gross domestic product growth is not so fast. However, the target is not an outrageous number. The only thing that I would say is that we would be

helped enormously if there was not a focus on selling to the euro zone, because it is not a tremendously good prospect. If the focus was on selling to BRICS countries, it would in principle be a lot easier to meet the target. If you tried hard, you could probably do it through exporting malt whisky to China alone.

The Convener: In recent years, the growth rate has been nearer 1 or 2 per cent a year, never mind 10 per cent. Meeting the target will require a major step up.

Professor Hughes Hallett: It will be a sea change, but that is the point, I think.

The Convener: Thank you. We will move on to another subject.

John Park: A big element of increasing jobs and the recovery will be to try to get people to invest in Scotland and to create facilities and make job-related investments here. As Mr Beveridge will know, during the 1990s, a significant number of inward investors came to Scotland, while many manufacturing companies in other parts of the economy found it difficult. The companies that came, such as Chunghwa Picture Tubes and Motorola, eventually moved out of the country and went to lower-wage economies. However, at the time, those jobs were welcome and they were relatively skilled and well paid. That gave people transferable skills and the opportunity to work in the wider economy when the difficulties of redundancies and job losses had to be dealt with.

We recently had a big investment when Amazon came to Fife, but I was a little concerned to learn of an overreliance on agency and temporary workers. We do not expect that and we certainly would not have had it with the inward investment in Scotland in the 1990s. At the time, there was a core workforce, and the issue of peaks and troughs was dealt with through augmenting staff with agency workers. When the Government spends money to attract employers and inward investment to the country, is there a question about the quality of employment that people will have, regardless of the skills level? Is consideration given to providing secure employment so that people can take longer-term decisions about how they invest in their communities, homes and families? Given the current economic climate, should that be a key aspect of Government policy?

Crawford Beveridge: Andrew Hughes Hallett can start on that.

Professor Hughes Hallett: No—you can start and I will come in after.

Crawford Beveridge: That allows him to think.

That is a difficult question. As John Park rightly said, in the 1990s we were lucky and we got a lot

of inward investment. Generally in the global economy, the 1990s were great years—things were expanding at a great rate and eastern European and far east manufacturing had not taken off to a great extent, so companies were looking for places where they could get decent skills at a reasonable cost. We therefore got lots of jobs, although we lost the vast majority of them in the 2000s. As John Park said, that was not necessarily bad, because we had upskilled people along the way.

The jobs that we are getting now are different. The investments tend not to be quite so big and the jobs tend to be a bit bifurcated between those that do not require a massive amount of skill to start with, as with Amazon, and those in companies such as Wyeth, which require a lot of great skills to start with and which are much stickier. Such investments, because they link to things such as our medical system, do not move so easily. It is likely that such companies will largely take on full-time people.

Amazon is very economy sensitive—it is concerned with how many books and other goods will run through its system over the next five years—so it would tend to start by taking on temporary workers. We hope that, over time, it will largely convert those folks to full-time workers, but in the meantime it will still give them skills.

I do not know how realistic it is for the Government to place specific conditions on Amazon, because the marketplace is still highly competitive. I am sure that Wales would be happy to say, “If the Scots are going to make you commit to that, we won’t. Why don’t you just come here instead?” I would rather have the jobs and take some risk in the hope that there will be skills output from that, than risk losing them to somewhere else.

11:30

Professor Hughes Hallett: John Park is absolutely right. It is certainly true that what happens depends on the industry. The bifurcation point is important.

We spent some time talking to your predecessor committee about productivity and trying to push high value-added industries. There is no reason not to do that and we should continue to do it. Wyeth—I have done work on life sciences, so I am biased—and other such companies are important, and the skills that are learned along the way are a good thing.

I would not knock Amazon too much, because it can have Scots goods on its list for sale. I was trying to suggest that Hunter wellington boots would be ideal, because my daughter cannot get them. That was a facetious remark, but you

understand the point. There are a number of things that Amazon can do, so it is probably not a company to discourage. We cannot get away from the fact that it is likely that low-technology goods will be cheaper to produce somewhere in the far east than they would be in Scotland. The strategy is to try to climb the productivity ladder. It is a longer-term approach.

John Park: Absolutely. I am not knocking Amazon by any stretch of the imagination. However, when public investment goes into such a company, we have to ask about the level of job security for people if we are genuinely going to climb the productivity ladder. It is not only about people feeling secure in their employment and what that means for them outside work, but about the company feeling that it can take investment decisions that will help people to upskill, stay in work and progress in their careers. We had such successes in the 1990s, although I admit that the global marketplace then was completely different from the current one.

The Government's stated aim is clear: we need to try to ensure that we have a flexible skilled workforce for the future. If public money is supporting that, I hope that the Government would discuss with Amazon—and whatever other companies make inward investments—the need to take longer-term decisions that will help Scottish industry in the future. I hope that you, as advisers to the First Minister and other ministers, would take an interest in that as well.

Professor Hughes Hallett: That is absolutely right. Speaking for myself as well as for the council, I would take a personal interest in that. I have done work on productivity, so I have a personal interest as well as a professional one. It is an important matter.

One question that came up in the previous meeting of the council was: how can we persuade firms to take a much longer-term view than they have done in the past? That is a difficult question, and we do not yet have a clear answer. We need to pursue various suggestions on that. It is very much a live topic in the council at the moment.

John Wilson: I will comment on John Park's recollection of the 1990s—particularly the late 1990s—and the success of Lite-On Ltd, Chunghwa Picture Tubes and Eurocentral. My direct experience of such investment and agency involvement in securing it gives me a different perspective.

Lite-On located in Eurocentral and produced cathode-ray tubes. Chunghwa was supposed to be a complementary company: it was supposed to pick up the cathode-ray tubes and put them into computer terminals. However, the rest of the world had already moved on to flat screens. The workers

did not have good conditions and the pay that they received was not much above the minimum wage. We did not get the high-end, high-tech jobs that we expected.

How can we guarantee that we will not repeat the mistakes that were made in the late 1990s in encouraging companies to locate in Scotland? A lot of public investment went into Lite-On, Chunghwa and Eurocentral to attract those companies, but they upped and left within two to three years. They left the agencies with a financial headache and they left a large hole in communities. When Lite-On came in, it was going to create 2,000 jobs on the site through the investment strategy, but it created fewer than 300 jobs, I think, which were also only short-term.

When we are encouraging companies to locate and invest in Scotland, how can we guarantee that we will get the maximum benefit from any public funds that are used to get them to do so, the maximum benefit for their employees, and ensure that we are not competing in the world market for the lowest employment unit cost to attract those employers? Surely we should be trying to attract the higher-end and better-paying employers to Scotland to ensure that there is a real benefit for Scotland's economy and not for the economy of wherever the company relocates from.

Crawford Beveridge: I could not agree more. One of the great lessons from that period was that trying to compete on cost will not make it. I have been on the board of a company in one of whose Chinese factories, which has a couple of thousand people, there has been a large strike about wage rates for the past month. Wage rates in China are starting to go up, and as Andrew Hughes Hallett rightly said, the move is on to other places, such as Vietnam, where people are paid less than half the rate that people in China would be paid, which is only a tenth of what people in Scotland would be paid. Our competing on a wage basis here is long gone. We cannot do that. When people were competing on wage rates against Ireland rather than China, perhaps they could get away with it, but they cannot do so now.

The second lesson is that we need to be cognisant of how technology is shifting and to start to understand whether we have the technology and whether companies have a plan for the next phase. Technology is moving at an incredible rate.

The third lesson is about finding other things in the community that will cause ventures to be sticky. One thing that appealed to Wyeth was that we have had a homogeneous set of medical records on people in Scotland for a long time, which helps very well with the translational medicine system. If we can find other things like that so that people do not just come here because doing so is a good idea that we sold them and

they have received a Government grant, but rather they see a real reason to be in the community, that will bring much higher-level jobs that are much less likely to move as the economy shifts.

Professor Hughes Hallett: I agree. The particular example of the life sciences is generalisable. Life sciences firms are interested in coming in at the high-tech end because of higher education here, and they want all sorts of other things. They want the access to seminars and libraries that we can offer which, of course, means that they are locked in, to some degree. If they were to decide to move to Vietnam they could not get those things there, so they will not do that. There is protection, in a sense. It is clear that, if public money is going into such ventures, the people who are making the decisions need to consider those aspects.

Patrick Harvie: We are discussing jobs and recovery. I want to ask about the second word, which is used frequently. The Government and the media talk about economic recovery, and we will have a debate on recovery later this week in Parliament. What is recovery? What does it mean?

Crawford Beveridge: That is a good question. Andrew Hughes Hallett is much more capable of answering it than are we simple business grunts, but I will try to answer it from my perspective.

One of the things that worries me just now about most economies—Greece is the biggest example—is that people need to understand that, as with companies, you cannot cut your way to growth. It is not possible to keep on cutting without having a plan for growth. When we were going through the independent budget review, the council advised the Government that it needed to be steadfast about continuing its capital expenditure plans, because that will allow us to build some of the growth that we need in the economy. I think that the Government has done a fairly good job, within the financial boundaries that it has.

We are noticing—in looking not only at Scotland but across much of the world—that where things are starting to recover, for example in China and the US to some degree now, the recovery has so far been largely jobless. It will take some time to be able to show that there are jobs available.

Patrick Harvie: You are identifying areas in which you say recovery is happening, so you must know what you recognise as recovery.

Crawford Beveridge: The recovery there means that people are spending more money and that gross domestic product is in growth mode rather than in decline mode and is not the zig-zag that we are currently seeing, with one quarter up and the next quarter down, but sustained over a

number of months. That is how we would recognise it here too, but it looks as though that will not happen for a while. Things in the whole United Kingdom are still moving up and down.

Patrick Harvie: What I am driving at and wanting to explore is whether recovery simply means getting back to business as usual. We have been talking for 40 minutes or so, and most of the discussion has involved fairly narrow terms such as “GDP” and “growth”, and has focused on business success and exports. Those are important parts of the economy, but they are not the whole economy. Even the Government’s own economic strategy on paper does not focus on that: it talks about making

“Scotland a more successful country with opportunities for all ... to flourish through increasing sustainable economic growth.”

When the minister uses that phrase, I generally wrinkle my nose in a quite unattractive manner, because I am a bit sceptical about whether “sustainable economic growth” really means anything. Does it?

The Government has targets that it is failing to meet, not only on economic growth but on solidarity, cohesion and sustainability—all the things that make a decent society. Does recovery simply mean getting back to business as usual, or does it mean finding our way to a new economic model? What is the role of the Council of Economic Advisers in challenging the Government on the economic model that it is trying to pursue, in a way that elected politicians in office often find hard to do?

Crawford Beveridge: They do. I will let Andrew Hughes Hallett answer that, because I know that he discussed the subject in his conversation with Professor Stiglitz. We are interested in some broader answers about what growth is, not only in terms of company profits and revenues, but with regard to sustainability and what it might mean. How do we measure companies on broader things to do with society rather than simply on the earnings per share that they put out for the stock market? We will have that on the agenda for one of our meetings, which we are starting to think about now.

I was not in the meeting with Professor Stiglitz on Saturday, so Andrew can talk about that.

Professor Andrew Hughes Hallett: We talked about the matter on Saturday without coming to firm conclusions. It is obviously a longer-term conversation, because we want sustainable growth and not just growth that goes up very quickly. Part of our conversation was about how we can persuade firms to take a longer-term view in their decision making, and to be more responsible in their social policies in order to

benefit society as a whole, rather than focus on the narrow balance-sheet stuff. We then went off into areas such as green housing and the prospects for enhancing that in Scotland. There were several different ideas.

When companies talk about sustainable growth, they mean—I hope—that we must get back on a positive growth path that does not necessarily involve high growth. It is about long-term potential growth that can be sustained over the years. That is what will happen: the fast growth that we were used to in the 1990s and early 2000s will not feature in the future, so companies may find sustainable growth happening whether they like it or not. I take it that that is what they would be aiming at.

11:45

Patrick Harvie: I am grateful to both witnesses for their answers. However, this is the beginning of a longer-term discussion and the world is not yet clear about where the discussion will go. I hope that it will involve a challenge role—you will be challenged and you will have a role in challenging Government about assumptions.

Sustainability is not about continual or perpetual growth, but about recognising social and environmental factors, and that the economic model that we have been pursuing for decades has externalised—even when it was nominally successful—huge social and environmental costs and allowed economic benefit to be hoarded by the few. As the committee heard yesterday, we are seeing levels of inequality in this country that have not been seen since the 1930s. In my view, such issues should be central to the agenda of the Council of Economic Advisers. We must be willing to challenge the notion of business as usual and to develop a new economic model.

The Convener: This is turning into a speech, Patrick.

Patrick Harvie: If we do not move beyond competition and think about tax co-operation, we will not be able to shut down the tax havens. Perhaps at some point we might see a Council of Economic Advisers whose members all pay income tax, for example.

Crawford Beveridge: Do we not all pay income tax?

Patrick Harvie: Some choose to live in places that do not charge income tax.

Crawford Beveridge: Oh. Okay. Lucky them.

Patrick Harvie: Tax co-operation is the only way to flush out that kind of legal tax avoidance.

Crawford Beveridge: As you know, this is a very difficult subject. I know of a few companies in

the US that have taken the whole social and environmental new economy thing very seriously. What they have in common is that they are all private companies. The problem is, as you know, that once you put companies out into the stock market, stockbrokers, investors and big equity players will say nice things about all the things that you have just said, Mr Harvie, but at the end of the day they just want to see what the earnings per share are. That is what drives everything.

The problem is in how to start a global mindset that is different to that, which is not easy to do. However, I totally agree that that is why we need to have the problem on the agenda and why we need to start to understand what it would take for us to take a slightly different approach to how we do things here. I have no argument with that.

Stuart McMillan: I have a brief question. Will you look at any particular models or countries in order to help the debate here in Scotland?

Crawford Beveridge: We will not do that yet, but it will emerge as we go through the next several meetings and start to ask where we can examine people doing things differently, which might help us here.

The Convener: Before we move on, Chic Brodie wants to come in briefly.

Chic Brodie: I heard what Patrick Harvie said, but Mr Beveridge is right that in the current environment it is the economic base of progress that we must talk about.

Professor Hughes Hallett mentioned productivity. Clearly, the Scottish Government has already started looking at capital investment. What advice are you giving on what form beneficial taxation might take to swing some of the expenditure from consumption to investment? Have you had any conversations about how we encourage savings in Scotland? We recognise that there is a current economic problem globally, but how do we encourage savings in Scotland? How do we use or encourage the use of Scottish pension funds to be part of investment? Have you any views on having a Scottish stock exchange?

Professor Hughes Hallett: I do not have views at the moment on your last question. If we got a serious sea-change in the mental make-up of how people run businesses, we may need a Scottish stock exchange because we would be different from the rest of the world and there would be quite some mileage to be made from that.

We are just beginning to talk about the use of pension funds and whether they would invest. They would have a longer horizon, so they naturally come into that conversation. We have not developed that very far, but I can assure you that we will develop it.

What you said about savings is interesting, but I am not sure what I can suggest about that. We cannot give tax breaks on savings, because we do not have the power to give tax breaks. You know what I think about that, so that is part of your answer.

The Convener: Okay, thank you very much. We are moving on to a different topic with Mike MacKenzie.

Mike MacKenzie: I was very interested to hear Mr Beveridge talk about the council's concerns and advice about the planning system. I was reminded of reading the minutes of the council's first meeting, in 2007, which the chief planner attended and when planning was discussed. That was shortly after the Planning etc (Scotland) Act 2006 was passed. Since then, the act has come into force and bedded down to an extent. You might be aware of the recent Audit Scotland report on the planning system, which looked at the cost of running the system and its internal efficiency. Do you have thoughts about the economic effects of the 2006 act and of planning generally? What lessons can we learn from how other countries operate their planning systems and from beneficial effects of that on their economies?

I will quickly ask another question. You might be aware that the Jimmy Reid Foundation produced a report on procurement just a week or two ago. The report's authors were Jim and Margaret Cuthbert. It suggested that a lot of economic opportunity leaked out of Scotland because of how we implement EU procurement rules and that that approach was unnecessary, even under current rules. What are your thoughts on that?

Crawford Beveridge: I have not looked recently at what change has gone on since we started the discussions on the planning system. Planning is difficult, because we want it to be protective—we do not want to be in one of those countries where things are just signed through, buildings fall down and people get killed—but we want it not to be so punitive on business that it takes for ever to do anything. Trying to start a business in California, for example, is a nightmare. Work needs to continue on planning, to strike the right balance.

As for the procurement system, my view has always been that, in good British fashion, we take the rules from the EU far too literally. We could do many things to allow small contracts to go out without some of the pain that we put people through for them. The more that people can push in that direction, the better.

Professor Hughes Hallett: Like Crawford Beveridge, I am not entirely sure of the economic effects from the change in the planning regulations—I do not think that any study has

been done to give the economic effects in numbers. I understood that the regulations had eased up some, so perceptible benefits could be pointed to. Maybe we should do an audit of that, to try to tie that down more specifically. I have given my impression, but I do not have the detail.

I know—or think that I know, as I do not have what we wrote down two years ago—that the EU allows procurement not necessarily from the lowest bidder, if that would have advantages for the economy concerned. We have pushed that in the past. I do not know whether procurement processes reflect that position. When I tried making a suggestion in relation to some drugs for the national health service, my head was bitten off, because safety issues are involved. I am not a biologist, so I cannot judge such issues easily. However, that is certainly a line to pursue. Maybe we should reiterate what we said in the previous council.

The Convener: You mentioned in passing economic levers. A lively constitutional debate is going on in Scotland. Does the council take a position on the debate about devolution of economic levers and about independence?

Professor Hughes Hallett: The council has taken no position on independence. The previous council did work on borrowing, which had some effect, although it is hard to quantify exactly. The effect was that the amount that can be borrowed for capital purposes was raised. The business of being able to move capital expenditures up in time, which the Government has used, also came from such debates. There are general propositions that allow a bit more flexibility in using policy instruments—I should put that phrase in inverted commas, because the instruments are not very strong, but they can be moved around a bit.

We looked at the fiscal autonomy debate and suggested that some extensions to that might be wise. That was of course in the context in which the Scotland Bill was going through. We have taken a position on that and some suggestions were made. That debate is in flux, so it is difficult to know what will come out at the other end of it. Quite a number of such changes could be made, which would improve the ability of the Scottish economy to perform.

The Convener: I asked the question because I was interested to read last month in the *Financial Times* that Professor John Kay, who is a former member of the Council of Economic Advisers, said that plans to entice global investors to Scotland with low corporation tax were “a fantasy” because they would not be permitted by the European Union. Do you agree with Professor Kay's analysis?

Professor Hughes Hallett: I would suggest that he goes to Ireland. That is a strong case. I hope that I am getting the right one of the Baltic countries, but I believe that Estonia has a policy on corporation tax that has had quite an effect. I imagine that there would be high blood pressure in Brussels if it happened here, but it is perfectly allowable under EU rules.

The Convener: To be fair, Professor Kay's point—if I read the article correctly—was that it happened in Ireland but would not be allowed to happen again.

Professor Hughes Hallett: It would be difficult to find a legal way to say that it could not happen. There might be political pressure, but it would be up to the political leadership to say, “Yes, thank you very much but we're going to do it.”

How much the rate goes down also matters. What makes a hell of a difference is not so much the rate as the control of the tax base. The Germans have a high rate, but they have a very low take on the tax. I was lecturing on that last night, so I can tell you. The Germans have a rate in the low 30s per cent, but the revenues that are raised in that way are about 1 per cent of their GDP. The Irish have a rate of 12.5 per cent and they raise 3 per cent of GDP through that. The reason for the difference is that the Germans have thousands of exemptions; that is the part that is far more effective. Privately, I would be happy to go down that track. The EU cannot complain about that.

The Convener: I am happy for other members to pursue this line of argument. I raise the EU only because, as you will be well aware, there is serious pressure within the EU at the moment to harmonise tax rates as a result of what is happening in the euro zone. The situation that occurred in Ireland may not occur again.

Professor Hughes Hallett: Yes, but I put it to you that that is political pressure rather than a legal arrangement. If the EU wants to write a new treaty, that is another matter.

The Convener: It may happen.

Professor Hughes Hallett: Treaties do not go through so easily.

John Park: You are being asked to assess something that might or might not happen in the future. Part of your work is to assess the effectiveness of policies that the Scottish Government is taking forward.

Before I was on the committee, there was a lively discussion with a representative of the Scottish Trades Union Congress about business rates and, for example, the impact of the small business bonus scheme. Evidence has been provided to the committee about how much money

has been spent on that and the impact that it has had on the number of enterprises and small businesses, the number of people employed and so on. Is that something that you would consider and assess?

Crawford Beveridge: I do not have that on my list, but there is no reason why we could not look at some of the current policies.

I will be sitting down with the civil servants next week to figure out what the next agenda will look like and how much work we can get done by then. We need to put together two or three forward agendas based on all the comments that we gathered in from the previous meeting. I am happy to raise that issue then.

The Convener: If members have specific ideas for future agenda items, we could forward them to you.

Crawford Beveridge: Yes.

The Convener: We are up against the clock. Patrick Harvie wants to come in, followed by John Wilson.

12:00

Patrick Harvie: Thank you, convener. I will briefly follow up your point on corporation tax. I assure John Park that I do not particularly want to knock Amazon, either. I just wish that it would pay a fair amount of corporation tax. Nine times out of 10, when someone orders something from Amazon, it is posted to them from a tax haven, not because the warehouses are cheap there, but because Amazon is doing everything that it can to avoid making a fair contribution to the common good.

I put it to Professor Hughes Hallett that, if we get into a competitive race to cut corporation tax, there is a serious danger that we will give more and more incentives for corporations to find loopholes and avoid paying a fair contribution. If we got into such a race, how would we ensure that that scandalous behaviour did not get even worse?

Professor Hughes Hallett: I can understand that that would be a major problem. “A race to the bottom” is a phrase that comes up all the time, but if we look at the evidence of those who have moved their corporation taxes around, we find that there is no evidence of a race to the bottom. Obviously, if the corporation tax rate went to zero, no revenue would come in and expenditure would have to be cut. Firms, and the population, are interested in the services that are being paid for, so there is a natural tendency not to go too far in that regard.

There are quite a lot of studies, including a big one by the Organisation for Economic Co-operation and Development—it is probably out now—on the position in different countries with regional Governments. In Switzerland, for example, there is no race to the bottom, in practice.

I do not know where Amazon posts its packages, but if they all come from the Cayman Islands, we are perhaps encouraging the wrong industry. However, I do not know whether that is the case.

It is possible to compensate with other taxes. We might well want to have other taxes. I presume that we would want to have some green taxes, which can be used to compensate.

Patrick Harvie: I have to point out that they can be used well or badly.

Professor Hughes Hallett: Yes. I take the point that you are making.

Crawford Beveridge: The key is how the tax code is written. How many loopholes have been left in? How much have we listened to lobbyists for particular industries? What have we done about where people keep their cash? That is why it is important, as Andrew Hughes Hallett says, to think the whole thing through in terms of both the rate and the tax base, and to decide what we want to achieve.

Patrick Harvie: My only point is that, without international co-operation on tax—at a European level, for example—we are very ineffective at preventing people from exploiting those loopholes.

Crawford Beveridge: Yes. It seems to me that the clever stuff for Scotland is to try to figure out how we can take a lead in writing a tax code that makes sense to people, that is acceptable to industries, and that we can reasonably persuade others to follow. Somebody has to make a start on that, but nobody is doing it at present. The nonsensical position that the US has, whereby as long as cash does not come back from overseas it does not get taxed, is a ridiculous unintended consequence, because it means that US companies spend that money outwith the United States. We would not want a system such as that. We want a system that regenerates the economy. We need to spend a lot of time up front and think through what the tax code should look like and what we will allow and not allow.

Patrick Harvie: Thank you.

John Wilson: Good afternoon, gentlemen. I would like some information on the functioning of the council. Mr Beveridge, you said in your opening remarks that the council will meet twice a year, and in an earlier response to John Park you said that you will meet civil servants to draw up the

agenda for the next meeting and look at issues that you can take forward. Has the council established sub-committees or groups of advisers that are working on specific areas? You mentioned four areas in your introductory remarks. Are sub-committees or individual council members looking at those issues? If so, how do they feed in to the council meetings? In particular, how do they feed in to the Scottish Government's agenda on economic recovery between council meetings?

Crawford Beveridge: We do not have many such groups yet, but I will outline how that will work in principle. We think that it might make sense for the economists on the council to spend a little more time on the issue of fiscal levers and so on. We already have an agreement that Susan Rice and Professor Stiglitz will do a little work on what the totality of a company should look like in terms of its social and environmental responsibilities rather than anything else. We will ask either individuals or small groups who have expertise to go off and look at specific topics for us, which will then become the subject of major papers that will come to the council, and in that way get into the policy making of the First Minister.

We have not done much yet, because we have only just met and started to figure out who is interested in and capable of doing what topics, but in principle that is how it will work.

John Wilson: On the timing, if you meet only twice a year over the next four years, input will be an issue. You mentioned earlier that the previous Council of Economic Advisers made 57 recommendations. It met much more regularly than what is being proposed, and 46 of those recommendations were accepted by the Scottish Government and put into play. At what point will the impact of the council's advice and recommendations start to kick in? Given the economic situation in Scotland—we are looking at various ways of driving it forward—how quickly can the council start making recommendations that push the Scottish Government in the desired direction and, I hope, influence decisions south of the border?

Crawford Beveridge: We can probably move a little more quickly than the two meetings a year. One of the things that we did not do in the previous council was to use any kind of videoconferencing. We were in one of those modes whereby if we could not all get into a room together, there would be no meeting. This time we are thinking about how we can use technologies so that, rather than have people fly in from Hong Kong or Washington, we can have a quick meeting with them in order to make progress.

We are in early days. It will take me a little while to work with the civil servants on how to set this up, but in the coming months I hope that we will

not have to wait six months before anything can happen. We could do things in the interim as people work on the sub-groups of various issues.

The Convener: Those are all the questions that we have this morning. On behalf of the committee, I thank you, Mr Beveridge and Professor Hughes Hallett, for coming along. This has been an extremely useful meeting. I am sure that the committee will want to keep a liaison going with the Council of Economic Advisers, so perhaps we can see you again in a year or two and keep in touch with your work.

12:07

Meeting continued in private until 13:05.

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e-format first available
ISBN 978-1-4061-8366-5

Revised e-format available
ISBN 978-1-4061-8381-8

Printed in Scotland by APS Group Scotland
