OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Constitution Committee

Wednesday 11 March 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 11 March 2020

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FINANCE AND CONSTITUTION COMMITTEE
7th Meeting 2020, Session 5

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Tom Arthur (Renfrewshire South) (SNP)
*Neil Bibby (West Scotland) (Lab)
*Alexander Burnett (Aberdeenshire West) (Con)
*Donald Cameron (Highlands and Islands) (Con)
*Angela Constance (Almond Valley) (SNP)
*Patrick Harvie (Glasgow) (Green)
*John Mason (Glasgow Shettleston) (SNP)
*Alex Rowley (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Scott Mackay (Scottish Government)
Ben Macpherson (Minister for Public Finance and Migration)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Finance and Constitution Committee

Wednesday 11 March 2020

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Bruce Crawford): Good morning and welcome to the seventh meeting in 2020 of the Finance and Constitution Committee. I remind members to do the proper thing with their mobile phones.

The first item on our agenda is a decision on whether our proposed consideration of contingent liability should be taken in private. Do members agree to consider that in private at a future meeting?

Members *indicated agreement.*

Subordinate Legislation

Budget (Scotland) Act 2019 Amendment Regulations 2020 [Draft]

10:01

The Convener: The second item on our agenda is to take evidence on the draft Budget (Scotland) Act 2019 Amendment Regulations 2020 from Ben Macpherson, the Minister for Public Finance and Migration, and Scott Mackay, the head of finance co-ordination, Scottish Government. Welcome to the meeting.

I invite the minister to make a short opening statement, if he wishes to do so.

The Minister for Public Finance and Migration (Ben Macpherson): As the committee will know, the spring budget revision provides the final opportunity to formally amend the Scottish budget for 2019-20. This year's spring budget revision deals with four different types of amendments to the budget. First, there are a few funding changes. Secondly, there are a significant number of technical adjustments that have no impact on spending power. Thirdly, there are some Whitehall transfers. Finally, there are some budget-neutral transfers of resources between portfolio budgets, including a modest budget redirection to ensure that we maximise our available budget. The net impact of all those changes is an increase in the approved budget of £1,108.5 million, from £43,094.8 million to £44,203.3 million.

Table 1.1 on page 5 of the supporting document shows the approved budgets following the autumn budget revision and the changes sought in the spring budget revision. The supporting document to the spring budget revision and the brief guide prepared by my officials provide background on the net changes.

The first set of changes increases the budget by £255.9 million and comprises funding that has been allocated over a number of lines as detailed in the brief guide.

The second, most significant, set of changes comprises a number of large technical adjustments to the budget. Those adjustments are mainly non-cash and therefore budget neutral—as they cannot be redeployed to support discretionary spend elsewhere. They have a net positive impact of £714.8 million on the overall aggregate position. It is necessary to reflect those adjustments to ensure that the budget is consistent with the accounting requirements and with the final outturn that will be reported in our annual accounts.

By far the largest of the adjustments relates to an increase to the annually managed expenditure provision for future national health service and teachers' pensions costs. That flows mainly from past service costs for guaranteed minimum pensions equalisation relating to the full indexation of pensions in respect of members reaching state pension age after 6 April 2021. However, last year's higher-than-expected pay award for teachers and the outcome of Court of Appeal rulings on the judicial pension scheme and the firefighters' pension scheme discrimination claims have also contributed to the increase of £594.6 million.

With regard to Whitehall transfers and allocations from Her Majesty's Treasury, there is a net positive impact on the budget of £138 million from a number of transfers, the most significant of which are the transfers of £80 million convergence funding for farmers from HM Treasury and the £35 million reserve claim to cover the costs of the changes to the personal injury discount rate.

The final part of the budget revision concerns the transfer of funds within and between portfolios to better align the budgets with profiled spend.

The main transfers between portfolios are noted in the supporting document and the guide to the SBR.

As we approach the financial year end, we will continue—in line with our usual practice—to monitor forecast outturn against budget and, wherever possible, we will seek to utilise any emerging underspends to ensure that we make optimum use of the resources available in 2019-20 and manage the necessary carry-forward to meet the additional spending commitments reflected in the budget agreement reached for 2020-21.

In line with the budget process review group's recommendations, my officials have included in the brief guide that was sent to the committee an indication of the forecast outturn position as at 31 January. That is the latest position that was available when the brief guide was prepared and gives the committee the best view of the emerging underspend position. Provisional outturn figures will be announced by the Cabinet Secretary for Finance in early June.

The brief guide to the spring budget revision prepared by my officials sets out the background to and the details of the main proposed changes. I hope that colleagues have found the guide to be helpful.

The Convener: I guess that, when you took on the role of the Minister for Public Finance and Migration, you did not expect to have to deal with such procedural, technical transfer movements—and the numbers involved are considerable. The brief guide and how that is being developed is helping us—it is giving us a bit more transparency over what is going on and a bit more understanding.

However, over the years, this committee has faced a bit of a challenge when trying to scrutinise the funding position, particularly in relation to the Scotland reserve. It has not always been easy to work out what is happening because the picture constantly moves, although I guess that that is a normal part of the process.

Annex C of the brief guide provides the most up-to-date figure on the reserve, with a forecast closing balance of £106 million. I am not as interested in the movement therein as I am in what you can tell us today about how much of that reserve funding you will utilise to deal with the potential shortfall of £550 million in 2021-22 that will come out of the income tax reconciliation process later this year. I know that that figure is a projection at this stage, but I think that it will be pretty near the mark.

Ben Macpherson: As you say, the reserve is a moving picture. There are considerations in respect of how the forecasting for that evolves. In short, the cabinet secretary will need to make a decision on the forecasting position that you mentioned as part of the 2021-22 budget process in due course.

The amount of reserve deployed in meeting future reconciliations will depend—as you would expect—on the overall funding for the 2021-22 budget. We do not yet have the United Kingdom Government spending plans for 2021-22, which await the outcome of the forthcoming UK spending review. Until we have a clearer position on that, it is difficult to be more precise.

Although about £100 million—after allowing for planned drawdown in 2020-21, as illustrated in annex C of the brief guide—is forecast as the Scotland reserve balance, that balance takes no account of any additional amounts that might emerge during the financial year.

As I alluded to in my opening statement, the cabinet secretary will need to consider the extent to which any resource borrowing may be deployed to offset the reconciliation impact. She will provide a statement to Parliament on the 2019-20 provisional outturn figures by portfolio in June, in accordance with the usual practice, which the committee will be used to. The statement will be accompanied by a breakdown of the Scotland reserve position.

The Convener: During the coming months, we might see some underspend in the budget that will be added to that Scotland reserve amount, so the figure will shift again. The committee is keen that the Government, in its medium-term financial strategy, which is due to be released in May, at least maps out a direction of travel on how it will deal with the reconciliation process. I hope that the Government will consider that point.

Ben Macpherson: I note that point, which we will certainly consider.

Donald Cameron (Highlands and Islands) (Con): Good morning, minister. I, too, want to ask about the reserve. I think that we all accept that the reserve fluctuates—you said that you expect that some additions will be made to it—and that forecasts get updated. Given that the £106 million figure is a long way below the spring budget revision forecast of, I think, £488 million, which is a decrease of about 80 per cent, and given that the amount has reduced from 2018-19 onwards, do you share my concern that the reserve has dwindled to a relatively small sum?

Ben Macpherson: The £488.3 million figure, which appears at the bottom of table 1.7a on page 8 of the supporting document, shows an interim funding position. As I mentioned in my opening statement, what is provided in annex C of the Scottish Government brief guide is the most up-to-date position. The figures in that include the planned drawdown from the budget that the Parliament has just passed for the year ahead. However, there is also the impact of the negative consequentials that the UK Government imposed unexpectedly through its supplementary estimates. I refer the committee to the letter of 11 February from Kate Forbes, which goes into more detail on that point.

Donald Cameron: To reiterate what the convener has said about reconciliations, we have a troubling issue, as we all know. With the reserve at a relatively low point of £106 million, do you understand the significant anxiety that many have about how the Scottish Government will handle the reserve going forward?

Ben Macpherson: The budgeting process is a movement between what becomes available and how we utilise underspend, and how that is rolled forward year by year.

As I said, annex C of the supporting document shows how the 2018-19 underspend is rolled forward and utilised; it also illustrates the drawdown that is being undertaken to implement the budget that the Parliament passed for 2020-21 and the negative consequentials that have had to be taken into account.

We need to go through a process of considering together those negative consequentials and the UK spending review and how we move the position forward. Scott Mackay might want to add something to that.

Scott Mackay (Scottish Government): The £106 million highlighted at the bottom of the table in annex C allows for the planned drawdown in the 2020-21 budget, but it does not yet recognise any underspend that will emerge during the year. In the normal course of events, we would expect that figure to be augmented to a degree, at least.

Donald Cameron: I appreciate that you might not be able to answer this question, but do you have any idea of the sum of that augmentation? What additional sums might you garner?

Scott Mackay: The outturn varies year to year. We are showing £101 million as the likely emerging resource underspend at this point for 2019-20. It has been higher than that in previous years. However, as you said, we cannot predict the amount with any certainty at the moment.

The Convener: I want you to clarify what has been said to ensure that I understand it correctly. Usually, there is an underspend of about £200 million. If that transpired, the reserve would increase to £306 million. However, if I recall correctly, the maximum that can be drawn down from the reserve in any one year is £350 million.

Scott Mackay: That is correct. The maximum drawdown is £250 million of resource and £100 million of capital.

10:15

The Convener: So that everyone understands the dynamic, that is not a big pot for dealing with the scale of the reconciliations.

Angela Constance (Almond Valley) (SNP): The discussion thus far has been illuminating, as it always is when sifting through the finer details about the reserve, given that it is a bit of a moveable feast. Will the minister remind us of the constraints that are built into the reserve in terms of its size, how much can be drawn down and how it can be used? There are issues in relation to how the reserve can be deployed in terms of resource and capital.

Ben Macpherson: We can work with a total of £700 million. Annually, we can use £250 million for resource and £100 million for capital. That constrains how we can use the reserve for the budgetary process. As the Scottish Government has illustrated in this year's figures, it is used to best effect for the provision of the public services that we all want to invest in and improve.

Angela Constance: Looking to the future, we all know that the fiscal framework will need to be reviewed at some point. Does the Government have any views now on what parameters it would ideally like to have at its disposal for the reserve?

Ben Macpherson: It is not for me to speak on behalf of the Cabinet Secretary for Finance at this time, although she commented in last week's stage 3 budget debate on the position of the Scottish Government as we go into the negotiations on the fiscal framework. The convener also spoke powerfully on those points in that debate. The negotiations will be extremely important for Parliament and for all our concerns for our constituents. The cabinet secretary is starting those conversations. In those early discussions, we have already asked the UK Government about the limits. That is one of the base points for taking forward those negotiations in the months ahead.

Alex Rowley (Mid Scotland and Fife) (Lab): Is the Scottish Government looking to speed up the fiscal framework negotiations and get them moving sooner rather than later, given the difficulty that the fiscal framework is causing?

Ben Macpherson: Yes—the Cabinet Secretary for Finance was clear about that in the budget debate last week. We are keen to take those negotiations forward as soon as possible.

The Convener: A joint working party including Finance and Constitution Committee officials, Social Security Committee officials and the Government is working to draw together some themes on the challenges of the fiscal framework. That will come before the committee shortly and will give us more of the detail.

Alexander Burnett (Aberdeenshire West) (Con): I have a small question on one of the additions. There is an £87 million addition to the rural services budget, which is labelled as convergence funding. It is clear that £80 million of that comes from the Whitehall transfer for convergence funding. Where does the additional £7 million come from?

Ben Macpherson: Which page is that on?

Alexander Burnett: It is on page 75.

Ben Macpherson: The additional £7 million is from central Government funding in 2019-20, which allows the funding to farmers to be brought forward and allows a saving of that amount in 2020-21.

Alexander Burnett: Thank you.

Murdo Fraser (Mid Scotland and Fife) (Con): I, too, have a question on a minor issue, on which I would like more information. Page 58 in the supporting document shows a transfer of £7.5 million from the transport infrastructure and connectivity budget to the local government budget in relation to funding for an additional investment package in the Tay cities deal. Could you give us a bit more information on what that money will be spent on?

Ben Macpherson: As you stated, the funding is for additional investment in the Tay cities deal. The transfer will enable early delivery of enabling works at the Michelin Scotland innovation parc and will help to secure private sector match funding. The project is a component of the Tay cities industrial investment programme, which is aligned with but is separate from the Tay cities deal.

The Convener: John Mason has a number of questions—

John Mason (Glasgow Shettleston) (SNP): I have four, actually.

The Convener: We will see how many he gets through.

John Mason: If we wanted more money in the reserves, we would have to cut our spending on health, local government, the police or whatever. That is the choice, is it not?

Ben Macpherson: Yes.

John Mason: Good. Thank you.

Page 11 of the supporting document deals with health and sport. Near the top of the list of proposed changes is a change of £50 million, which is described as

> “Additional resource funding for health portfolio from Scottish Government”.

Can you provide any more detail on what that is for?

Ben Macpherson: The allocation of that money follows the approach that was outlined in the Scottish Government’s medium-term financial strategy, which was published in May 2019. It will be used to support national health service boards.

John Mason: Am I right that that money is not ring fenced and is just general funding?

Ben Macpherson: Yes.

John Mason: Page 26 of the supporting document deals with enterprise, trade and investment. At the top of the list of proposed changes is the figure of £45 million, which comprises £5 million of operating expenditure and £40 million of capital expenditure. The alignment of the table might be a bit out, but that change seems to be for

> “Release of emerging/planned underspend to support priorities”.

Ben Macpherson: Of that amount, £40 million is made up of financial transactions that have been returned to the centre from the Scottish national investment bank and further underspends that have emerged as a result of delays in committing to deals because of time being taken for sufficient scrutiny and due diligence on sign-off. We are fully committed to our programme with the Scottish national investment bank: the

Government remains committed to the investment of £2 billion over 10 years to capitalise the bank. The change that Mr Mason has identified relates to the set-up—

John Mason: So, that is partly a timing issue.

Ben Macpherson: Exactly.

John Mason: That is great. Thank you.

The Convener: Neil Bibby has a question on that specific area.

Neil Bibby (West Scotland) (Lab): The £45 million is "to support priorities". What priorities will it be used for?

Ben Macpherson: I am not fully clear on that point, but I or Scott Mackay will write to you—unless Scott wants to comment now.

Scott Mackay: That money is not ring fenced for a particular purpose. It has flowed into the centre and forms part of the funding that is redistributed across the headings in the document.

Neil Bibby: The phrase "support priorities" suggests that there are priorities.

Scott Mackay: The supporting document details all the other additions that we have made, and the money to which you refer is part of the funding that supports those other additions. It is not really possible to point to a particular purpose for any single change.

John Mason: Page 85 of the supporting document deals with social security. The largest figure there is £45.9 million of capital, which is described as

"Allocation of available funding to support capital projects".

Are those information technology projects?

Ben Macpherson: It was agreed at the start of the year that a budget transfer of up to £40 million for social security would be received through budget revision in the course of the year. We have also agreed a refreshed approach to capitalisation with central finance. The overall transfer of £45.9 million should therefore be viewed in conjunction with changes to our resource programme and operating costs budgets. Together, they represent an overall £38.7 million net budget transfer in. That will support key systems development for the social security programme. The key systems that are required include social programme management and the digital portal to support the wave 2 benefits.

Alex Rowley: It took a lot longer than anticipated to bring social security powers and capital investment powers to Scotland. One reason for that was complexity, but investment was also needed to build the systems. Are we building a system for 11 benefits, or are we building one that can take on more benefits as the powers are transferred from the Department for Work and Pensions to Scotland?

Ben Macpherson: That is a question for the Cabinet Secretary for Social Security and Older People. However, I can reflect on my time on the Social Security Committee during the passage of the Social Security (Scotland) Bill. One of the complications was data, and how systems would be constructed and created to administer social security benefits, as we are determined to do, by linking with DWP data. There was a sense that we were learning from previous IT projects. Although we want to create an overall architecture, smaller IT projects are easier and are more efficient to implement. I do not want to speak on behalf of the Cabinet Secretary for Social Security and Older People. It would be more appropriate to seek detail from her.

Alex Rowley: Yes.

John Mason: You mentioned pensions and teachers in your opening remarks. I suspect that when I was on the then Finance Committee I asked this question, but I have forgotten the answer. There are quite large figures under "Technical Changes". Can you explain more? You said something about a higher pay increase. I am looking at the £408.5 million on page 108.

Ben Macpherson: The additional net resource expenditure of £594.6 million has been added to the 2019 budget. As I said in my opening statement, that is annually managed expenditure and has therefore not been reported to HM Treasury. There is no impact on other Scottish Government budgets.

The increase is due to several factors. There is £400 million of past service costs for the guaranteed minimum pension, and there is equalisation relating to full indexation of pensions in respect of members reaching state pension age after 6 April 2021. There is £200 million each for the NHS pension scheme and the teachers pension scheme, along with the higher-than-expected pay award for teachers. The McCloud and Sargeant judgment and the increase in interest rates have increased resource costs by a further £194.6 million. The current service cost for 2019-20, expressed as a percentage of that pay, has increased from what was stated in the budget for 2019-20. The increase is mainly due, as I said, to the potential higher costs of benefits accruing in the future because of the judgment. That is partly offset by the increase in the discount rate, net of consumer prices index increases.

10:30

John Mason: It sounds as if some actuaries were involved in that; it is beyond me. Is that amount a possible future liability, rather than an actual expense?

Ben Macpherson: Yes. That will not impact on cash expenditure in-year.

The Convener: John Mason had a good kick at the ball, there.

Agenda item 3 is consideration of the motion on the order. I invite the minister to move motion S5M-21135.

Motion moved,

That the Finance and Constitution Committee recommends that the Budget (Scotland) Act 2019 Amendment Regulations 2020 [draft] be approved.—[*Ben Macpherson*]

Motion agreed to.

10:30

Meeting suspended.

10:33

On resuming—

Public Services Reform (Registers of Scotland) Order 2020 [Draft]

The Convener: Agenda item 4 is consideration of the draft Public Services Reform (Registers of Scotland) Order 2020.

We will take evidence from Ben Macpherson, who is the Minister for Public Finance and Migration, Scott Mackay, who is the head of finance co-ordination, and John St Clair, who is a senior principal legal officer at the Scottish Government.

I invite the minister to make a short opening statement before we move to questions.

Ben Macpherson: In 2019, in accordance with international standards, the Office for National Statistics reclassified Registers of Scotland as part of central Government, removing its status as a separate public corporation, under which it had been operating since 1996. This followed the reclassification of HM Land Registry in England. The primary reason for the change in status of both organisations is how their fees are now classified in the UK national accounts, which is as taxes rather than as fees.

That means that the legal powers that were conferred on the keeper of the registers of Scotland in the Public Finance and Accountability (Scotland) Act 2000 and the UK national budgeting regime are no longer aligned. In particular, as a Government body, Registers of Scotland will no longer have the power to accrue reserves and deploy them over a number of financial years.

The order will enable the keeper of the registers of Scotland to pass her existing accumulated reserves into the Scottish consolidated fund, so that they are not lost to the UK consolidated fund.

Scottish ministers therefore have no choice but to make the order to ensure that Registers of Scotland operates within the HM Treasury budgeting regime and is treated appropriately in the Scottish budget in future years.

On process and timing, the order is—of course—subject to the super-affirmative process. A draft was laid in November last year and was subject to a statutory consultation period. Following consultation with Registers of Scotland and its key stakeholders, the new draft order was laid at the end of January. There were nine responses to the consultation: because the number of responses was so limited, the explanatory document gives details of each of them. None of the responses questioned the legal basis of the draft order or suggested that an order could not be made. In fact, none made any comments on the actual text of the draft order.

On timing, I thank the committee for its approval of the slightly curtailed laying period, which is usual for this type of order, and which will—if approved—allow for the process to be completed before the end of the 2019-20 financial year. That is when the derogation period, during which HM Treasury allowed an exemption from applying the budget regime to Registers of Scotland, will come to an end. Although the organisation is self-financing, the order will mean that if, at any point in the future, income does not cover planned expenditure in a financial year, that can be addressed as part of the overall Scottish budget.

I confirm that the order need have no impact on the day-to-day activities of Registers of Scotland or its delivery of services to the public. It will simply bring Registers of Scotland into line with the internal accounting and budgeting of the rest of the Scottish Administration. I look forward to the committee's questions.

The Convener: I am glad that we, and not HM Treasury, are getting the money. That will do for a starter.

In its letter, Registers of Scotland summarises the changes as

"transferring a number of risks from being wholly within the control of RoS to manage and mitigate, to being risks to be managed within the larger Scottish Government budgeting framework"

which the minister just mentioned. The letter also states that the keeper "will therefore rely on the Scottish Government to provide the funding"

for a number of pieces of work such as warranty or cover for compensation payments, or cover for operating costs should any future market downturn impact on revenue that is generated through fees. With the coronavirus, such a situation in relation to fees could well emerge. What arrangements will ensure that the Scottish Government deals with any—in those circumstances, unexpected—liability that Registers of Scotland faces?

Ben Macpherson: Under the order, there will be an arrangement whereby we will take responsibility for how we support Registers of Scotland as part of our overall responsibilities. As the committee would expect, we have been fully engaged with Registers of Scotland in advance of the order as part of the 2020-21 budget process and have—as the committee will be aware—provided funding of £12.4 million for next year. We will continue to engage with the keeper of the registers on Registers of Scotland's funding position as circumstances develop, and we will provide what is necessary to allow Registers of Scotland to continue to deliver its important functions and priorities next year and in the future.

Murdo Fraser: I will follow up on that point. When I was convener of the Economy, Energy and Tourism Committee in the previous session of Parliament, it was the lead committee on the Land Registration etc (Scotland) Bill. As part of that process, we did some scrutiny of Registers of Scotland, at which point the level of reserves that were being held became an issue. I remember discussing the matter with the relevant minister, who was Fergus Ewing. We were told that the level of reserves that were held by Registers of Scotland was in part explained—as the convener alluded to—by its income being cyclical and very dependent on the health of the property market.

The costs of the organisation are relatively stable and it employs a large number of very experienced expert legal staff, so it cannot simply reduce costs. If there were to be a sudden drop-off in the property market caused by, for example, coronavirus, and Registers of Scotland's income were to fall, it would have reserves to fall back on. It is a legitimate issue to raise: if suddenly Registers of Scotland had a big drop in income, would the Scottish Government guarantee it a protected level of income so that it would not have to look at reducing staff costs because its cushion of reserves was taken away?

Ben Macpherson: That is a very important question. I agree about the levels of service and expertise that Registers of Scotland provides. As I said, as part of the Scottish Government's budgeting process and in consultation with Registers of Scotland, we would make sure that there was a fair and appropriate arrangement for the funding that it requires, not just in relation to its costs and fluctuations in market revenue—to which Murdo Fraser referred—but in relation to priorities such as completion of the change in the land register from the register of sasines to the current modern approach. In terms of both service and priorities, the Scottish Government would make sure that appropriate funding would be provided.

Murdo Fraser: Thank you for that helpful reassurance.

The Government is clearly benefiting from an unexpected windfall of £70 million to the Scottish budget. What will you spend that bonus on?

Ben Macpherson: As I said in my opening remarks, the order is more of an accounting arrangement through which we will make sure that the rules are followed. The decision on where the resources will be applied—Scott Mackay will correct me if I am wrong—will be considered as part of the finance and budgeting process, as we have already discussed.

The Convener: Item 5 is consideration of the motion on the order. I invite the minister to move motion S5M-20852.

Motion moved,

That the Finance and Constitution Committee recommends that the Public Services Reform (Registers of Scotland) Order 2020 [draft] be approved.—[*Ben Macpherson*]

Motion agreed to.

The Convener: The committee will publish its report to Parliament in the coming days, setting out our decisions on both statutory instruments.

I thank the minister and his officials for giving evidence today.

Meeting closed at 10:42.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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