



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Finance and Public Administration Committee

**Tuesday 22 November 2022**

**Session 6**



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**FINANCE AND PUBLIC ADMINISTRATION COMMITTEE**

**30<sup>th</sup> Meeting 2022, Session 6**

**CONVENER**

\*Kenneth Gibson (Cunninghame North) (SNP)

**DEPUTY CONVENER**

Daniel Johnson (Edinburgh Southern) (Lab)

**COMMITTEE MEMBERS**

\*Ross Greer (West Scotland) (Green)

\*Douglas Lumsden (North East Scotland) (Con)

\*John Mason (Glasgow Shettleston) (SNP)

\*Liz Smith (Mid Scotland and Fife) (Con)

Michelle Thomson (Falkirk East) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Tom Arthur (Minister for Public Finance, Planning and Community Wealth)

Niall Caldwell (Scottish Government)

John Swinney (Deputy First Minister and Cabinet Secretary for Covid Recovery)

**CLERK TO THE COMMITTEE**

Joanne McNaughton

**LOCATION**

The Robert Burns Room (CR1)



# Scottish Parliament

## Finance and Public Administration Committee

Tuesday 22 November 2022

*[The Convener opened the meeting at 10:00]*

### Subordinate Legislation

#### Budget (Scotland) Act 2022 Amendment Regulations 2023 [Draft]

**The Convener (Kenneth Gibson):** Good morning and welcome to the 30th meeting in 2022 of the Finance and Public Administration Committee. We have apologies from Michelle Thomson, who is unwell, and Daniel Johnson, who is submitting amendments at another committee meeting.

Before I move to our first item of business, I thank all those who organised, supported, attended and participated in the joint taxation conference that was hosted yesterday by the Royal Society of Edinburgh. In what was a very interesting day, I know that committee members will have heard lots of ideas about proposals to inform our consideration of potential areas of future work on taxation. We will come back to consider those formally at a later date.

We will now take evidence from the Minister for Public Finance, Planning and Community Wealth on the draft Budget (Scotland) Act 2022 Amendment Regulations 2023. Mr Arthur is joined by the Scottish Government officials Niall Caldwell and Craig Maidment. I welcome our witnesses to the meeting and invite Mr Arthur to make a short opening statement.

**The Minister for Public Finance, Planning and Community Wealth (Tom Arthur):** Thank you very much, convener, and good morning to the committee.

The autumn budget revision provides the first of two opportunities to formally amend the Scottish budget for 2022-23 and contains the usual four categories of changes. The funding changes increase the budget by £691.5 million. The changes include £290 million of cost of living measures that the Cabinet Secretary for Finance and the Economy outlined as part of stage 3 of the Scottish budget in March.

The technical adjustments relate primarily to international financial reporting standard 16 adjustments. They are essentially budget neutral and do not impact the spending power of the

Scottish Government. They have a net positive impact of £106.5 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.

Whitehall transfers total £7.9 million, and 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 supporting document on the autumn budget revision and a finance update prepared by my officials provide background on the net changes.

Of the total funding that we have received, £94 million is not allocated in the budget revision. However, that funding is being held against a number of commitments embedded in our financial forecasts. The Deputy First Minister made it clear in the emergency budget review that we still face a number of budgetary challenges this year. That funding is being held as a necessary step to ensure that we can balance the inflationary pressures on our budget within the constraints that we face.

The finance update provides further detail of the effect of the EBR on our budget process and the wider fiscal context in which we have to operate.

I will conclude there, convener. I am happy to answer any questions that the committee has.

**The Convener:** That is great. Thank you very much for that opening statement.

One thing that came up when we had a wee discussion before you arrived was the fact that the autumn budget revision and the guide are not published at the same time, which causes a wee bit of difficulty. In future, could the guide be published at the same time as the papers? That would allow members to reflect on matters a lot more easily and earlier in the process.

**Tom Arthur:** I am happy to take that away, convener, and to see what we can do in that area. Indeed, if there is anything, more broadly, that the committee would like to discuss on the content of the paper, I am happy to do so. I want to ensure that we provide as much information as possible and in as timely a manner as possible.

**The Convener:** We realise that, because of the political flux that there has been at Westminster, it has perhaps not been as easy to produce the figures. Perhaps there is a bit more complexity in them than one would normally expect.

We have an explanation of the technical adjustments in our papers, but, for the record, will you tell us a wee bit more about them?

**Tom Arthur:** Certainly. As I outlined in my statement, the overwhelming majority of the £106 million is to ensure compliance with IFRS 16, but, given that it is a technical matter regarding accounting charges, I will ask Niall Caldwell whether he wants to offer any further comment.

**Niall Caldwell (Scottish Government):** The issue is mainly about leases being capitalised on to the balance sheet. We receive budget cover for all the transfers that we require through the estimate process, so it is essentially budget neutral, as the minister said. It will still be classified as capital, and there will be depreciation or non-cash ring-fenced budget for it, but, in the overall context, it is budget neutral.

**The Convener:** Minister, in your opening statement, you mentioned the additional funds that have been allocated to, for example, social justice, housing and local government. The guide to the ABR states:

“The second largest allocation (£180 million) relates to Police and Fire Pensions which has been added to the Justice and Veterans portfolio. This is a volatile demand led budget with additional budget pressure beyond the core allocation managed in year.”

That is fair enough, but it is 6 per cent of the budget. That seems like quite a lot of money not to have been anticipated. One would have thought that police and fire pensions would be an area of spending that one could anticipate fairly early on.

**Tom Arthur:** It very much is a volatile and demand-led area, and it is subject to significant change throughout the financial year. The fact that final costs are heavily dependent on the number of retirees in one financial year means that there is significant uncertainty until the end of the financial year.

Let me give a bit more information for context. Following the 2021-22 spring budget revision, when additional budget was provided, a £30 million underspend was subsequently reported at provisional outturn. That illustrates the uncertainty that we have in accurately forecasting the costs. We expect to see further volatility, with a higher than anticipated number of retirees in the current year, so further budget may be required as part of the spring budget revision to fully fund the position. The picture from previous years and that we are seeing in-year is demand led and volatile, which is why we manage it through the budget revision process.

**The Convener:** But if you know how old firefighters or police officers are, surely you will have a pretty precise idea of when they will retire, generally speaking.

**Tom Arthur:** That can depend on a number of factors and on decisions that individuals take in a particular context. As I said, the amount that is

required to meet the need is demand led. The point that I made regarding last year, when additional funding was allocated but a £30 million underspend came through, illustrates that.

**The Convener:** I found it interesting that Transport Scotland was allocated an additional £22 million of funding for free travel for under-22s. That is in paragraph 17 of the guide. However, paragraph 23 states:

“£20.7 million released from Concessionary Fares ... to reflect lower than expected demand”.

The net effect of that is a change of £1.3 million, of course, but it seems clumsy to say that you gave a department £22 million and then took £20.7 million off it. Would it not have been easier to explain the £1.3 million change?

**Tom Arthur:** As you identify from the document, the net change is £1.3 million. The additional £22 million was a targeted carry-forward from the reserve at the start of the year. With updated information, we can see that the demand is not what was originally predicted, which is why the return is taking place.

**The Convener:** Every year for many years, we have asked about the transfer from health and social care to education and skills to pay for teaching grants for nursing and midwifery students. This year, that figure is £64 million. Why do we have that transfer every year? Why is it not simply put into the education and skills budget in the first place?

**Tom Arthur:** It is a question of what policy area the fund supports and what policy area delivers it. You gave the example of £64 million for nursing and midwifery. Clearly, that contributes towards outcomes in the health portfolio, but it is delivered through the education portfolio. Another example that I am sure you will have identified is the transfer around free school meals and the provision of summer activities, which sit within the education and skills portfolio but are delivered through local government.

**The Convener:** There will always be transfers, of course, but if the money is going to be transferred every year, it seems daft. That suggests that the money is clearly in the wrong portfolio to start off with. It does not make any sense to have money allocated to a specific budget when, this time next year, we will probably be asking you the same question: why is the nursing and midwifery money not in the education and skills budget? I suspect I know what the real reason is, but can you give me a financial reason for that?

**Tom Arthur:** It provides clarity. We are discussing the autumn budget revision, but I can imagine that, if we were discussing the budget as

introduced, we would want maximum clarity. For example, were those funds to be in the education and skills portfolio when they are clearly achieving a health outcome, the question might be, “Why is that not in the health portfolio?” We want to provide as much clarity as possible. It is part of the health spend, but the transfer takes place because of how it is delivered.

**The Convener:** Right. We will have to agree to differ on that. I do not think that that is the real reason, but we shall leave it at that. If others want to explore the issue, they can.

There remain a number of significant potential budget pressures that have not yet been fully quantified, including pay agreements for key public sector staff groups that have yet to be settled. Other than pay increases, what are the potential budget pressures?

**Tom Arthur:** Clearly, there is a huge degree of volatility and uncertainty. I would highlight, for example, the Ukraine resettlement. Again, there is uncertainty about where we will land there: it could be in the region of £200 million. Given the overall set of inflationary pressures that we face and the uncertainty on where we will finally land regarding the total cost of public sector pay—more than £700 million has already been allocated to that through the EBR—there is a great degree of uncertainty. I touched on pensions earlier and the potential need to revisit that in the spring budget revision. There remains a significant amount of uncertainty in our position.

**The Convener:** I really sympathise with your position and understand how frustrating it is to have the level of uncertainty that you are having to deal with.

One thing that the presentation that we have been given does not provide is a full breakdown of the Scottish Government’s funding envelope by source, nor does it reflect the full forecast position for the remainder of the year. Why is that the case?

**Tom Arthur:** I refer the committee to annex A of the supporting document, which sets out the funding envelope and sources of funding.

**The Convener:** Can you expand on that?

**Tom Arthur:** The information is in appendix A to the guide. Appendix B sets out the capital position. We have provided an indication of the funding envelope there—we have set out the 2022-23 budget position, the confirmed changes at ABR and the revised position. Those figures include, at the foot of the table, the funds that remain unallocated for resource, capital and financial transactions.

**Niall Caldwell:** That information should be in the final two pages of the guide document that the

committee was sent. There is a line-by-line analysis.

**The Convener:** Okay. Thank you for that.

**Tom Arthur:** There is commentary as well, preceding the tables.

**The Convener:** I will ask you about one more thing that I and committee members are a bit concerned about. Normally, capital cannot be used for day-to-day resource spending. It appears from the figures that we have been provided with that savings of around £150.1 million have been made in relation to the capital budget. Is it the intention for that to be spent on resource? Normally, money from capital is not spent in that way—for example, on salaries. We have seen money go the other way, from resource to capital, but that is not something that we see very often.

**Tom Arthur:** Given the circumstances that we face, we are seeking that flexibility from the United Kingdom Government.

**The Convener:** The flexibility that you are seeking is not normally permitted. Have you had any indication of whether it will be permitted in this case?

**Tom Arthur:** We are still awaiting confirmation from the UK Government, but we are seeking that flexibility.

**The Convener:** Okay. If we look at where the £150.1 million is drawn from, we can see that there is £60.9 million from net zero, energy and transport and certain amounts from rural affairs and islands, social justice, housing and local government. In relation to the latter, there would be a £10 million reduction for housing capital projects. Given the accelerating inflation in construction, which is higher than general inflation and the retail prices index, what impact would taking £10 million from that have on the affordable housing programme?

10:15

**Tom Arthur:** Ultimately, the budget changes that we make reflect demand. You mentioned the NZET budget, where there have been reductions to the energy line. Ultimately, that is just a reflection of where demand is at present. That is impacted by a number of factors including general economic conditions and the legacy of the pandemic supply chain issues. In the case of the energy line, that money has been released back to the centre. I do not know whether Niall Caldwell want to add any specific comments on that.

**Niall Caldwell:** On the timing, the benefit of processing some of those returns of capital early was that we could ensure that the £120 million for local government capital could be included.

Generally, there is a question to do with timing and certainty about what we include in a budget revision at this stage of the year and what we do not. That is the main reason for their inclusion at this time of year.

**The Convener:** On education and skills, there is a £40 million reduction in what the document calls "Education Capital Projects". Which projects will be impacted by that?

**Tom Arthur:** I will be happy to come back to the committee with more detail on that. I do not have that in front of me now.

**Niall Caldwell:** That is one of the savings that were included as part of the EBR exercise, so it is not in the budget revision as it stands.

**The Convener:** You hope to be able to transfer £15 million from energy capital projects. When you talk about demand, do you mean that there is no demand from industry or the public? Is there a shortage of skilled workers, for example, to deliver some of those capital projects? Why is there that loss of demand? My understanding is that there is high demand for this right across the economy.

**Tom Arthur:** There can be a number of reasons but, clearly, inflationary pressures and supply chain challenges have resulted in project delivery slipping.

I should probably add that, with regard to the capital reduction of £92 million in the NZET portfolio, we have provided project development support to undertake feasibility studies and business cases to secure investment in future years and we are beginning to support a number of multiyear projects. In addition, we recently established a heat network support unit to work directly with pre-capital projects to support development ahead of capital investment, which will provide greater certainty for spend in future years. We need to consider the economic context in which we are operating, but we are taking action in year to help to address that.

**The Convener:** The figure for roads and taxis capital projects is £7.2 million. I cannot believe for a second that there is no demand for that money. I could tell you about a project in my constituency that has been delayed for two years because of governance procedures. After two years, I am still trying to find out what they are from Transport Scotland, which has been taking the fifth on it. I cannot understand why there would be a lack of demand of £7.2 million for roads and taxis capital projects.

**Tom Arthur:** There are areas where there is demand, but there are also areas where we have had to make purposeful savings to ensure that we balance the budget position in year. There are savings that are identified in the EBR as pressure

reductions, some of which may come through as savings in the spring budget revision, but we do not have the required degree of certainty at the moment to include them in the autumn budget revision.

**The Convener:** Thank you for those responses. I will open up the session to colleagues round the table.

**Ross Greer (West Scotland) (Green):** Minister, I am interested to have a bit of clarity on which of the budget revisions are presumed to be one-offs due to underspends or unforeseen circumstances and which have arisen, as in the NZET portfolio, because of lower than expected demand. Which areas of lower demand are expected to reoccur such that the new figure after the budget revision will be baselined into next year's budget instead of a return to the baseline figure that was in the budget at the start of this year?

**Tom Arthur:** As you will appreciate, we will set out our position for the next financial year at the budget, and it will be determined by a number of factors. Our commitment on net zero is absolute. That should be clear. What we have to do with the ABR is to make sure, first, that we arrive at a balanced budget position by the end of the financial year, as we are required to do, and secondly that we seek to free up resource to provide support in year. That has been part of the EBR exercise.

As the Deputy First Minister said in the September statement, some of those savings are captured in the ABR. There are £191 million of pressures identified that may follow through in the SBR. Savings that were identified in the EBR statement and publication earlier this month will, where appropriate and required, come through in the SBR. With regard to the next financial year and beyond, we will seek to be consistent with the priorities as set out in the resource spending review. We will, of course, take specific decisions at the budget.

**Ross Greer:** I recognise that the NZET reductions are not in your portfolio so you might not be able to go into the specifics. However, given that they are some of the more substantial reductions, what effect does the Government expect them to have on hitting our NZET targets for emission reductions, nature restoration and so on and, separately, our child poverty targets as they relate to home energy efficiency?

**Tom Arthur:** Those are important points. I do not want to repeat myself, but the two points that I made are relevant here. First, as I said, the reductions in the area ultimately reflect demand. Secondly, we are taking action in year to support the delivery of multiyear projects to help to address that. Delivering on those ambitions and

what those lines seek to deliver is vital for NZET. What we have to do—and what we are doing—is to ensure that we support the demand so that the funds are drawn down in future years to enable the outcomes that we seek.

**Ross Greer:** I have a question that relates to the point about whether the savings will recur—that is, whether the baseline now includes them, rather than being the figure that we started the financial year with. Where the savings are being made in order to deliver what is required for public sector pay, we can presume that public sector pay increases are a recurring cost and not a one-off for this year. We will therefore need to find that money from somewhere in future years, although it will not necessarily need to come from the specific areas that it came from this year.

What instructions have been issued to ministers and civil service directors about evaluating the impact of those savings and whether it will be sensible to baseline the new figure in from next year because the potential negative consequences are manageable in some way?

**Tom Arthur:** As part of the process of setting the budget for next year, we will consider what the demand has been for demand-led schemes in previous years. Demand-led schemes are always one of the challenges that we have in the budget, particularly as we get towards the year end. It can be a challenge if there is less demand than was forecast, because there is an effect on the end-of-year position if underspends emerge. It can also be a challenge if demand exceeds what was forecast. We reflect on that as part of the budget-setting process and we consider what the effective level should be for the following year.

With regard to what is identified in the document, I note that the capital savings have allowed the provision of £120 million of capital to local government to support pay deals. That is for this year and next year, and it will then be wound in as revenue.

**Liz Smith (Mid Scotland and Fife) (Con):** Good morning. Can I bring you back to the question that the convener asked about the transfer from capital to resource budgets? As far as I am concerned, for most of the time that I have been in this Parliament, such transfers have not been possible. There are fiscal rules that are directed at ensuring that they do not take place. Can you confirm that that rule has been eased or changed because of the extenuating circumstances that you set out?

**Tom Arthur:** Are you asking specifically about Scottish Government spend?

**Liz Smith:** Yes. The fiscal discipline, if you like, has always been that capital budgets may be transferred to capital budgets but not to resource

budgets. Money can go the other way but, generally speaking, it has not been the case that capital can be used for resource spending, which is what seems to be happening now. Can you confirm whether the easing of that fiscal discipline is happening because of the extenuating circumstances that you outlined or whether you are looking to ease the rules on that?

**Tom Arthur:** We have sought to engage with the UK Government on the ability to reclassify capital to resource because of the circumstances, but we have not yet had agreement from the UK Government on that.

**Liz Smith:** Is that part of the negotiations for the new fiscal framework that you are looking at?

**Tom Arthur:** It is specific to our in-year situation. As you will appreciate, no new in-year funding was announced in the chancellor's autumn statement, so we still face a significant challenge in managing the various pressures that we have discussed. We still have a third of the financial year to run, so we are seeking flexibility whereby we would be able to reclassify capital as resource in order to support the in-year position. Do you want to add anything, Niall?

**Niall Caldwell:** Was the question about local government?

**Liz Smith:** No. Well, in effect, it affects both areas, because Scottish Government funds go to local government as well. The issue that I am asking about is this. If there is to be an easing of the fiscal discipline about the transfer of money from capital to resource budgets, is that something that reflects the current extenuating circumstances—you say that you have engaged with the UK Government because of the difficulties that you face—or do you presume that there could be a change to that fiscal discipline whereby it would be possible on a longer term basis to transfer from capital to resource budgets?

**Tom Arthur:** The ask reflects the current set of circumstances that we face. We have to operate within the decisions and processes that are set out by the UK Government and HM Treasury. As for longer-term considerations, we obviously want maximum flexibility across all aspects of our budget, but that will be subject to negotiation through the fiscal framework. My reference to seeking the ability to reclassify capital as resource is specific to this financial year and the circumstances that we find ourselves in.

**Liz Smith:** From the perspective of the fiscal framework negotiations, do you have any updates on the timescales for when the independent report is due? At what stage are the Scottish Government's negotiations with the UK Government?

**Tom Arthur:** I do not have an update at this stage. As you will appreciate, there has been a lot of flux with regard to the UK Government. When we are in a position to give an update, I will be happy to share that.

**Liz Smith:** Do you have an update on the timing of the independent report?

**Tom Arthur:** I do not have that. If there is an update to give, I will be happy to write to the committee.

**Liz Smith:** It would be helpful if we could have that.

On a slightly different theme, the Scottish Government's programme for government sets out three distinctive principles around which government policy is devised. One of those is the move to net zero and justice in the green economy. If that is one of the defining principles, it seems a bit odd that there has been such a substantial downturn in the net zero budget. How does that fit with the Scottish Government's programme for government, when that was very much one of the three identified principles? Why has that happened?

Secondly, if there are to be changes to the principles of Government policy, can we hear a little more about those? I know that you cannot go through every change—it would be unrealistic to ask you to do that—but are there specific criteria on which you are examining government spending in relation to budget spend?

10:30

**Tom Arthur:** I want to be absolutely clear: net zero is a key priority of the Government; it is a moral imperative. We are taking forward a range of actions in the broader programme for government. Clearly, in the specific case that you allude to—NZET—being able to decarbonise how we heat our buildings will be a key aspect. As I set out, we have initiated work to help support the pipeline of projects to help address the underdemand that there has been for those funds. It is important to recognise that within the broader context of work that is under way. For example, a few weeks ago—wearing another hat—I published our revised national planning framework, which has been warmly welcomed by the Scottish renewable sector as a remarkable step forward. It is important to recognise the particular fiscal and economic circumstances that we are in, but that does not detract from the imperative and priority of meeting our net zero obligations.

**Liz Smith:** Except that the figures here suggest otherwise, because it is such a big downturn. It is difficult, I would have thought, to convince people that the Scottish Government's priorities, which

include that strong move to net zero, are being adhered to in this budget.

**Tom Arthur:** The allocation of the Scottish budget, earlier this year, demonstrates that commitment, but the issue here has been demand. The issue has not been the willingness of the Government to supply the resource; it has been the demand that has led to us being in a position to reallocate that funding to support the in-year position. However, I recognise the point that you make, and that is why we are taking the action that we are taking to address the shortfall in demand. That is why the work that I outlined to support project development is taking place.

**Liz Smith:** I have one final point. Obviously, the committee has talked a lot about the national performance framework. How many of the budget decisions that you are taking adhere to its principles?

**Tom Arthur:** If we consider the measures that we are taking to support public sector pay, we see that they have a number of outcomes that are consistent with the NPF and the sustainable development goals that the NPF reflects. Our support for measures to ensure that we meet our obligations on reducing child poverty, whether that be through the expansion of provision for free school meals or holiday meal entitlement or the £47 million for the whole family fund, is also reflected in there. A range of activities are taking place that are consistent with that. We find ourselves in exceptionally challenging economic and fiscal circumstances, but, in taking the decisions that we have taken, we have sought to be consistent with our values and principles, as articulated in the national performance framework. The ABR demonstrates a consistency with that approach.

**John Mason (Glasgow Shettleston) (SNP):** I go back to the technical adjustments and the IFRS 16 adjustments. I understand that operating leases did not used to be on the balance sheet and now will be as both an asset and a liability, so the net effect is nil. Does that have an impact on our borrowing limit of £3 billion?

**Tom Arthur:** No.

**John Mason:** It does not. Will it in the future?

**Tom Arthur:** No.

**John Mason:** So, there is no effect, and I am correct in saying that that issue is, effectively, looked after by the Treasury at Westminster and does not impact on us at all, as it stands.

**Tom Arthur:** As it stands.

**John Mason:** Okay, that is nice and clear. That is fine.

**The Convener:** Never ask closed questions, John.

**John Mason:** I am happy to ask a simple question and get a simple answer. That is commendable.

Paragraph 45 of the guide talks about the emergency budget review:

“While the amounts outlined in the letter are savings based on the in-year budget monitoring position, these do not necessarily correspond to a budget being formally surrendered as part of a gross funding movement.”

I am struggling with the phrase “budget being formally surrendered” and what that would mean. It goes on:

“This is because these savings may be against forecast pressures”

that

“are being transferred internally”.

Again, I am not sure that I understand what “forecast pressures” that are “being transferred internally” means.

**Tom Arthur:** I am not sure whether you have finished your question, Mr Mason.

**John Mason:** I will stop there.

**Tom Arthur:** I recognise that it is not entirely possible to look at the savings presented in the September and November EBR documentation and read across directly to the ABR.

The savings highlighted include movements and pressures that are present in the in-year monitoring position—for example, demand-led budget expectations—that have not had budget formally allocated to them. The intention of the analysis that we provided in the guide was to highlight where the EBR documents can be read across and where there are differences. As I said earlier, some of those pressure reductions will manifest themselves as savings and be identified through the SBR, but there just is not the degree of certainty currently to present them in the ABR.

**John Mason:** Right. Some of them are savings that would have been made anyway, so the EBR, effectively, does not impact on that area.

**Tom Arthur:** Unfunded pressures have emerged that were not present when the budget was passed. Part of the exercise is identifying and reducing. As I said, there are two aims through the EBR process. One is to identify resource and provide additional support in the context of the cost of living crisis; and the other is to ensure that we achieve a balanced budget position at the close of the financial year. I appreciate that this is a complex picture. There will be elements of the savings identified that are not captured in the ABR but will be captured in the SBR.

Niall Caldwell might want to add to that.

**Niall Caldwell:** One table a bit further down in the guide breaks down the entire list of items, totalling £560 million, into three categories. There are funding changes; there are items that were included as a saving in the autumn budget revision; and there are the pressure reductions. The best example of surrender of budget is concessionary travel. You will see that £20.7 million is included in the autumn budget revision. A further pressure that was identified earlier was not in the budget, but, given that demand has fallen for that, we do not expect that to crystallise either. The total saving from our forecast position is the two added together—£37.6 million— but the budget that is surrendered is only £20.7 million.

**John Mason:** Right. I am still toiling a wee bit, but, anyway, I will keep going. That £20.7 million is part of a total of £223.9 million that is included as savings in the ABR at the bottom of that table. After that, paragraph 51 states that there is a balance of £191.5 million. What is the difference between those two columns—the one that shows a total of £223.9 million and the one that shows a total of £191.5 million?

**Tom Arthur:** It is with regard to what is identified in the ABR and what is identified as an unfunded pressure.

**John Mason:** Okay. That is the difference: the total is part of the emergency budget review, but some of it—£223.9 million—is in this autumn budget review. Is that right?

**Tom Arthur:** Yes.

**John Mason:** And we are so unsure about the £191.5 million that we cannot put it in at the moment.

**Tom Arthur:** As I say, those are pressure reductions, and some of those may materialise as savings through the SBR.

**John Mason:** Okay. Other colleagues may want to come in.

**Niall Caldwell:** The best way of saying it is that, if it was not in the budget in the first place, you do not need to change it.

**John Mason:** Right, okay.

**Niall Caldwell:** However, it was in our forecast position at an earlier stage in the year. The point that we are trying to make in the guide is that there are some components in that column of £191.5 million that might have an impact on the spring budget revision. All of those pressures were in our forecast position, so, from our budget management, it is a saving.

**John Mason:** Okay. There is a degree of uncertainty around that column, and it could be

that a department that looks like it is overspending manages to catch up over the next few months. That would be good news, I guess.

Paragraph 53 says:

“The EBR process identified approximately £615 million of additional options for spending reductions”.

So, those are not definite. That suggests that there is a degree of uncertainty around that figure.

**Tom Arthur:** Paragraph 53 addresses the figure of £615 million. The information is set out below. There are clear lines. There is £400 million that stays within health and social care, to support the fair pay offer; there is the £33 million of resource saving; and there is the £180 million of capital and financial transaction reductions to support the wider financial position. Again, some of that might be ultimately reflected in the SBR, where required. Only a very small amount is reflected in the ABR.

**John Mason:** Right. The final area that I wanted to ask about was the question of the spillover dispute with the UK Government. I know that that is a debate that has been going on for some time. I think that we have a figure of £375 million now: is that what the Scottish Government was expecting. Is it more or less?

**Tom Arthur:** There had been anticipation of £400 million, but £375 million has been decided this year in engagement through the fiscal framework review.

**Niall Caldwell:** You might remember that there was a rough assumption in the budget of a total of £620 million of other income. Within that, we had a rough estimate internally of £400 million, but that was on the basis that the dispute would conclude in a timescale up to and including the end of 2022-23. The basis of the calculation was that we would go to the end of 2021-22, with the current year and future years as part of the fiscal framework review. That is why the figure was £375 million.

**John Mason:** That was a good estimate, so that is good.

Looking at the current year—2022-23—and the £25 million or whatever it might be, given what Liz Smith has already asked about with regard to how we are a bit uncertain about the timing of the framework review, I am a bit concerned that that is involving the current year’s budget. Presumably, the uncertainty about that figure causes you quite a lot of uncertainty about what you can do this year. I do not know whether there are other figures elsewhere that will be backdated to 1 April, depending on when the spending review is. We might not even know that until next year.

**Tom Arthur:** There is much in the engagement with the UK Government that causes uncertainty around our public finances, as I am sure that you

will appreciate. I will draw your attention to paragraph 71, which says:

“Whilst this is a complicated picture, the full “Other Income” funding assumptions have been met, and surpassed by £324 million when the borrowing cost adjustment is reflected in full.”

I hope that that provides more clarity.

**John Mason:** I am not sure that it does. I was not going to ask you about that paragraph, but now you have raised it, I will. Can we say that the £25 million is small enough in the scale of things to mean that we can just cope with that? We are looking at other figures, and I do not know whether the £25 million is in the £324 million or whether the £324 million is different.

**Tom Arthur:** It was just on what our position is now given what we had anticipated with regard to other income as identified in the budget document published last December.

**John Mason:** Right. I remember that you made an estimate of different things, including this, and, actually, it is turning out better. So, this year, we do not need to worry too much about when the fiscal framework review concludes because we are basically okay for this year. Is that a fair summary?

**Tom Arthur:** We are, of course—

**John Mason:** I know that we have problems this year, but we are not depending on the fiscal review to fix this year’s budget.

**Tom Arthur:** We are not depending on the fiscal framework review to fix this year’s budget, but I am not going to suggest in any way that this is not an issue that needs to be addressed, which will be done through the fiscal framework.

**John Mason:** Okay, that is a good, clear answer.

**The Convener:** Liz Smith has a supplementary.

**Liz Smith:** On a minor point of clarification, in answer to Mr Mason’s first question on the difference between the two columns, you said—if I heard you correctly—that the second figure was money that you thought might have to be used for the £195 million, I think it was.

10:45

**Tom Arthur:** The £191 million.

**Liz Smith:** Yes, the £191 million.

**Tom Arthur:** That is from our internal monitoring of budget pressures. Are you talking about the “Pressure reductions” column?

**Liz Smith:** Yes. On what criteria has that been based? What have you used to make that estimate?

**Tom Arthur:** There are a number of things that have led to the previously unfunded pressures that we have discussed already. I will ask Niall Caldwell to say a bit more.

**Liz Smith:** My question is about how you came to the £191 million figure rather than anything else.

**Niall Caldwell:** It came from looking across all the lines. The £191 million was not a target figure in and of itself; the £560 million was the figure that was included in the letter that the committee received from the Deputy First Minister on 7 September. In the table, we are just itemising it on the basis of how we look at it from a budget monitoring perspective. There are the items that are included in the autumn budget revision, and then there are the £191 million of items that are not in it. However, they emerged in our budget monitoring forecasts and because steps have been taken or because demand has reduced, they are effectively a saving.

**Liz Smith:** Has the demand for the money reduced?

**Niall Caldwell:** In the case of the concessionary travel scheme, demand itself has reduced, which means that the pressure on that budget has reduced, too.

**Liz Smith:** Convener, it would be helpful if we had a little more detail about some of these things.

**The Convener:** What specific detail would you like, Liz?

**Liz Smith:** Well, you just gave a good example. In the transport budget, specific changes have been made that you had thought might be included but which did not have to be. It would be helpful to know what the other ones were.

**The Convener:** Okay. Maybe Mr Caldwell can provide those just now.

**Niall Caldwell:** They are all listed in the document.

**Liz Smith:** Where are they exactly?

**Niall Caldwell:** There is a table just after paragraph 50 that details them all.

**Tom Arthur:** It goes through them line by line by portfolio.

**Liz Smith:** Right, and that comes to the total of £191 million—

**Niall Caldwell:** Yes.

**Liz Smith:** —that you thought might have to be used but which has not been. Okay—I see the arithmetical calculation. I am just interested in why some of the figures are what they are, but I will leave that for now.

**Douglas Lumsden (North East Scotland) (Con):** I am confused by the figures, too, and I will ask one more question about them. I note, for example, that in the line entitled “Employability”, there is a pressure reduction of £53 million. Where did that £53 million appear at the start of the year? Where was that money budgeted?

**Tom Arthur:** I am sorry—what line are you referring to?

**Douglas Lumsden:** I am looking at the line entitled “Employability”, which is about halfway down, under the “Finance and Economy” heading. That £53 million figure is one of the big ones; in fact, it is the biggest one.

**Tom Arthur:** I cannot speak to each individual line; I do not have any more detail on that.

**Douglas Lumsden:** I picked that just as an example, minister. Was that money in the employability budget at the start of the year?

**Tom Arthur:** No. As I have said, these are pressures that emerge through our internal monitoring, and it is those forecast pressures that we have sought to reduce.

**Douglas Lumsden:** But where was that £53 million at the start of the year? Was there some biscuit tin with £191 million in it that has now been raided? I am struggling to understand this, because it seems to be a saving from an amount that had not been allocated in the first place.

**Tom Arthur:** The savings that have been specifically identified as being reallocated have been included in the ABR. Savings currently identified as pressure reductions might translate into savings that will emerge in the SBR.

**Douglas Lumsden:** But where was that pressure going to be funded from in the first place?

**Niall Caldwell:** It might help to think of it this way. The Scottish budget is laid in December, and when we do the forecasts of the financial position and all the pressures, potential savings and changes in demand, the picture that emerges can look quite different from the budget itself, so we have to manage that position in year. Pressure reductions arise where forecasts have changed from when the budget was laid in December, and you have just identified one of the bigger ones.

**Douglas Lumsden:** Was there a contingency of £191 million that was eaten into?

**Niall Caldwell:** There is no specific contingency pot of £191 million.

**Tom Arthur:** We set the budget at the start of the year, but the fact is that circumstances can change and pressures can emerge on our spend side. The flipside of that is the uncertainty that we

always face regarding how much money we will have available, because we do not get a settled position on what we receive from the UK Government until very close to the end of the financial year through the supplementary estimates process. There is always uncertainty. I appreciate that, when we pass a budget in Parliament, it can look as if things are certain, but pressures always emerge due to changes in circumstances, particularly with demand-led schemes. We also do not have certainty on the funding that we receive from the UK Government until much closer to the end of the financial year.

**Douglas Lumsden:** Minister, was it assumed that this £191 million would be covered by extra funding that perhaps has not come through, which means that that figure has to come back down?

**Tom Arthur:** This reflects the emergence of pressures that have developed in year, and work has been done to reduce them.

**Douglas Lumsden:** Yes, but I am struggling to work out where that £191 million was at the start of the year.

**Niall Caldwell:** There was no £191 million at the start of the year for funding those pressures. Steps had to be taken or, where demand reduced, the pressures could be brought down. There is no line that the £53 million or the £191 million comes from directly.

**Douglas Lumsden:** Okay. I will move on.

As I understand it, you are seeking more flexibility from the UK Government to convert capital to revenue. When you were answering a previous question, you were about to mention local government. If you get that flexibility from the UK Government, will you do the same for local government?

**Tom Arthur:** As far as flexibility towards local government is concerned, that forms part of the process of supporting public sector pay. As you will be aware, £120 million of capital funding was provided to local government to fund capital expenditure and, ultimately, that funding is deployed at councils' discretion. The capital grant accounting flexibilities reflected in the statutory guidance permit local authorities to replace existing revenue reserves that they have allocated to capital investment with the capital grant in the context, as I have said, of supporting public sector pay. The new capital grant will fund the planned capital expenditure that would have been met from earmarked revenue reserves, enabling the release of those revenue reserves to meet the pay award.

Statutory guidance is required to address a restriction that requires a transfer of capital grant to a specific statutory reserve within local authority accounts. The relaxation of that restriction widens

the permitted use of the grant to meet the principal element of the loan repayments, which are capital in nature.

That was with regard to the £120 million of capital funding that was confirmed for local government. I think that that was set out in the letter of 7 September to the committee, and it is how that capital is being used to support local government pay offers.

**Douglas Lumsden:** It is almost as if local authorities have to use their reserves and the capital grant will then be converted to top up the reserves again, in some strange sort of way.

**Tom Arthur:** The point is that revenue can be used to pay for capital, with revenue reserves meeting capital expenditure. That then frees up the revenue reserve, which can then be used.

**Douglas Lumsden:** But is that flexibility just for pay? Given that the cost of meals, for example, has increased, is there flexibility to convert capital into revenue to support those areas?

**Tom Arthur:** This is specifically for support for local government pay.

**Douglas Lumsden:** So it is for nothing else, then.

**Niall Caldwell:** It is my understanding that that is what has been agreed for this year, but we can double-check that.

**Douglas Lumsden:** Moving on, I note that paragraph 19 mentions additional funding of £7 million for the Cairngorms funicular railway and an extra £6.7 million to Ferguson Marine for vessels 801 and 802. Have those sums already been announced, or are they in addition to anything that had already been put aside for those two projects?

**Tom Arthur:** The ABR is retrospective in nature, so it is just confirming the transfer of that funding.

**Douglas Lumsden:** So the figures have already been announced, which means that the funding for those projects has not increased by those amounts.

**Tom Arthur:** What is there is consistent with previous announcements.

**Douglas Lumsden:** Thank you for that clarification.

My next question is on the reaching 100 per cent—R100—project. Obviously there will have been some funding changes in that respect, given the £16 million capital saving on digital projects. What impact will that have on the R100 project? Will it delay the project further?

**Tom Arthur:** The projected timescales were rephased following issues that emerged through

the pandemic and which impacted on timing. The recapitalising that you have referred to reflects that longer timescale.

**Douglas Lumsden:** How far is it going to be pushed out?

**Tom Arthur:** I do not have the exact timescale in front of me, but that is why the capital has become available.

**Douglas Lumsden:** My next question is on paragraph 26, which mentions £9.5 million of savings from agriculture and rural economy. Do you have any idea what impact that will have on our rural population? What was the money for, specifically?

**Tom Arthur:** Is that from Scottish rural development programme funding?

**Douglas Lumsden:** It is in paragraph 26.

**Tom Arthur:** The guidance states that that is just a combination of revised forecasts and modifications in the Scottish rural development programme.

**Douglas Lumsden:** So we do not know specifically what the money would have been used for and what impact the saving will have.

**Tom Arthur:** It is a revised forecast, specifically within that line.

**Douglas Lumsden:** There is nothing specific, that you are aware of, that it will affect.

**Tom Arthur:** I cannot provide you directly with information about the specific implications and how that decision has been arrived at. If you would like me to follow up on that, I will be happy to do so.

**Douglas Lumsden:** That would be good.

My last question is on paragraph 28, which concerns a Whitehall transfer of £6.5 million from the Money Advice Service. Can you give me a bit more detail on that, please?

**Tom Arthur:** That money is allocated for the debt advice levy in the social justice line.

**Douglas Lumsden:** Will it be used for money advice services?

**Tom Arthur:** Yes. That is identified in the supporting document.

**Douglas Lumsden:** Great. Thank you.

I want to go back on one last point, on energy grants. You said that they are a key priority and commitment. How can we ensure that take-up is better in future years? It is great to announce a big pot of cash, but we are often critical of the UK Government for not increasing uptake of benefits. What are you doing to get greater uptake so that

we do not have an underspend of almost £92 million?

**Tom Arthur:** That is a fair question. I will touch on points that I made earlier. We have provided project development support to undertake feasibility studies and develop business cases to secure investment in future years. We will support a number of multiyear projects. In addition, we have recently established a heat network support unit to work directly with pre-capital projects to support development ahead of capital investment. The intention is that that will provide greater certainty for future years.

**Douglas Lumsden:** Are private sector and local authority partners well aware of what is available?

**Tom Arthur:** We will certainly endeavour to achieve that. I have outlined the action that we are taking, but obviously we want to see those budgets being fully deployed and utilised. We have an important role to play in delivering on net zero obligations, so there is always a process of learning to ensure that we maximise awareness and uptake. It is also important to recognise that, beyond making money available and Government efforts to increase awareness and uptake, prevailing economic conditions can and do have an impact, whether they be inflationary pressures, supply chain issues or skills shortages, which all Governments are wrestling with.

I assure the committee that we are absolutely determined and are focused on ensuring that we meet our net zero obligations. I am happy to reflect on the points that the member has raised.

11:00

**Douglas Lumsden:** What will that do to your targets? Will it delay your targets, or are you looking to increase investment in future years?

**Tom Arthur:** We have absolutely committed to a target of net zero by 2045. As I touched on earlier, notwithstanding the work that we will do to ensure greater uptake of the funding that will be available in future years, which I have already outlined, it is important to recognise where this sits within the broader work that the Government undertakes across a range of areas to support us in reaching the targets.

**Douglas Lumsden:** I struggle to understand how we can reach the target when there has been such a huge underspend, unless we increase spending going forward. If, as you said, there are budgetary pressures in future years, will the target be pushed back again?

**Tom Arthur:** Net zero is a clear priority and focus of the Government. The commitment will be matched with action through funding from other areas across Government. This year, we find

ourselves in a situation in which there has been lower demand than was forecast; I have set out the action that the Government is taking to support greater uptake of the funds in future years. Clearly, there will be a process of continued learning about how we can ensure that the funds are utilised to the fullest extent. I note that we are facing exceptionally challenging economic circumstances that, of course, impact on public finances, and will impact on the decisions of individual households and businesses, as well.

**Douglas Lumsden:** Do you accept the criticism that, because net zero was your key priority and your number 1 commitment, you should do everything possible to make sure that the money was spent to make sure that you meet your targets?

**Tom Arthur:** We want that resource to be deployed in the most effective and impactful way. Ultimately, however, the scheme is demand-led, so the key issue that has been addressed is the shortfall in demand. I accept and recognise that there has been a shortfall in demand, which is why, as I have set out, the Government has taken action to address it. I am sure that that Parliament and the lead committee—the Net Zero, Energy and Transport Committee—will take a keen interest in that, because it is clearly in all our interests to ensure that resource that is made available to support the transition to net zero is fully utilised. That is something on which we can learn from the experience of this year, and we are doing so through the action that we are taking to support greater uptake.

**Douglas Lumsden:** Thanks, minister, and thanks, convener.

**The Convener:** Thank you very much. Your final question was about 10 questions, but never mind. I will cover just one more area. Of course, that could mean any number of areas, if I follow Douglas's example.

You mentioned the importance of raising awareness and uptake of demand-led schemes. My understanding is that the budget for employability was initially £82 million for the year. It has been reduced by £53 million to £29 million, which is a reduction by almost two thirds. One must think that it seems like an odd time to reduce the employability budget. Forecasting of demand seems to me to be wildly inaccurate, but you can correct me if the figures are wrong. Since the pandemic, the number of people who are economically inactive in the United Kingdom has grown by 600,000; obviously, a fair number of those people are in Scotland. I would have thought that, when the budget was decided, programmes would have been planned a long time in advance, because they are important if we are to ensure that we reduce the number of people who are

economically inactive so that they become more productive members of society. Obviously productivity, economic output and growth are stagnating, as we all know.

**Tom Arthur:** I think that the figure that you highlighted was for the United Kingdom as a whole. That speaks to the scale of the issue that you raise, to the fact that it is not a Scotland-specific phenomenon and to its perhaps not being directly related to availability of support. Clearly, as a consequence of the pandemic and having reflected on that experience, people will have made different decisions about, for example, their life choices. All Governments are engaged in addressing economic inactivity.

I touched on the fact that, throughout the emergency budget review process and the ABR process, which reflects some of that, we have been focused on ensuring that we provide support in the here and now directly to those who most need it. That is being done in the context of challenging fiscal circumstances and the limitations of the fiscal framework within which we operate.

The other broad point that I would make—it is one that the convener recognised—is that, notwithstanding the level of economic inactivity, we are experiencing an incredibly tight labour market. I accept that some early evidence suggests that that is changing, but one of our challenges is that there are labour shortages in a range of sectors. That, again, is part of the broader circumstances in which we find ourselves.

**The Convener:** Yes, but we have 100,000 or so people who are unemployed, quite apart from counting economically inactive people, who, in areas such as mine, make up more than 30 per cent of the population. It seems to be a bit odd that employability support, which is designed to get people back into work, has been reduced.

My point about the autumn budget revision is that, if what you say is true, it looks as though you wildly overestimated demand by some 200 per cent. If £29 million is sufficient to address the issue, why was £82 million forecast? That is a huge difference. If the ABR figure had been £30 million, £33 million, £35 million or £40 million, I could understand it, but that is such a huge difference. How much was spent on employability in previous years? One would think that the amount would remain fairly level. It is odd that the budget seems to be wildly out of kilter with the initial estimate.

**Tom Arthur:** I acknowledge that there was interest in that budget line on 7 September, when the EBR statement was made. A number of factors are at play. One is what demand has been. We must also go back to the two key principles

that underpin the EBR exercise—much of which is reflected in the ABR—which are to ensure that we balance our budget in-year and, where possible, that we redirect support to respond to the immediate cost crisis that individuals and households face. That has necessitated decisions about how we should reprioritise certain budget lines. That has been reflected throughout the EBR and the ABR.

**The Convener:** I will not press the matter further. I thank you for the responses that you and your officials have given us today.

Agenda item 2 is formal consideration of the motion on the instrument. Do members have any further comments?

**Members indicated disagreement.**

*Motion moved,*

That the Finance and Public Administration Committee recommends that the Budget (Scotland) Act 2022 Amendment Regulations 2023 [draft] be approved.—[Tom Arthur]

*Motion agreed to.*

**The Convener:** I thank Mr Arthur and his officials for their evidence. We will publish, in due course, a short report to Parliament setting out our decision on the regulations.

As the Deputy First Minister is unable to arrive before 11:30, we will go into private session to go through item 4 and make more efficient use of committee time.

11:09

*Meeting suspended until 11:20 and continued in private thereafter until 11:30.*

11:30

*Meeting continued in public.*

## **Scottish Government's Continuous Improvement Programme and Updated Complaints Policy**

**The Convener:** Item 3 is consideration of evidence on the Scottish Government's continuous improvement programme and its updated complaints policy. On Friday, members received a letter from the Deputy First Minister containing additional information to inform today's discussion. The letter and our meeting papers are available on the committee's web pages.

We will take evidence from John Swinney, Deputy First Minister and Cabinet Secretary for Covid Recovery. Mr Swinney is supported today by Ian Mitchell and Ashleigh Gray, who are Scottish Government officials. I welcome our witnesses to the meeting and invite Mr Swinney to make a short opening statement.

**The Deputy First Minister and Cabinet Secretary for Covid Recovery (John Swinney):** I am grateful for the opportunity to give evidence to the committee on the progress of the procedure for handling complaints by civil servants about a current or former minister's behaviour and the continuous improvement programme to promote the culture and behaviours that we want to see in the Scottish Government.

When I appeared before the committee on this subject in April, the procedure had been operational from 24 February, following a period of wide engagement with Scottish Government staff, trade unions and the committee. The procedure is founded on a grievance process that has to balance employment law with public law and is consistent with the Advisory, Conciliation and Arbitration Service codes and guidance. Since it is a grievance procedure for staff, it rightly emphasises the need for privacy and confidentiality, with outcomes restricted to only those who are closely involved.

As the First Minister set out in Parliament, and as I have said in correspondence to the committee, given the legitimate public interest issues that are at play, it is appropriate for us to balance the expectations of confidentiality with the public role of a minister if a complaint is made about them. We have been working to make proposals to change the procedure and the Scottish ministerial code to allow for greater transparency in the reporting of the subject of a complaint. I see that as a natural development of the procedure.

Having trust and confidence in the process is fundamental to getting people who feel that they have a legitimate complaint to come forward. It is important for me to set out that the public disclosure of the outcome would not affect the confidentiality of the process with respect to the complainant or others who are involved in the case, such as witnesses. I cannot stress that point strongly enough. On the confidence of ministers, they should be assured that the process will be fair and that expectations will be set out and clearly communicated.

Therefore, after careful consideration, we propose to update the procedure and the Scottish ministerial code to reflect that, after the conclusion of an investigation, including any appeal, the name of the minister who is the subject of a complaint will be publicly disclosed as well as the outcome of the complaint. In addition, a redacted decision report for upheld or partially upheld cases will be published. Complaints that are not upheld are a different scenario, and it is proposed that more limited reporting would be fair. As such, the minister's name and the outcome will be published for a period of six months. Changes will not be made retrospectively to investigations that have already been completed.

Under the changes that I am discussing with the committee today, the publication of the outcomes of future complaints about former ministers will be reported in the same way as complaints about current ministers. On a six-monthly basis, we will proactively report on the Scottish Government website the number of cases that are under investigation and any that concluded in the previous period. The proposals mean that ministers past and present will work to a more transparent set of reporting principles for upholding standards of behaviour in public life. We will publish those figures for the first time in December after a short period of reflection on the changes with the committee, staff, ministers and trade unions.

We have worked in tandem with our trade unions and staff and taken soundings and advice from others with experience in complaints handling. Should there be complaints in the future, in publicly reporting the information that I am setting out today, I believe that we are striking the right balance between the public interest and maintaining the privacy and confidentiality of the complainant. I look forward to discussing the updates with the committee.

In addition to the updates to the procedure, I am pleased that the continuous improvement programme has successfully completed the activity that was scheduled for the end of each quarter. A programme update was submitted to the committee at the end of July, and another one

will be completed to reflect the activity scheduled for the end of December. The programme has made good progress. The measures of success have been identified from the Scottish Government's people survey and will be supplemented by the engagement that the propriety and ethics directorate has started throughout the organisation.

The measures attempt to assess the degree to which the continuous improvement programme has contributed to an improved culture of openness and inclusion in the workplace. It is a workplace where bullying and harassment is not tolerated and where early intervention and mediation continue to have a key role in addressing the majority of issues that arise before they become problematic. However, it is also a workplace where—if needed—our staff feel able and willing to speak out against unacceptable behaviours and understand and have confidence in the processes that are in place.

I look forward to discussing the programme with the committee.

**The Convener:** Thank you. Initially, I will touch on the comments that you have made in your opening statement. You said that there is a need for privacy and confidentiality and that the process has to be fair to both ministers and complainants, and you spoke of the importance of striking the right balance. To a large extent, that seems to be the case with regard to ministers when a minister is found against. However, I am astonished to hear that, if complaints are not upheld, the minister will still be named and the information will be published for a fixed period of six months—that is nonsense, of course, because it will be on social media for ever. How is that fair to someone? If a complaint is made about someone and it is not upheld, why should the person be named? The complainant will not be named. How is that fair to both sides if the minister is named for something that they have not done? How is that natural justice?

**John Swinney:** There is a very difficult judgment here, convener. I assure the committee that, in coming to that judgment, I have wrestled with the issue significantly, because I understand exactly the points that you raise. As I set out in my opening statement, there is a careful balance to be struck between the nature of a due process to be undertaken and the need for there to be transparency about the way in which the issues are handled. You will note in the information that I have shared with the committee that there is a difference between the approach that will be taken should a complaint be upheld or partially upheld and the one that will be taken should a complaint not be upheld. No details will be shared about the substance of a complaint if it is not upheld.

I recognise that it is a careful balance. As I have indicated, we are setting out proposals to the committee. They have been the subject of dialogue with our trade unions and our staff. If the committee is minded to give me feedback on that question or other questions, I will of course consider it before we come to final decisions about the application of the proposals for changes to the procedure and the ministerial code.

**The Convener:** I could have understood such an approach 20 years ago, perhaps, but we now live in a fetid environment on social media, and the fact that a minister is named will mean that he or she will continue to be vilified. “No smoke without fire”, and all that kind of stuff, will still be said. Is that fair to a minister and his or her family? The complainant will not be named, so they will be able to continue with their work, even though they have made a complaint that is not upheld, but there will still be murk around the minister, will there not? That cannot possibly be fair and it is not balanced. That also assumes that their privacy will be protected throughout the process, but I would be shocked if it were, because leaks happen in such instances.

**John Swinney:** The key thing is the question of transparency, because I regularly hear calls for the Government to be transparent about absolutely everything, and, obviously, we have statutory and legislative provisions in place that require us to act in such a fashion. The judgment that I have come to on the matter is that this is the right balance to strike, given that, to ensure that we provide an entirely transparent picture, we will report on the fact that we have had a certain number of complaints. It is a matter of dialogue and scrutiny. The Government is trying to respond to legitimate calls for transparency. As I indicated in my earlier answer, if the committee judges that that is a step too far, I will of course listen to that feedback.

**The Convener:** That is a fair comment. Who will publish the report every six months?

**John Swinney:** The Government will do so.

**The Convener:** Who specifically in the Government?

**John Swinney:** It will be handled by the Scottish Government’s propriety and ethics directorate, which was established in autumn 2021 to ensure that we have in place all the proper procedures and processes that members of the public would reasonably expect the Government to have for the handling of such matters.

**The Convener:** If such matters will be published, it is important that the public know what the parameter is. How does the Scottish Government currently define bullying? Is it subjective, or is it objective, as it should be?

**John Swinney:** It would have to be an objective assessment. In these circumstances, we are putting in place a set of arrangements to try to address any such experiences. The whole approach goes back to part of what I said in my introductory remarks: we aim to create a working environment in which there is no place for bullying. We will set out in the advice and guidance what we consider to be examples of bullying. We cannot be precise about absolutely everything, but all organisations are able to set out their reasonable expectation of what bullying might look like. There are proactive efforts to create a climate and culture that mean that such behaviour is not in any way present in the working experience of members of staff. Should concerns be raised, there is, as I said earlier, a keenness to ensure that those issues are resolved as early and as proactively as possible. Ultimately, if members of staff feel that they have the basis on which to make a complaint, and if they feel that the issues have not been satisfactorily resolved, they can do so, and we have a procedure that enables that to be addressed.

**The Convener:** It is important to have objective criteria. You are absolutely right: you cannot encompass everything, but it is important to have that, because the public’s view of bullying might not be the same as that of the Scottish Government, particularly depending on how old someone is. In my younger days, bullying was only about violence and intimidation; now, of course, the perception of bullying has changed quite considerably. It has a much broader meaning, because there is a much greater understanding of psychological bullying. Of course, if someone is threatened with violence and intimidation, that is obviously psychological as well. There are other forms of bullying—for example, psychological bullying and passive aggression, which is an issue that might or might not be covered by the criteria—I would be interested in finding out whether it is. Can you give us some examples of objective criteria? I would appreciate that so that the public have a greater understanding of what you mean if you say, “Bullying was upheld because of the minister’s actions in terms of X, Y and Z.”

**John Swinney:** The best way to answer that is by reference to the standards of behaviour that we have set out in the guidance to members of staff and ministers. That guidance will be set out in the ministerial code and in the standards of behaviour that are expected for the undertaking of Scottish Government business. I am happy to make those available so that the committee can cast its eye over them. The approaches give a clear distillation of our expectations of what the workforce will be like and what the experiences of members of staff should be like. If they are not of that order,

conduct can be resolved through the various means that I have set out.

11:45

**The Convener:** No one on the committee has been a minister, but I imagine that it can be a stressful and wearying job at times. In this entire scenario, will ministers be allowed to occasionally display the normal human traits of annoyance, frustration and impatience without potentially being denounced?

**John Swinney:** There is a careful balance to be struck between legitimate expectations of performance and support and inappropriate conduct. I am mindful of that a great deal. There are times when I am frustrated by things that are put in front of me, but I always express my frustration in an appropriate and courteous fashion. I need to be supplied with accurate information—if I do not use accurate information, people complain about that. If I do not think that I am getting accurate information, I will press to get it, but I will do so in an appropriate fashion. There is a careful balance between setting out legitimate expectations of performance and behaving in a fashion in which your conduct is not acceptable. Ministers have to be very careful to calibrate that balance in the right fashion.

**The Convener:** Thank you very much for that. A number of colleagues want to come in.

**Douglas Lumsden:** How will complaints that are already in progress be dealt with? Will they follow the new process, or will they continue to work through the old process? What will be shown in the report in December? Will there be anything at all?

**John Swinney:** Nothing will be shown in the report in December, as things stand. There are no complaints with the Government, so we will have none to report on in December.

**Douglas Lumsden:** Is that because there are none in progress or none in progress that would—

**John Swinney:** There are none, full stop. Our complaints handling process has been in place since February. That is the process as it stands. For total completeness, I set out that we have had no complaints submitted on the basis of the procedure that was put in place in February. The changes that I am explaining today will potentially give rise to further change to the procedure in due course. At that moment, the points that I am raising today will be included in the procedure. As I said in response to the convener's points, if the committee thinks that we are not getting this right, I will be interested to hear that from the committee. Notwithstanding that, with any complaints that are

received after that moment of application, we will reflect any changes in the procedures.

**Douglas Lumsden:** I slightly disagree with the convener. Even if somebody is cleared, the information should be published, just as happens for councillors with the Standards Commission for Scotland, where the findings are always published.

There was a suggestion that, previously, you could not publish the findings, or even say whether a complaint was upheld or not without getting into the details. Is that correct?

**John Swinney:** Yes.

**Douglas Lumsden:** What was the legality that prevented the Government from publishing the outcome of a case?

**John Swinney:** Essentially, we need to have procedural arrangements in place that enable that to happen. Those arrangements did not exist prior to the changes that I am putting to the committee this morning.

**Douglas Lumsden:** Is that because the procedure did not explicitly say that you would report on the outcome of cases?

**John Swinney:** That is correct.

**Douglas Lumsden:** You cannot even report on the number of cases that you have had, or on how many were upheld or rejected, just so that we can try to understand whether there is an issue here or not.

**John Swinney:** In relation to the detail of previous issues, in June 2022, we responded to two freedom of information requests confirming that two investigations had been carried out in respect of three complaints since 2007. Our judgment was that that was the information that it was appropriate for us to disclose, given the points that I have already made to Mr Lumsden.

**Douglas Lumsden:** So you do not think that it is appropriate to share information about whether a complaint was upheld.

**John Swinney:** The issue is not that I judge that not to be appropriate; it is that we do not have a basis for so doing.

**Douglas Lumsden:** Okay.

**Liz Smith:** Mr Swinney, I think that the Scottish Government and the ethics directorate have gone a long way to improving transparency. I very much welcome the progress that you have made since you first came to the committee, particularly in relation to complaints that are upheld or partially upheld. That is very good news.

Partly from listening to what the convener said, I have slight concerns about circumstances in which a case has not been upheld and about ensuring

that all the information comes out to the public. There has to be a categorical assurance to the person, who potentially could be vilified through social media, as the convener mentioned, or otherwise—it should be very clear exactly what the reasons are for not upholding the complaint.

We all know that, especially if there is a bit of a time delay between a complaint being made and the investigation process, there is scope for individuals in any political party to be vilified by members of the public unfairly. I am slightly concerned that that could have an implication for those who might be attracted into politics, who might feel that the system will name and shame them even when they have not done anything wrong. I am a bit concerned about that process, so could I have your reflections on that?

Secondly, when you mentioned that former ministers could be included in the procedure, I take it that that is all former ministers and that there is no time bar for ministers who have not been in office for 10 years or whatever. Does it apply to all ministers?

**John Swinney:** On that last point, yes, it is all former ministers.

In relation to cases where a complaint is not upheld, just to be absolutely clear, we would not publish any details about the case, other than the name of the minister and the fact that a complaint had not been upheld.

I will not say to the committee that I think that that is an absolutely certain judgment. I hope that I have left enough scope for the committee to consider the point. Indeed, Mr Lumsden, in his question, presented a different argument from the one that the convener and Liz Smith potentially present to me. I understand the arguments that are made. I have wrestled with those very questions, and I came down on the side of the preference for absolute transparency. However, I accept that there is an alternative argument that could be applied in these circumstances, and I will, of course, consider it should the committee make that point to me.

**Liz Smith:** It is just that, if somebody genuinely has not engaged in the activities of which they have been accused, it is good for the public to know why it was a wrong accusation. It helps that person to move on, rather than just to be named and it stated that a complaint was made against them but was not upheld. That leaves just a bit of doubt in the mind of that person.

**John Swinney:** I accept that, if any complaints are received, it has to be acknowledged that there have been complaints—I do not think that there is any issue with that; indeed, it has been part of the demand that has been made of us in terms of transparency, and it is the point that lies at the

heart of Mr Lumsden's question. In a scenario in which we receive a complaint and it is not upheld, we would disclose that a complaint has been received. If we were to say that the complaint had not been upheld but it was not clear whom it was against, there would be a question mark across all current and previous ministers in that process.

There is a very careful balance to be calibrated here in deciding what information should be available in such circumstances. I do not think that there is any dispute about the fact that, if a complaint has been made and upheld, a certain amount of detail should be disclosed, but with protection of the names of complainants and witnesses. The committee is alighting on an issue for which there is no absolutely certain answer.

I will go back to the point that Liz Smith raised, to which I did not respond in my earlier answer, about what the approach says to people who might think about becoming involved in politics. We are of course all familiar with the degree of public commentary that can go with the work that all of us are involved in, and that adds to the mix.

**Liz Smith:** I completely understand what you say about making available information that a complaint has been made and the name of the person. If I were that person, I would like the public to know that the complaint was turned down for certain specific reasons, to clear my name. I would not want a scenario in which there was on-going doubt and confusion. I completely understand why you say that, if the person is not named, all ministers are potentially involved in the speculation but, if someone is cleared of any wrongdoing, it is important to make clear why.

**The Convener:** Deputy First Minister, do you not feel that the phrase “not upheld” sounds more like “not proven” than “not guilty”?

**John Swinney:** No, I do not think that it sounds like “not proven”.

**The Convener:** I am thinking about public perception and the media perception.

**John Swinney:** We are in different language here, convener. It is about whether a complaint has been upheld—yes or no. If it has not been upheld, it does not have validity.

**Douglas Lumsden:** At what stage would a minister be reported? I do not mean “reported” in a bad way. Is it at the initial contact and assessment stage, or is it at the investigation stage? I imagine that it would be a bit unfair on a minister if there was initial contact and assessment and then it was ruled by the ethics people that it was not a complaint. I do not feel that it would be right for that to be reported.

**John Swinney:** I will be corrected if I am wrong, but that would not register as a complaint,

because it would not pass the threshold for consideration. As Mr Lumsden will recall, an initial consideration is undertaken to judge whether what has been presented is a substantive complaint that passes the threshold for consideration. If the material did not pass that threshold, it would not be considered a complaint and would not be reported.

**Douglas Lumsden:** Thanks for that clarification.

**Liz Smith:** On that same point, am I right that the procedure that would be followed is very similar to that of the Ethical Standards Commissioner in that, if a complaint is made about somebody, the commissioner is duty bound to find out whether the complaint should proceed by contacting the person and asking for evidence and by asking for evidence from the complainant? It is then the commissioner's judgment whether it should become a formal complaint. Is that pretty much the same procedure that you are asking for?

**John Swinney:** It is about an initial consideration of the substance of the issue and whether it should be considered as a complaint. Some voices will say that that provision should not exist and that every issue should be considered fully but, in my judgment, it is appropriate that we have that initial consideration, given the context that Liz Smith puts about other scenarios.

**The Convener:** As colleagues have no further comments or questions, without further ado, I thank the cabinet secretary and his officials for their evidence. That concludes today's meeting of the Finance and Public Administration Committee. Thank you all for your contributions.

*Meeting closed at 12:00.*

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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