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## **REFLECTING THE SCOTLAND ACT 2012 IN THE WRITTEN AGREEMENT**

I write to make proposals to the committee about how we might reflect the implications of the financial provisions in the Scotland Act in the Written Agreement between the Scottish Government and the Finance Committee and in the budget process.

I enclose with this letter some proposed drafting changes to the Written Agreement and supporting material to explain what is proposed. I understand that there have been positive discussions between the Committee's staff and Scottish Government officials, and the proposals set out here are intended to be consistent with the spirit of these discussions.

In summary, I would like to propose the following amendments to the budget process:

- The Scottish Government will, with effect from the Draft Budget for 2015-16 onwards, provide additional information in the annual Draft Budget document setting out forecasts of receipts from the devolved taxes – Scottish Landfill Tax and Land and Buildings Transactions Tax – and, for the purposes of the Draft Budget 2015-16 in particular, our proposals for setting the rates and bands for these taxes.
- Future Draft Budgets would also include a commentary on outturn figures for the devolved taxes for the most recent available year, including any variance between outturn and forecasts;

- The Draft Budget would also contain information about the Government's plans for utilising the borrowing powers introduced in the Scotland Act including the purpose and rationale of borrowing and an annual update on the costs of repayment and the Scottish cash reserve;
- The Draft Budget would also set out how relevant block grant adjustments had been calculated by HM Treasury;
- This material would support the Committee's scrutiny of the Government's spending plans as part of the normal budget process each Autumn;
- A final decision has still to be taken about the precise arrangements for delivering an annual independent assessment of the Government's forecasts, as part of consideration about the role of the Scottish Fiscal Commission. However, I would envisage that such an independent assessment should be available for the Committee's consideration each Autumn, with respect to the Draft Budget for 2015-16 onwards.

The enclosed material addresses two other significant points.

In line with practice in other legislatures, and consistent with what has been said in Parliament during passage of the Land and Buildings Transaction Tax Act, I am proposing through these suggested amendments to the Written Agreement that the Scottish Parliament should be able to scrutinise and make recommendations on the Government's tax proposals as part of the annual draft budget scrutiny process. It is also proposed that thereafter the Parliament would be asked to approve rates and thresholds for the devolved taxes. However, the Parliament's power to approve or not to approve these proposals would not include the power to amend the rates and thresholds proposed by the Government. This is consistent with Rule 9.16.6 of the Parliament's Standing Orders.

I also propose that we should hold back at the present time from adding a reference in the Written Agreement to the Scottish Rate of Income Tax (SRIT). The SRIT will not come into effect until 2016-17 and I suggest it would be appropriate to agree any amendments to the budget process and the Written Agreement in a year's time, should they be required.

I would welcome the Committee's agreement to the changes I am proposing to the Written Agreement.

On a related matter, I would also like to raise with the Committee the issue of next year's budget timetable.

The arrangements that will apply to parliamentary business next autumn due to the Referendum suggest to me that it would be practical for the Government to publish the Draft Budget 2015-16 shortly after Parliament returns from October recess. In 2010, with the Committee's agreement, the Scottish Government published the Draft Budget on 13 November and I would like to suggest we adopt that date as the latest point at which the Government would publish next year's Draft Budget.

I would be grateful to know if the Committee would be content with such an approach.

Y-aye,

A handwritten signature in black ink, appearing to be 'JS' with a horizontal line underneath.

**JOHN SWINNEY**

**REFLECTING THE SCOTLAND ACT 2012 IN THE WRITTEN AGREEMENT  
BETWEEN THE FINANCE COMMITTEE AND THE SCOTTISH GOVERNMENT**

**BACKGROUND NOTE TO SCOTTISH GOVERNMENT'S PROPOSED  
AMENDMENTS TO THE WRITTEN AGREEMENT**

- 1. It is proposed that the Scottish Government with effect from the draft Budget for 2015-16 onwards will provide additional information in the annual Draft Budget document setting out forecasts of receipts from the devolved taxes – Scottish Landfill Tax and Land and Buildings Transactions Tax – and, for the purposes of the Draft Budget 2015-16 in particular, information about the Government's plans for setting the rates and bands for these taxes. Future Draft Budgets would also include a commentary on outturn figures for devolved tax receipts for the most recent available year, including any variance between outturn and forecasts.*

It is intended that this material would support the Committee's scrutiny of the Government's plans in this area as part of the normal budget process each Autumn. As the Government has already indicated, it is proposed that plans for tax rates for Land and Buildings Transactions Tax and Scottish Landfill Tax for 2015-16 will be set out in the Draft Budget 2015-16.

The actual tax rates and thresholds would be set by means of Scottish Statutory Instruments to be approved by Parliament towards the end of the Budget process. There would therefore be legislative scope for the Government to alter its proposals before they were finalised, in the same way that spending proposals made in the Draft Budget can be amended by the Government in the Budget Bill.

It would be for the Finance Committee to decide what evidence to take from stakeholders on the tax proposals set out in the Draft Budget and whether to express views in its annual report on the Draft Budget on the Government's forecasts and its tax proposals.

- 2. A final decision has still to be taken about the precise arrangements for delivering an annual independent assessment of the Government's forecasts of tax receipts, as part of consideration about the role of the Scottish Fiscal Commission. However, I would envisage that such an independent assessment should be available for the Committee's consideration each Autumn from 2014 onwards and therefore including the process for considering the draft Budget 2015-16.*

This could take the form of either a commentary within the Draft Budget document or a separate report, or both.

- 3. The Draft Budget would also contain information about the Government's plans for utilising the borrowing powers introduced in the Scotland Act.*

This approach will build on the information set out in this year's Draft Budget 2014-15 about the Government's plans to support its capital programme through

borrowing in 2015-16 and monitoring its long term investment commitments. We do not envisage any references to borrowing being made on the face of the Budget Bill.

- 4. The Draft Budget would also include information about the calculation of adjustments to the Scottish block grant carried out by HM Treasury. This reflects the importance of the calculation of the block grant adjustments and the need for the Scottish Parliament to be able to scrutinise how they have been calculated.*
- 5. In line with practice in other legislatures, it is proposed that the Scottish Parliament is asked to scrutinise and approve rates and thresholds for the devolved taxes, but would not have the power to amend the Government's tax proposals. We anticipate that existing provisions in the Parliament's Standing Orders which define who can introduce or amend Budget Bills would remain unchanged.*

This also reflects existing practice in the UK Parliament and in other European and Commonwealth jurisdictions.

- 6. In relation to the Scottish Rate of Income Tax, it is proposed that it would be appropriate to agree any amendments to the budget process and the Written Agreement in a year's time, should they be required.*

The Government considers that amendments should be discussed and agreed in Autumn 2014, should they be required, in order to best reflect legislative progress, engagement with HM Revenue and Customs and constitutional circumstances at that time.

**The points above have been addressed in the amendments the Government proposes to paragraphs 4, 5, 14, 15 and 16 in the Written Agreement and new paragraphs 19 to 23.**

# **DRAFT AMENDMENTS TO THE WRITTEN AGREEMENT**



The Scottish Parliament  
Pàrlamaid na h-Alba

## **THE BUDGET PROCESS SESSION 4 AGREEMENT BETWEEN THE SCOTTISH GOVERNMENT AND THE FINANCE COMMITTEE**

### **Introduction**

1. The Finance Committee recommended in its legacy paper at the end of Session 3 that the Written Agreement be reviewed and redrafted to incorporate a number of changes to the budget process which have been implemented since the document was last reviewed in 2005.
2. This revised document sets out an understanding between the Finance Committee and the Scottish Government (SG) on the administrative arrangements for the scrutiny of the annual draft budget during Session 4 and other related budgetary matters.
3. There are three phases in the budget process. The Draft Budget Scrutiny Phase and the Budget Bill Phase take place on an annual basis, and the Budget Strategy Phase (BSP) takes place once during the parliamentary session.

### **Scotland Act 2012**

4. The additional financial powers arising from the Scotland Act result in a number of changes to the budget process. The key changes have been incorporated in this version of the Agreement. It is intended that this Agreement will be reviewed and updated as the new powers are implemented and where experience indicates that refinements to the process would be of benefit.
5. It is also intended that this Agreement will be reviewed at the end of the session and updated in due course to recognise the introduction – on present plans in respect of 2016-17 - of the Scottish Rate of Income Tax.

## **Budget Strategy Phase**

6. Following a review of the budget process<sup>1</sup> in Session 3 the Committee agreed to introduce a strategic phase to the process which replaces the previous Stage 1 which had not been carried out since 2004. The SG supports this approach and this section of the Written Agreement sets out the procedure and supporting documentation for the BSP in Session 4.

7. The Committee and the SG have agreed that the BSP will take place in the Spring prior to the next UK Spending Review and is intended to allow the Parliament to scrutinise the progress which the SG is making in delivering its own targets through its spending priorities and to take a strategic overview of the public finances around the mid-point of the current Parliament.

8. To assist with this process the SG has agreed to consider in consultation with the Finance Committee the options for provision to the Parliament of an assessment of its performance and its updated indicative spending priorities for the rest of the parliamentary session.

9. The parliamentary committees will then have the opportunity to both scrutinise the SG's performance and its spending priorities and will report to the Finance Committee in sufficient time to allow a report on the BSP to be published prior to Summer recess and for that report to be debated by the Parliament. It is expected that the outcome of this process will then inform the scrutiny of the next SG Spending Review.

## **Draft Budget Scrutiny Phase**

10. The SG will continue to publish a draft budget by 20 September at the latest but will endeavour to publish as early as possible in September in non-Spending Review years on the basis that the amount of money that is available to the Scottish Government is primarily fixed and known.

11. In Spending Review years, the Scottish Spending Review and the Draft Budget should be published as one document by 20 September.

12. Where the SG believes that it may not be able to meet the 20 September deadline, the Scottish Ministers will consult the Finance Committee on a revised timescale for that year's budgeting process.

13. The 2012-13 Draft Budget scrutiny phase will also involve a spending review and committees will have an opportunity to scrutinise the SG's spending priorities for the period ending 2014-15. The budget process in the following two years will provide committees with the opportunity to focus on the extent to which these spending priorities are being met and on any changes that have been made to the detailed spending plans since publication of the Spending Review.

14. The Finance Committee's report on the Draft Budget may include an alternative set of tax and spending proposals. The report may also include recommendations on the Scottish Government's tax proposals. Any revised spending proposals may not exceed the total proposed by Scottish Ministers unless

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<sup>1</sup> Scottish Parliament Finance Committee, 5<sup>th</sup> Report, 2009 (session 3), *Report on the Review of the Budget Process* (SP 315)

there is a proposal for a commensurate increase in the level of Scottish taxes. Any recommendation to increase the level of taxes should include how the additional funding should be allocated. Any recommendation to decrease the level of taxes should include how the reduction is to be balanced by a reduction in the total spending proposed by the Scottish Government. The report will be debated by the Parliament on a motion from the Finance Committee prior to Christmas recess.

15. Committees and individual Members may seek to propose amendments to the SG's expenditure and tax proposals by tabling amendments to the Finance Committee motion. No amendment may seek to increase the total spend proposed unless it includes a proposal for a commensurate increase in the level of Scottish taxes. Any recommendation to increase the level of taxes should include how the additional funding should be allocated. Any recommendation to decrease the level of taxes should include how the reduction is to be balanced by a reduction in the total spending proposed by the Scottish Government. Therefore, amendments proposing any increase in one area must recommend how this increase will be financed including from an increase in the level of Scottish taxes. It should be noted that even if such amendments are agreed to, this does not automatically guarantee that expenditure or tax proposals will be amended in the subsequent Budget Bill.

16. While the Parliament will be able to make recommendations in relation to the Government's tax proposals, proposing tax rates and thresholds will be a matter for Scottish Ministers. The Parliament will be asked whether or not to approve the tax rates through the legislative process but will not have the opportunity to amend the rates. This is consistent with Rule 9.16.6 of the Parliament's Standing Orders.

### *Preventative Spending*

17. Both the SG and the Finance Committee recognise the need to move towards a greater emphasis on a preventative approach to public spending. The Finance Committee aims to ensure that the scrutiny of preventative spending is integral to the annual budget process and the SG agrees to include an overall assessment in the Draft Budget of the progress that is being made towards a more preventative approach.

### *Level 4 information*

18. The SG agrees that while there is no formal definition of "level 4" information there is nevertheless a presumption for information below "level 3" to be released. Subject committees are encouraged to request information from relevant portfolio areas who will endeavour to provide the following information where possible:

- In presenting 'level 4 figures' the SG will provide figures separately for all spending programmes that are distinctive, novel, or likely to be of parliamentary interest. Whilst there is no maximum value for level 4 figures, wherever possible the SG will aim to break down figures to the smallest reasonable level;
- The SG will provide figures for the funding being provided to each of Scotland's public bodies as listed on the SG website;



- As with level 3 figures the SG will include an explanation of 'what the money buys';
- The SG will identify and explain changes to budget headings from the previous draft budget;
- If the SG cannot provide the information to a Committee within the requested period, the SG will write to the Committee explaining why and provide a timetable for receipt.

## **Scotland Act 2012**

### *Devolved Taxes*

19. In respect of the two devolved taxes, the Draft Budget will include a commentary on the expected income, including tax receipt forecasts and the assumptions, rates and thresholds on which they are based. The commentary will also reflect the views of the Scottish Fiscal Commission on the level of receipts. To aid scrutiny of the Government's proposals, it is anticipated that the Commission will also publish separately its views on the forecast position (the precise arrangements for this will be a matter for the Commission once established, in discussion with the Scottish Government and the Scottish Parliament). Once information on receipts is available, the Draft Budget will also include a commentary on outturn figures for the devolved taxes for the most recent year, including any variance between outturn and forecasts.

20. It is not intended that the estimates, published as part of the Draft Budget, will constrain Ministerial discretion to adjust proposed tax rates and thresholds prior to asking the Scottish Parliament to approve the relevant subordinate legislation. The estimates will provide context for the decisions set out in the Draft Budget and inform debate during the Autumn budget scrutiny process.

21. The Scottish Parliament's role is set out at paragraphs 14 to 15. The power to bring forward legislative proposals to set tax rates and thresholds for the devolved taxes will be reserved to Scottish Ministers.

### *Borrowing Powers*

22. The SG will provide details of any planned borrowing under the Scotland Act powers as part of the Draft Budget publication.

### *Block Grant Adjustment*

23. The SG will provide information about the calculation of adjustments to the Scottish block grant carried out by HM Treasury.

## **Budget Bill Phase**

24. The SG will introduce a Budget Bill by 20 January each year or the first day thereafter on which the Parliament sits. The procedures for Budget Bills are set out in standing orders.

25. The SG has agreed that it will respond to the recommendations of the Finance Committee report on the Draft Budget during the Stage 1 debate and that a written response will be published prior to the Stage 3 debate.

26. The SG will also comment on any changes that have been necessitated by financial decisions taken by the UK Government since the publication of the Draft Budget during the Stage 1 debate.

27. Rule 9.16.6 of the Parliament's Standing Orders sets out provisions

### **The Parliament's Budget**

28. The SG draft budget includes working assumptions on the parliamentary budget prepared by the SPCB. Should the SG wish to challenge the budget proposal by the SPCB, they will do so by means of an amendment to the Budget Bill. Provision for the Parliament to scrutinise its own budget is made in a separate understanding with the SPCB.

### **Revisions to this agreement**

29. The Scottish Ministers or the Finance Committee may propose amendments to this agreement. If the Committee and the Scottish Ministers are unable to agree the changes that are proposed, they may ask the Parliamentary Bureau to arrange a plenary debate on a proposal(s).

## **AGREEMENT ON IN YEAR CHANGES TO EXPENDITURE ALLOCATIONS**

### **Purpose**

1. This document sets out an understanding between the SG and the SP on the administrative arrangements for:

- the reallocation of expenditure within portfolios of the SG;
- procedures for making contingency payments during the year;
- controls on contingent liabilities.

It is not intended to create any legal rights or obligations on either the SG or the SP.

### **In year transfers between portfolio budgets**

2. The previous agreement said that Budget Acts were to set out absolute resource expenditure (net of receipts) limits for individual entities. These entities were the individual departments of the Scottish Executive, Scottish Executive Administration, the General Register Office for Scotland, National Archives of Scotland, the Forestry Commission, the Food Standards Agency, the Scottish Parliamentary Corporate Body and Audit Scotland. The Scottish Ministers and the Finance Committee are agreed that in future Budget Acts a single Scottish Government budget figure will be provided for net expenditure and total income limit. Separate budget approvals will still be required for the Forestry Commission, the Food Standards Agency, the Scottish Parliamentary Corporate Body and Audit Scotland.

3. The Scottish Government will continue to set, manage and report budgets against individual totals at Portfolio level, which will be agreed by the Parliament through the Budget Bill, as well as through the Budget Revisions. In accordance with the previous agreement, Scottish Ministers will still not be able to transfer funds between these limits, including between individual portfolios of the Scottish Executive, without the approval of the Parliament.

### **Reallocation of expenditure within departments of the Scottish Government**

4. FIAG recommended that the Executive should be allowed to move funds within portfolio budgets to respond to changes in need. The Group recommended that transfers should be subject to internal controls. It also recommended that the Parliament should be informed of transfers on a regular basis.

5. FIAG also recommended that the total amount of funds that may be transferred in this way should be limited. The Group recommended that transfers between "budget sections" should be no more than £50 million, (at 1999 values) or 15% of the receiving section, whichever is the lesser. (A "budget section" refers to the level below the portfolio as a whole.) FIAG recommended that transfers within budget sections should be unlimited. This recommendation will be given effect by the Scottish Parliament and the Scottish Ministers in accordance with this understanding.

6. The SG undertake:

- Not to move provision from one budget section to another in such a way as to increase the total budget for that section by more than 15%, or £70 million at 2011 values, whichever is the lesser, without seeking the specific approval of the Parliament through the Budget revision procedure.
- To inform the Parliament of movements between budget sections that are within these limits at the time Budget revisions are made.
- To inform the Parliament of movements within budget sections in as much as they affect the detail set out in the documents accompanying the Budget Bill (the Budget documents), when seeking Budget revisions.

7. It remains open to the SG to continue to make use of the flexibilities provided by this agreement and outlined above (the process is technically known as “virement” or “viring between budgets”) after the last budget revision of the year. There is however no vehicle by which changes made at this point can be reported to the Parliament. The SG will therefore prepare its accounts on the basis that budgets at the end of the year were those contained in the last budget revision, that is, as if no further virement had taken place. The accounts will then show moves between budget heads as offsetting over- and under-spends.

### **Contingency payments**

8. Under the terms of the Public Finance and Accountability (Scotland) Act 2000, the SG have powers, in certain circumstances, to authorise the use of resources up to 0.5% of the total budget in any financial year without the prior authority of the Parliament. A separate limit of £50 million is currently placed on this power as part of the annual Budget Acts.

9. The SG can only use this facility if it is necessary to do so in the public interest and if it is not reasonably practicable, for reasons of urgency, to seek prior Parliamentary approval by means of Budget legislation. Unless the circumstances are such that extreme urgency makes it impossible, the SG will lay a report before the Parliament at least 14 calendar days before undertaking any expenditure. Should the requirement to use the power arise during a recess, a report will be presented to the Parliament as soon as Parliament returns from recess.

10. Details of any such contingency payments will appear in the SG's annual accounts.

### **Contingent liabilities**

11. FIAG recommended that the authority of the Parliament is required before the Scottish Government can grant a guarantee or indemnity which would, in effect, bind

the Parliament into providing the expenditure in the event of the guarantee or indemnity maturing. This does not apply to a guarantee or indemnity which is granted under a statutory requirement to do so or is of a standard type and arises as an unavoidable feature of an activity authorised by statute.

12. In accordance with FIAG's recommendation, the SG undertake, before granting any guarantees or indemnities in excess of £1 million (including those without limit), to submit their proposals to the Finance Committee. The SG agrees to provide the Committee with as early notice of the contingent liability as practically possible so as to allow sufficient time for effective scrutiny.

13. The Committee agrees to consider each contingent liability at the earliest opportunity and will take evidence from the appropriate Minister before deciding whether to approve the proposal or to propose an amendment or recommend that the proposal is rejected. If the SG does not agree with the Committee's recommendation then the Committee following further information from the SG may either allow the SG to proceed or refer the matter to the Parliamentary Bureau for debate. It will then be for the Parliament to agree whether or not to allow the SG to proceed.

14. Where the SG requests that a contingent liability should be considered by the Committee in private session it will provide a full explanation for the reasons for this request when submitting its proposal. In doing so the SG recognises that the Committee will only agree to take evidence in private in exceptional circumstances.

15. Where there is agreement to consider a contingent liability in private both the Finance Committee and the SG agree not to make public any of the details discussed during the private session. The SG will also agree with the Finance Committee what information can be made public in relation to the contingent liability itself.

### **Revisions to this agreement**

12. The Scottish Ministers or the Finance Committee may propose amendments to this agreement. If the Committee and the Scottish Ministers are unable to agree the changes that are proposed, they may ask the Parliamentary Bureau to arrange a plenary debate on a proposal(s).