FINANCE COMMITTEE

AGENDA

17th Meeting, 2015 (Session 4)

Wednesday 3 June 2015

The Committee will meet at 9.30 am in the Mary Fairfax Somerville Room (CR2).

1. Decision on taking business in private: The Committee will decide whether to take item 5 in private.

2. Scotland's Fiscal Framework: Members will report back on a recent fact-finding visit to Stockholm.

3. Scotland's Fiscal Framework: The Committee will take evidence from—

   John Swinney, Cabinet Secretary for Finance, Constitution and Economy,
   Sean Neill, Acting Deputy Director of Finance, and Stephen Sadler, Team Leader, Elections and Constitution Division, Scottish Government.

4. Carers (Scotland) Bill: The Committee will take evidence on the Financial Memorandum from—

   Jamie Hepburn, Minister for Sport, Health Improvement and Mental Health, and Dr Maureen Bruce, Deputy Director; Care, Support and Rights Division; Population Health Improvement Directorate, Scottish Government.

5. Interests of Members of the Scottish Parliament (Amendment) Bill: The Committee will consider its approach to the Financial Memorandum of the Bill.

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The papers for this meeting are as follows—

**Agenda 3**

Note by the Clerk  
FI/S4/15/17/1

**Agenda 4**

Note by the Clerk  
FI/S4/15/17/2

**Agenda 5**

PRIVATE PAPER  
FI/S4/15/17/3 (P)
Finance Committee
17th Meeting, 2015 (Session 4), Wednesday 3 June 2015

Scotland’s Fiscal Framework

Purpose

1. At its meeting on 4 February, the Committee agreed to undertake an inquiry examining the proposals for a fiscal framework set out in Chapter 2 of the UK Government command paper: Scotland in the United Kingdom: An enduring settlement.

2. The Smith Commission recommended that the “devolution of further responsibility for taxation and public spending, including elements of the welfare system, should be accompanied by an updated fiscal framework for Scotland, consistent with the overall UK fiscal framework.” Chapter 2 of the command paper “is intended as the start of a process to develop a suitably robust and coherent framework.”

Evidence

3. The Committee issued a call for evidence in relation to the inquiry and has taken oral evidence at a number of meetings with a view to reporting before the summer recess. All written evidence received and official reports of the oral evidence sessions are available on the Committee’s website.

4. The Committee’s budget adviser, Professor Gavin McEwen, has produced a summary of all evidence received by the Committee. This is attached as an annexe to this note.

5. At this meeting, the Committee will take oral evidence from John Swinney, Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy.

6. The Scottish Government’s response to the Committee’s report on Further Fiscal Devolution is also attached.

Conclusion

7. The Committee is invited to consider the above.

Alan Hunter
Assistant Clerk to the Committee
Inquiry into Scotland's fiscal framework - Adviser briefing

1. On 22 January 2015, the UK Government published a Command Paper, *Scotland in the UK: An enduring settlement*,\(^1\) in response to the Smith Commission's recommendations in its Report published on 27 November 2014.\(^2\) Chapter 2 of the Command Paper sets out the UK Government's proposals for an updated fiscal framework for Scotland and in a Call for Evidence\(^3\) the Finance Committee of the Scottish Parliament requested views on the proposals in Chapter 2 by 17 April 2015. This briefing summarises the written evidence received in response to the call and also oral evidence provided to the Committee at its meetings on 22 and 29 April and 13 and 20 May 2015. The written evidence submitted and the Official Reports of these meetings are available on the Committee's pages of the Scottish Parliament website.\(^4\) The sections of this briefing follow in turn the issues set out in the Call for Evidence.

**What needs to be included within a revised funding framework for Scotland and how do we ensure that it is fair, transparent, effective and mechanical rather than requiring regular negotiations?**

2. Key elements of a fiscal framework were identified by Audit Scotland thus:

   a. Fiscal rules

   b. Medium term budgetary framework

   c. Budgetary procedures including effective scrutiny

   d. Sound fiscal reporting

   e. Fiscal institutions.\(^5\)

3. While the Command Paper suggested that consistency with the UK fiscal framework was a requirement, CIPFA suggested that this does not mean that a Scottish fiscal framework need exactly reflect UK fiscal policy objectives or fiscal mandate. There is an opportunity to modernise and update giving Scotland an appropriate fiscal framework aimed at medium to longer term planning.\(^6\) Fiscal levers appropriate to an updated framework include:

   a. borrowing powers;

   b. power to hold reserves; and

   c. improved financial reporting, including a Scottish public sector balance sheet, which provides an opportunity to scrutinise performance of

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\(^1\) Cm 8990; https://www.gov.uk/government/publications/scotland-in-the-united-kingdom-an-enduring-settlement

\(^2\) https://www.smith-commission.scot/

\(^3\) http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86486.aspx


\(^5\) Audit Scotland, para. 4

\(^6\) CIPFA, para. 3.1; A Bermingham, OR 13 May 2015, col. 28
Scotland's public services.  

4. The Royal Society of Edinburgh suggest what they consider to be the key elements in developing up a funding framework for Scotland:

a. Clearly established understanding and formal recognition of which risks and opportunities should be pooled and which of them should be devolved (in this context, it is important that the rationale for recommending particular tax and spending powers for devolution be fully developed);

b. Clear and transparent fiscal rules as part of an overarching fiscal framework;

c. Developing mechanisms to regulate the relationships between the Scottish and UK Governments;

d. The provision of fiscal data within an appropriate fiscal reporting framework;

e. Establishing fiscal institutions that can provide independent and rigorous analysis and review;

f. Developing a medium-term budgetary framework which includes rigorous and understood budgetary procedures and harmony of these across the total economy.

5. The Chartered Institute of Taxation, together with others, referred to the importance of improved data in a new funding framework for Scotland: Sound fiscal statistics, that are independently verified, will be essential as a foundation for any fiscal framework. Mairi Spowage, Head of National Accounts for the Scottish Government, explained the progress made and the gaps remaining in robustly measuring the Scottish economy. Areas of difficulty in data collection include:

a. Scottish exports and imports to and from the rest-of-the-UK as firms do not normally distinguish Scottish activity in their accounts or record relevant statistics;

b. capital investment in Scotland;

c. links between the offshore and onshore economies;

d. expenditure by tourists (a component of exports), which are estimated from a small ONS sample of international tourists; and

e. Scotland's balance of payments.

6. She commented that they do not have most of the things that are in a full set of national accounts and that is partly lack of data and partly lack of resource. A UK Bill

\[\text{\cite{ibid.}, para. 3.2} \]
\[\text{\cite{RSE paper}} \]
\[\text{\cite{CIOT/LITRG, para. 2.4; Prof. Bell, OR 20 May 2015, cols 15 & 16}} \]
\[\text{\cite{M Spowage, OR 13 May 2015, cols 2, 3, 8 & 16}} \]
is in early stage development to remove barriers preventing HMRC from sharing information with the ONS and other Government departments.\textsuperscript{11}

7. With regard to Government Expenditure and Revenue Scotland (GERS) statistics, she confirmed that these measure expenditure deemed to be for the benefit of the people of Scotland, not government expenditure in Scotland. Thus a population share of FCO and Defence expenditure, wherever in the world it is incurred, is included in GERS while some expenditure incurred in Scotland, eg a proportion of expenditure on museums, is reassigned as for the benefit of the rest-of-the-UK.\textsuperscript{12}

8. With the proposed assignment of a proportion of VAT to the Scottish Government, the measurement of Scottish VAT is important. For the purpose of GERS, Mairi Spowage explained that the basis for calculating Scottish VAT paid by Scottish households is a household expenditure survey pooling three years responses to a sample of 500 Scottish households a year. From this the VAT incurred by Scottish households is estimated and added to estimates of the VAT incurred by the Government sector and VAT exempt businesses. With HMRC, work is starting to identify data sources, alternative methods and whether a larger sample is required in order to calculate Scottish VAT for revenue assignment.\textsuperscript{13} Simon Fuller, Deputy Director, Office of the Chief Economic Adviser, explained that, while the total Scottish income tax figure of £11 billion is a good estimate, further work is necessary to understand how that is distributed across the population and how much is paid by basic, higher and top rate taxpayers.\textsuperscript{14}

9. In addition to improved data, transparency is important and Audit Scotland identify the following areas where transparency is required:

   a. Movements in the Scottish block grant arising from the application of the Barnett formula, Scottish income tax, devolved taxes baseline adjustments, assigned VAT receipts and welfare payment adjustments;

   b. Assumptions underpinning forecasts of Scottish tax revenues;

   c. Application of the no detriment principle;

   d. Reporting by fiscal institutions;

   e. Movements in borrowing; and

   f. Use of any powers to create and use reserves.\textsuperscript{15}

10. Doctor Cuthbert of the Jimmy Reid Foundation expressed concern whether a fair and equitable implementation of the Smith Commission proposals was possible without adverse consequences unless there were deep-rooted constitutional reform
in the UK or full federalism. \textsuperscript{16} With Scotland having 7.4\% of income tax receipts and 8.3\% of the population, the Barnett Formula combined with devolution of tax rates on non-savings income will create situations where tax and expenditure changes in the rest of the UK force even greater tax increases or expenditure cuts on Scotland. \textsuperscript{17} The solution to this conundrum would be the separation of rest-of-UK decision making on devolved matters from UK decision making on reserved matters. Effectively, there should be an over-arching body setting the UK budget and allocating resources (other than devolved taxes) between reserved functions and territorial block grants to the nations, with England (or English cities and regions) determining its own devolved budget. \textsuperscript{18} Prof. Jeffrey also commented that the process of disaggregating England from the UK Government is tremendously important. In some senses, it is a prerequisite for a UK-wide system to function in a more satisfactory way. \textsuperscript{19}

11. There is considerable doubt among the respondents on whether it is possible, or indeed desirable, to create a fiscal framework that meets all the objectives: fair, transparent, effective and mechanical. The Institute for Fiscal Studies considers that any system meeting both of the \textit{no detriment}\textsuperscript{20} principles cannot also be transparent, effective and mechanical. With flexibility, however, it could be fair. \textsuperscript{21} Both Professors Campbell Leith and Andrew Hughes Hughes Hallett drew attention to the need to model counterfactual scenarios in applying the \textit{no detriment} principles. This cannot be a mechanical process and \textit{no detriment} cannot literally mean no gains or losses or it would never be possible to devolve any powers. \textsuperscript{22} ICAS suggests that ensuring fairness and operating mechanical measures will require significant analytical and statistical input. This will reduce transparency and it will be necessary to find a balance between these objectives. \textsuperscript{23} Fiscal Affairs Scotland believe that prioritisation of these objectives will be necessary and that a degree of adaptability and negotiation (which occurs even with Barnett) is probably inevitable and should be welcomed. \textsuperscript{24} Doctor Cuthbert suggests that mechanical fiscal arrangements represent an attempt to de-politicise and managerialise what should be political and democratic decisions. \textsuperscript{25}

12. Finally, putting in place a robust and enduring fiscal framework will take time and concern was expressed at the speed with which the Smith proposals were being legislated. Legislation would be best deferred until the ramifications of further tax and welfare devolution have been explored and an appropriate fiscal framework worked out. Estimates were that the process would take more than a year. \textsuperscript{26}

\begin{flushleft}
\textsuperscript{16} JRF, Introduction; Dr Cuthbert, OR 22 April 2015, cols 18, 19 & 20
\textsuperscript{17} Ibid., para’s 1.3, 1.7 & 1.8
\textsuperscript{18} Ibid., para. 1.12
\textsuperscript{19} Prof. Jeffrey, OR 29 April 2015, col. 29
\textsuperscript{20} The first \textit{no detriment} principle applies to the fiscal consequences of initial devolution of taxes or spending powers and the second applies to the fiscal consequences of subsequent policy decisions and to UK and Scottish changes to taxes which have been devolved. These are found at sub-para’s 95(3) & 95(4)(a)&(b) of the Smith Commission Report.
\textsuperscript{21} IFS, sect. 2
\textsuperscript{22} Papers submitted by Prof’s Leith and Hughes Hallett
\textsuperscript{23} ICAS, sect. 1; C Barbour, OR 13 May 2015, col. 25
\textsuperscript{24} FAS paper
\textsuperscript{25} JRF, para. 1.13
\textsuperscript{26} Prof. Beath, Prof. Bell Prof. MacDonald & Prof. Keating, OR 20 May 2015, cols 10, 11, 12 & 13
\end{flushleft}
What fiscal rules should be applied in order to ensure fiscal responsibility and debt sustainability?

13. The summary of key elements of a robust fiscal strategy prepared by the European Commission as part of its Europe 2020 Strategy was suggested as a guide by several respondents. From this the CIOT identified the key elements as: sound fiscal statistics; numerical fiscal rules; medium-term budgetary frameworks; budgetary procedures; and fiscal institutions. Emphasis was placed on the importance of medium and long term targets for debt and borrowing. Prof. Leith pointed out the importance of debt as a shock absorber. This requires that a long term target should be adopted to allow gradual fiscal adjustment to it and that it should be a rolling target so that there would be no need to make overly large adjustments to meet a target by a defined date. This target should be set in terms of deficit and not debt. Flexible targets will require public monitoring and it is essential that the Scottish Fiscal Commission scrutinise and make public any failure to meet the plan. Consideration of intergenerational affordability, a plan to reduce debt to GDP ratio to 60% and independent monitoring of rules and plans were key matters raised in independent submissions.

14. Professor Hughes Hallett agrees on the importance of gradual fiscal adjustment. The political process tends to create a 'deficit bias' and may account for rising government debt levels. To counter this many governments have set short-term deficit or debt rules to tie their own hands. Hard annual targets are pro-cyclical (enhance rather than mitigate the economic cycle) and governments have only imperfect control over the economy so such rules are generally broken as soon as they bite. His suggestion for sustainability is a primary surplus rule requiring that the average primary (before interest) surplus or deficit is set larger than growth adjusted interest payments. The degree to which the primary deficit or surplus exceeds the threshold will determine the speed of return to the debt target. A debt ceiling and a target somewhat lower, with a fiscal adjustment rule around the target value, will introduce flexibility. This avoids the need for hard targets that can be pro-cyclical or which may block structural reforms where these have short run fiscal costs. This fits well with scrutiny by an independent Fiscal Council which should be forward looking and seek to head off insolvency problems before they become intractable while allowing short run flexibility.

15. Affordability, prudence and sustainability are key principles of fiscal policy offered by CIPFA and these should apply to the medium and longer-term public finances of Scotland, covering both current and capital budgets. These principles are supported by a fiscal mandate ensuring appropriate annual prudential measures and monitoring. Doctor Armstrong considered that, with the small degree of vertical balance implied by the Smith proposals and the tax powers transferred, no borrowing limit should be imposed on the Scottish Government. Responsibility goes with the transfer of tax powers. Most countries, for example Canada, Switzerland

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27 CIOT/LITRG, para. 2.4
28 Prof. C. Leith, paper
29 Keith Lough and Peter Inman, papers
30 Prof. Hughes Hallett, paper
31 CIPFA, para's 4.3, 4.4 & 4.5
and the US, do not impose such rules on their sub-central governments.  

What mechanisms are required to ensure the transparency and effective scrutiny of how the block grant is calculated including the operation of the Barnett formula?

16. There is consensus on the need for more information on how the grant is calculated than has been available in the past. The CIOT suggest regular, perhaps annual, review to ensure fairness, transparency and effectiveness with published reports which should be scrutinised by both parliaments. Ideally, the review process would be independent of government. Effective review will require analysis and relevant statistics, which implies significant resourcing. The Royal Society of Edinburgh argued for some mechanism by which the UK and Scottish governments can negotiate block grant adjustments in an open and transparent manner. They considered it unacceptable that Treasury, as an organ of the UK government, make these decisions.

17. Doctor Cuthbert identified a current failing that prevents effective monitoring of the operation of the Barnett Formula. The Treasury Funding Statement details which items of expenditure are reserved and devolved and is the source driving the Barnett Formula. The other key data source is the Public Expenditure Statistical Analysis recording the outturn of public expenditure, including identifiable territorial analyses. These databases are not aligned and this undermines effective monitoring of the impact of Barnett on per capita spending levels. Lack of transparency has led to major errors in the operation of the Barnett formula in the past to Scotland's advantage and disadvantage, which emphasises the importance of transparency in the more complex future.

18. Professor Hughes Hallett identifies the key factors in the Barnett Formula as spending totals set by UK departments based on the needs of the rest of the UK without any input from Scotland and rules of thumb based on implicit assumptions and rudimentary calculations. If Scotland's expected revenues from the UK government are to be checked effectively, this process needs to be opened to outside scrutiny. Professor Jeffrey noted that the Barnett formula becomes less important as more revenues are raised directly by the devolved governments and that there are current pressures for payments to made to devolved governments outside the formula. The very basis of the Barnett adjustments is undermined by proposals to set an English rate of income tax voted on by English MPs alone.

19. Alan Bermingham considered that the Barnett Formula simply did not work in the context of increased devolution and taxation powers and it would not allow the desired accountability for tax raising and spending.

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32 Dr Armstrong, OR 29 April 2015, col. 30
33 CIOT/LITRG, para. 3.2; P Stevens, OR 13 May 2015, cols 42 & 43
34 ICAS, sect. 3
35 RSE, paper
36 JRF, paras 3.2 &3.3
37 IFS paper, p2; and Dr Cuthbert, OR 22 April 2015, col. 26
38 Prof. Hughes Hallett, paper
39 Prof. Jeffrey, OR 29 April 2015, cols 10 & 11
40 A Bermingham, OR 13 May 2015, cols 27, 35 & 36
the Barnett formula inconsistent in its basic principles and these inconsistencies are reflected in the current discussions on indexing adjustments. Whatever the political realities in negotiating a replacement, he considered it would be useful to try to get agreement to appropriate principles for calculating the future block grant.41

What mechanisms are required to ensure the transparency and effective scrutiny of adjustments to the block grant to reflect the tax revenues foregone by the UK Government?

20. Audit Scotland propose reconciliations of amounts from one year to the next, explanations of variations from forecasts and tables showing movements of actual and forecast amounts over a period of years as mechanisms for increasing transparency.42 CIOT, on the other hand, were concerned that use of detailed analytics and complex arithmetical adjustments will reduce transparency, requiring a balance or compromise between objectives.43

21. The desirability, and even feasibility, of a mechanical system was questioned by Doctor Cuthbert and John McLaren. While Doctor Cuthbert referred to errors that have crept into the current mechanical system, and the potential for these to be magnified in future, John McLaren warned that a mechanical system could create unfairness and dispute. Any mechanical system would require regular review and adjustment and they suggested five yearly review as an appropriate balance.44

22. Four things were identified by Professor Hughes Hallett as required to make the adjustment process transparent and open to scrutiny:

   a. full access to the model, methodology, data and assumptions used to generate the projections;
   b. access to alternative forecasts that might explain any differences;
   c. an agreed method for reconciling the forecasts used and actual outturns; and
   d. for shared taxes, an agreed way to compensate any losses imposed, not by the Scottish Parliament, but by an outside authority (through changes in tax thresholds or rates, or in the definition of the tax base).45

In the context of the CIOT concern above, this raises a question of whether transparency in the context of block grant adjustments is judged with reference to economists and statisticians or parliamentarians and interested citizens.

What mechanisms are required to ensure the effective working of the “no detriment” principle?

23. There are two, or arguably three, no detriment principles, the first which applies

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41 Prof. Keating, OR 20 May 2015, cols 17 & 18
42 Audit Scotland, para. 13
43 CIOT/LITRG, para 3.4
44 JRF, para. 1.13; Dr Cuthbert and J McLaren, OR 22 April 2015, cols 39 & 40
45 Prof. Hughes Hallett, paper
on the initial devolution of a function or a tax power, the second which applies to the impact of policy changes made by one government on the tax receipts or expenditure of the other and the third which is that changes to UK taxes, which are devolved in Scotland, should only affect public spending in the rest-of-the-UK and changes to devolved taxes in Scotland should only affect Scottish public expenditure.\textsuperscript{46} The second and third are two subsets of \textit{no detriment as a result of policy decisions} and are generally referred to together as the second \textit{no detriment} principle derived from paragraph 95(4) of Smith.

24. Audit Scotland consider that there is already some experience of using a mix of empirical data and negotiation to meet the requirements of the first principle. The second is a new and complex area and will require the governments to agree on those policy effects within the principle and those without and the appropriate ways to measure or estimate the effects. They suggest that the second principle should apply in the first instance to measurable direct effects and that indirect or behavioural effects should be considered at a later date only if there is evidence of these being significant.\textsuperscript{47}

25. Professor McEwen commented that \textit{it is extraordinarily difficult to measure cause and affect ... because for any development whether it is in Scotland or in the rest of the UK, there will be multiple drivers and causes that lead to falls in revenue or decreases or increases in jobs}.\textsuperscript{48} Professor Beath believed that it would require a lot of detailed research to identify spillovers under the second \textit{no detriment} principle, measure their scale and decide how to correct them. While Professor Bell believed an econometric model could be developed, he considered that he would not be able to get sufficient data to calculate second, third and fourth round effects.\textsuperscript{49}

26. The Institute of Fiscal Studies agree that only the most obvious knock-on effects should be adjusted under the second principle\textsuperscript{50} and ICAS and CIOT consider that it will be easier to determine appropriate mechanisms once it has been agreed what \textit{detrimental} means in the context of the second principle.\textsuperscript{51} The impact of policy changes may be simply tax competition and could be part of the rationale for devolving that tax power.\textsuperscript{52} Patrick Stevens, Charlotte Barbour and Alan Bermingham agreed that tax competition was inevitable, whether intended or not, and that agreeing whether there was a resulting \textit{detriment} would be almost impossible.\textsuperscript{53}

27. The Royal Society of Edinburgh call for a comprehensive and independent analysis of the practical application of the \textit{no detriment} principle and the boundaries within which it operates.\textsuperscript{54} Professor Keating considers that there is a narrow interpretation around the impact of expenditure by one government which has a direct impact increasing or reducing the expenditure of the other. This could be

\textsuperscript{46} See para. 6, footnote 14; and Prof. McEwen, OR 20 April 2015, col. 21
\textsuperscript{47} Audit Scotland, para's 14,15 & 16.
\textsuperscript{48} Prof. McEwen, OR 29 April 2015, col.22
\textsuperscript{49} Profs Beath & Bell, OR 20 May 2015, col 21
\textsuperscript{50} IFS, sect. 5
\textsuperscript{51} ICAS, sect 5, and CIOT/LITRG, para. 7.2
\textsuperscript{52} ICAS, sect. 5
\textsuperscript{53} P Stevens, C Barbour & A Bermingham, OR 13 May 2015, cols 29 & 30
\textsuperscript{54} RSE, paper
modelled but a broader interpretation including tax competition becomes extremely difficult. Some other countries have mechanisms which prevent detrimental action but none that he could find both allow detrimental action and provide for compensation.  

55 Doctor Armstrong observed that, contrary to much of the comment on the subject, Scotland is much more at risk from detriment caused by UK decisions than vice versa. This is simply a result of the asymmetry between Scotland and the rest-of-the-UK.

56 Doctor Armstrong observed that, contrary to much of the comment on the subject, Scotland is much more at risk from detriment caused by UK decisions than vice versa. This is simply a result of the asymmetry between Scotland and the rest-of-the-UK.

28. The CIOT are concerned that establishing mechanisms and systems to deal with no detriment will be difficult. Yet without such, there will be lack of transparency and difficulty in determining whether the principle is operating effectively. The IFS are also concerned that any block grant adjustment mechanism meeting the no detriment principles will be complex, leave scope for disagreement and will be neither transparent nor mechanical. Both Professors Leith and Hughes Hallett expressed concern that the modelling of policy spill-overs goes well beyond the modelling currently underpinning the Scottish government's forecasts. To do such modelling for Scotland and the constituent parts of the rest of the UK to any degree of accuracy goes well beyond the likely available capacity.

29. Under the first no detriment principle, once an adjustment is agreed for the initial year of devolution of a tax or function, or for the first year of a policy impact, there is the question of the continuing adjustment appropriate for subsequent years. In doing this for example, changes in tax take resulting from changes to rates and thresholds will need to be distinguished from the effect of changes in the economy and in people's behaviour. This will not be easy. On the expenditure side, devolved welfare spend will not fall within the Departmental Expenditure Limit (DEL) mechanism in Barnett but is demand led as Annually Managed Expenditure (AME). The initial adjustment for devolved welfare expenditure will need to be indexed to the prime drivers of welfare spend somehow. The issue of adjustments for subsequent years received considerable attention from respondents and ICAS summarised the general view: Agreeing the appropriate adjustments at the outset will be one task, however the subsequent adjustments for later years are likely to be increasingly difficult to determine.

30. With taxes coming and going and specific benefits changing more frequently, Fiscal Affairs Scotland consider that it will become increasingly difficult with time to determine the 'correct' adjustment for a change in Scottish or UK policy. Changes in rates and thresholds will introduce complexity and the calculation of no detriment compensation will become ever less precise. They suggest that such imprecision could be accepted as a matter of 'swings and roundabouts'. On arbitration, John McLaren envisaged initial negotiations between a Scottish OBR and the UK OBR with backing from the Scottish and UK Treasuries followed by discussion and
conclusion by a panel of senior, representative politicians.\textsuperscript{64} Doctor Cuthbert, however, expressed scepticism about the suitability of the OBR for that role and distrust of Treasury involvement.\textsuperscript{65}

31. The Institute for Fiscal Studies consider that no method for calculating adjustments for subsequent years will meet the Smith principles. For a devolved tax, the simplest method would be to make the same percentage adjustment as in the first year but this leaves Scotland bearing the risk of UK wide shocks. Indexation to the percentage change in rest of UK revenues will insulate Scotland from UK shocks and will be neutral if Scotland's revenues grow at the same rate. However, Scotland may be adversely impacted by changes in the rest of the UK to the devolved tax. The third method considered is to index to the pounds per person change in rest of UK revenues. This protects against UK shocks and leaves Scotland unaffected by rest of UK decisions on taxes that are devolved. However Scotland will lose out unless its revenues grow faster in percentage terms than the rest of the UK. Similar issues arise for devolved welfare spending.\textsuperscript{66}

32. While the IFS paper refers to indexation to rest-of-UK revenues, the proposed indexation for SRIT is to the UK tax base. The UK income tax base is the total of taxable income after allowances and reliefs of all taxpayers in the UK. Rest-of-UK revenues will be the resulting tax payable after the application of rest-of-UK rates and thresholds to the tax base relating to rest-of-UK taxpayers.\textsuperscript{67} In discussions of indexation, it was not always clear whether the term revenue was being rigorously used or was loosely equated to tax base.

33. Doctor Cuthbert considered a possible method of adjusting for rest-of-UK changes to devolved taxes. This would require HMRC to conduct an annual exercise to determine how much revenue would have been collected under the rules applying in year zero in comparison to the revenue now collected following rest-of-UK changes. While this would solve some of the problems with indexation, it would enshrine an increasingly irrelevant year zero tax structure as a fixed reference point.\textsuperscript{68} The method spelled out in the Command Paper, paragraph 2.4.14, creates an unacceptable mechanism whereby decisions that were made by the rest-of-UK Government would yank the Scottish Government's chain and force it to react either by increasing tax or by cutting devolved services.\textsuperscript{69}

34. Professor MacDonald thought that indexation using GDP factors might provide a method for year-on-year adjustment. Such a rule plays a part in the determinations of the Australian Commonwealth Grants Commission. However, it would require reform of Barnett in order to work.\textsuperscript{70}

35. The one major tax where Smith recommends significant devolution (as opposed to assignment of revenues) is income tax. The question of how to index the initial adjustment for future years was considered by a number of respondents. There

\textsuperscript{64} John McLaren, OR 22 April 2015, col. 33
\textsuperscript{65} Dr Cuthbert, OR 22 April 2015, cols 33 & 34
\textsuperscript{66} IFS, sect. 4
\textsuperscript{67} Command Paper, Chapter 2, Box 1
\textsuperscript{68} JRF, para's 5.3 & 5.4
\textsuperscript{69} OR 22 April 2015, col. 18
\textsuperscript{70} Prof. MacDonald, OR 20 May 2015, col 16
is a difference between the proportion of Scottish income tax revenues to UK revenues and the proportion of Scottish population to the UK population, which is noted above in paragraph 10, and the UK population looks likely to continue to grow at a faster rate than the Scottish. This imbalance between tax and population share could be altered by decisions of either government leading to migration of top earners from north to south or vice versa. Consequently, the conclusion was that indexation to changes in the UK tax base (the 'Holtham' method) was not suited to Scotland. Instead, indexation by changes in the UK tax base per capita was preferred although John McLaren saw a disadvantage to this if Scotland successfully reversed its population decline.

**What additional borrowing powers for current spending and for capital spending should the Scottish Government have?**

36. Devolution of tax and spending powers will bring additional risks and respondents see these as grounds for greater borrowing powers. These powers, which should be further reviewed as devolution is increased, should be sufficient for budget smoothing more generally and not just to cover forecasting risk. Professor Leith considered that debt was an important instrument in managing shocks and that the borrowing powers appropriate to Scotland's increased risk exposure were not trivial. Doctor Armstrong commented that expecting the Scottish Government to forever run a balanced budget is to cast aside the last 90 years of economic development on smoothing shocks. But Scotland having a separate macroeconomic policy seems to contradict the Command Paper. Transparency of intention is required. ICAS considered that there was further justification for increased revenue borrowing powers for preventative spending initiatives. Such spending is similar to capital investment and should be allowed within limits as is capital borrowing.

37. With regard to capital borrowing, the Scottish Futures Trust believe that flexible and meaningful support to infrastructure investment could be provided in the short term by increasing the cash borrowing limit under the 2012 Scotland Act and removing annual limits. In developing a longer-term fiscal framework they suggest a prudent regime based on affordability and transparency. Consideration should be given to how debt repayment is profiled over the life of an asset and that investment plans should be matched with suitable asset management arrangements to ensure sustainability. With the deployment of new powers, global best practice on prioritisation of investment should be considered. Alan Bermingham also proposed a prudent regime based on a judgement of affordability by MSPs based, perhaps, on a percentage of locally raised taxes. He accepted Patrick Stevens point that, if there was an assumption that the debt was underwritten by the UK, then the UK

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71 Dr Cuthbert & J. McLaren, OR 22 April 2015, cols 20 - 22
72 JRF, para. 4.2 and FAS, paper
73 JRF, para. 4.3; Dr Cuthbert, OR 22 April 2015, col 22; FAS, paper; and J McLaren, OR 22 April 2015, cols 24 & 25
74 CIOT/LITRG, para. 8.1 and IFS, sect. 6
75 Prof. C. Leith, paper
76 Dr Armstrong, OR 29 April 2015, col. 17
77 ICAS, sect. 6
78 SFT, paper
Government should have a role in agreeing the limit.\(^{79}\)

38. Professor Hughes Hallett considered that borrowing powers, which are currently inadequate, should be increased to avoid the exacerbating effects when a shock occurs of cutting expenditure or raising taxes to balance the budget. He suggested setting a debt target for capital borrowing as a function of the return on public capital with current spending balancing current revenues on average. The way to do this was to set a primary surplus rule as outlined in paragraph 14 above to bring current debt back to the target value. He also suggested that borrowing costs could be reduced by borrowing in the market rather than through the Treasury.\(^{80}\) Professor MacDonald believes that increased borrowing powers are required post Smith but does not believe that the power should be unfettered leaving the market to impose discipline. The experience in Canada has been that undisciplined borrowing by certain provinces has pushed up the cost of borrowing.\(^{81}\)

39. Fiscal Affairs Scotland outlined four basic issues in relation to borrowing powers, which are:

a. First, whether any limit applies and if it does whether it is fixed or variable;

b. Second, whether borrowing is undertaken indirectly via the UK government or directly, or both;

c. Third, how any borrowing responsibility/limits are split between local and central government in Scotland;

d. Fourth, the ability of the Scottish government to top up any existing UK benefit brings into question what borrowing limit applies as it could, in practice, put an effective ceiling on the scope for such adjustments.

Rather than venturing answers to these, they suggested that the answers will be decided by political negotiation and not by reference to academic research findings.\(^{82}\)

**What fiscal rules should be applied to these additional borrowing powers?**

40. Respondents were agreed on the need for rules but these should allow for flexibility. ICAS emphasised the importance of permitting borrowing to fund preventative spending measures, as mentioned in paragraph 36 above, but this should be subject to an overall cash limit, a time limit on repayment and measures to prevent the use of these funds for recurrent revenue expenditure. Borrowing powers overall must be structured to be affordable, sustainable and prudent and should be shared proportionately with future generations.\(^{83}\)

41. Professor Leith warned against overly restrictive rules which are 'made to be broken' and noted the advantages of a Fiscal Council to evaluate the sustainability of

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\(^{79}\) A Bermingham & P Stevens, OR 13 May 2105, cols 37 & 38

\(^{80}\) Prof. Hughes Hallett, paper

\(^{81}\) Prof. MacDonald, OR 20 May 2015, col. 38

\(^{82}\) FAS, paper

\(^{83}\) ICAS, sect. 7
public finances and sound the alarm if they cease to be consistent with that objective.\footnote{Prof. Leith, paper} Professor Hughes Hallett referred to his proposals outlined in paragraph 38 above and advised that the Euro Zone experience shows that enforcement rather than the form of the rule is the critical factor. The judgement of when to enforce must be made by an independent body with no ties to the political sphere. Intermediate targets with predefined action to be taken prior to breaching them helps effective enforcement.\footnote{Prof. Hughes Hallett, paper}

42. The Institute for Fiscal Studies noted that the rules should be consistent with the UK's broad fiscal framework and suggested limiting the fraction of the Scottish governments budget allocated to current borrowing interest costs as an appropriate measure. This would provide flexibility while ensuring sustainability.\footnote{IFS, sect 7} Extending the Local Authority prudential code could be considered to control capital borrowing. However, the political implications of the UK government overruling a borrowing decision of the Scottish government, or of bailing it out, are very different from those of a central government doing the same for a local authority. In the absence of a prudential regime, a limit on capital borrowing should be agreed.\footnote{IFS, sect 6}

43. Doctor Armstrong referred to the moral hazard created where sub-central governments with borrowing powers are presumed to benefit from a central government bail out if the borrowing becomes unsustainable. This creates spillover effects for the fiscal position of the central government.

**How should inter-governmental machinery including the Joint Exchequer Committee be strengthened and made more transparent?**

44. There is general agreement that the current intergovernmental machinery is inadequate in the evolving environment. Fiscal Affairs Scotland notes the current nature of the JEC meetings, which are occasional and involve senior politicians, makes them unsuitable for a leading role in the future, although they may usefully continue to give final approval to negotiations carried out at a lower level.\footnote{FAS, paper} The CIOT calls for a more systematic approach at both ministerial and departmental level and for greater transparency including publication of briefing notes. Putting these measures on a statutory basis could be helpful.\footnote{ICAS/LITRG, para's 10.2 & 10.4}

45. Professor McEwen referred to the existing intergovernmental machinery as very informal and ad hoc and inadequate as we move towards a more complicated and complex devolution settlement. The lack of reporting and accountability is likewise an issue. The arrangements should be more formal and more transparent. Something akin to the JMC (Finance), recommended by the Calman Commission, should be established.\footnote{Prof. McEwen, OR 29 April 2015, cols 1, 2, 3, & 4} It is important that the forum should be focused have a real purpose, even decision making powers, if the Governments are to invest time and resources.\footnote{Prof. McEwen, OR 29 April 2015, col. 14} Professor Jeffery agreed with these observations and referred to the

\footnotetext[84]{Prof. Leith, paper} \footnotetext[85]{Prof. Hughes Hallett, paper} \footnotetext[86]{IFS, sect 7} \footnotetext[87]{IFS, sect 6} \footnotetext[88]{FAS, paper} \footnotetext[89]{ICAS/LITRG, para's 10.2 & 10.4} \footnotetext[90]{Prof. McEwen, OR 29 April 2015, cols 1, 2, 3, & 4} \footnotetext[91]{Prof. McEwen, OR 29 April 2015, col. 14}
failure of the central institutions of the UK state to adapt to the realities of devolution. There is need to find common purpose and mutually acceptable arrangements across the UK’s various Governments rather than the existing ad hoc bilateral arrangements between the UK government and the governments of Scotland, Wales and Northern Ireland.\textsuperscript{92}

46. Professor Keating urged caution in creating further intergovernmental committees. He suggested limiting intergovernmental mechanisms to three key areas, Europe (already in place), welfare and finance. Finance is particularly important given the Treasury's centrist mentality and there would also need to be independent sources of information to provide a common database for financial decisions. He suggests federalism is the answer and in a federal system the central government cannot make these decisions unilaterally. But there are difficulties in applying federalism to only three parts of the UK. There must be a forum for political negotiation on finance and greater transparency for the public and the two parliaments.\textsuperscript{93}

47. The Royal Society of Edinburgh notes that the complexity and challenge of negotiating a fiscal framework for Scotland requires much closer cooperation between the Scottish and UK governments. They suggest developing a stronger Joint Ministerial Committee system with clearer guidelines, more regular meetings and enhanced transparency and publicity.\textsuperscript{94} Doctor Cuthbert notes the need for a high-level body to review and adjust the intergovernmental arrangements. There is no UK federal government to perform this role and it goes well beyond the scope of the current JEC. In addition there is a need for a forum to iron out day-to-day issues and the JEC may be appropriate for this provide it does not simply impose Westminster decisions where agreement cannot be reached.\textsuperscript{95}

48. Principles of respect, trust and common interest are put forward by ICAS as the basis for intergovernmental machinery. The machinery must facilitate sharing of powers between governments and be strong enough to be effective without itself usurping those powers. An Office of the Regions or similar should be considered to coordinate the devolution of powers and provide a forum for sharing of experiences between devolved authorities.\textsuperscript{96} Cooperation and coordination should be nurtured at ministerial level but should also extend to the officials charged with developing and implementing the fiscal framework.\textsuperscript{97}

**What mechanisms should there be for reviewing the Statement of Funding Policy?**

49. There is agreement that the Statement of Funding Policy needs review, at least whenever there are changes to the devolution settlement or more frequently, even annually, as the CIOT suggest. Independent scrutiny is appropriate. The Royal Society of Edinburgh consider the input of the devolved administrations essential in revising the statement and the CIOT suggest review by both the Scottish and UK

\textsuperscript{92} Prof. Jeffrey, OR 29 April 2015, col. 4  
\textsuperscript{93} Prof. Keating, OR 20 May 2015, cols 34, 35 & 39  
\textsuperscript{94} RSE, paper  
\textsuperscript{95} JRF, para's 8.1 & 8.2  
\textsuperscript{96} ICAS, sect. 8  
\textsuperscript{97} RSE, paper
parliaments. The Institute of Fiscal Studies note that the absence of independent scrutiny in the past allowed the adoption of a flawed comparability factor relating to the devolution of business rates to Scotland. Alan Bermingham considered that the JEC, or perhaps the SFC, should be involved with Treasury in advance of the Funding Statement being produced, so that there can be advance agreement on indexation measures and consideration of the impact on the Scottish Budget.

What should be the role and remit of an enhanced Scottish Fiscal Commission and who should be responsible for generating the economic and fiscal forecasts?

50. Most of the witnesses agreed that the SFC should be responsible for providing independent analyses and forecasts. Some witnesses also saw the role of the SFC as being a watchdog monitoring the fiscal position of the government and publically raising the alarm if it is unsustainable. Several respondents referred to best practice guidelines produced by the OECD and the CIOT recommended building on the report of the Fiscal Commission Working Group.

51. The need for a better model of the Scottish economy to be provided by the OBR or SFC was noted and alignment of forecasting between these two bodies was recommended by CIOT. John McLaren referred to the importance of building up resource within the SFC and Doctor Cuthbert illustrated the weakness of current forecasts with the case of VAT. Scottish VAT revenues are estimated on the basis of UK household survey data and the figures in the past have been volatile. Such forecasts need to be put on a much sounder footing with improved data and methodology but not just in Scotland, as Doctor Cuthbert referred to inadequate handling of risk in the OBR's projections.

52. Doctor Armstrong considered that it would be inappropriate for the OBR to have dialogues with both Governments on their policies in the light of adherence to the fiscal framework. That would lack credibility. There needs to be a comparable Scottish body, independent of Government and adequately resourced to make its own forecasts. On the issue of whether the SFC simply reviews the forecasts prepared by the government or builds its own forecasts, Professors Beath and MacDonald believe that the necessary level of independence from and challenge to government requires it to make its own forecasts. Without preparing one's own model, it would be difficult to evaluate and challenge the underlying assumptions in someone else's model. It should also have a role in challenging the government on the route it is taking and on its fiscal sustainability, not just in the short and medium term but also in the long term.

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98 CIOT/LITRG, para.11.2 and RSE, paper
99 IFS, sect. 8
100 Alan Bermingham, OR 13 May 2015, col. 35
101 Audit Scotland, para. 9 and CIOT/LITRG, para. 12.2
102 CIOT/LITRG, para. 2.5
103 FAS, paper
104 CIOT/LITRG, para. 12.4
105 J McLaren and Dr Cuthbert, OR 22 April 2015, cols 41, 42, 45, 46, 47 & 48
106 Dr Armstrong, OR 29 April 2015, cols 27 & 28
107 Profs Beath & MacDonald, OR 20 May 2015, cols 35 & 36
108 Profs Beath, Bell & Keating, OR 20 May 2015, cols 39 & 40
53. ICAS refer to the future role of the SFC as an independent examiner of the forecasts, budgeting and fiscal statistics\textsuperscript{109} while John Glen refers to a fully independent fiscal council to provide the electorate with more objective macro-economic projections.\textsuperscript{110} Fiscal Affairs Scotland consider the SFC’s remit “is likely to be similar to that for the OBR, as, like the OBR, its most important role will be to bring ‘neutral’ information and analysis to the table.”\textsuperscript{111} If established as part of the Scottish Administration and with an obligation to prepare such reports as Scottish Ministers may require, ICAS fears that the SFC’s independence will not be obvious and suggest that it be put on a statutory basis.\textsuperscript{112} CIPFA see a role for the SFC to provide the Scottish Parliament with a view on the robustness of the Scottish Government’s estimates and measures of prudence, sustainability and affordability. CIPFA also supports the proposal that the SFC should be responsible for providing economic and fiscal forecasts to the Scottish Government.\textsuperscript{113}

54. In addition to the provision of forecasts on the newly devolved taxes, Professor Leith sees a key role for the SFC in assessing the sustainability of public finances. This requirement derives from the proposal that flexible fiscal rules be adopted. The SFC will perform the important function of evaluating the extent to which past plans have been implemented as fiscal targets role forward in time. Without such monitoring of slippage, the policy maker is always able to promise adjustment tomorrow.\textsuperscript{114} Professor Hughes Hallett enumerates the functions of an independent ‘fiscal policy commission’:

\begin{itemize}
  \item a. review the fiscal outlook (and major influences on that outlook) for the government and public;
  \item b. assess likely future revenues;
  \item c. estimate current structural imbalances;
  \item d. estimate the likely consequences of current spending and taxation plans, including those implied by changing demography, pensions or foreign factors;
  \item e. give advice on correcting any imbalances; and
  \item f. raise the alarm, publically, if the fiscal position is likely to become unsustainable.\textsuperscript{115}
\end{itemize}

What lessons can we learn from the experience of other fiscal federations?

55. There was limited response to this question, perhaps because of the perceived uniqueness of Scotland’s position. Fiscal Affairs Scotland considered few relevant lessons are likely to be available because the asymmetry in Scotland’s case and

\textsuperscript{109} ICAS, sect. 10
\textsuperscript{110} John Glen, paper
\textsuperscript{111} FAS, paper
\textsuperscript{112} ICAS, sect.10; C Barbour, OR 13 May 2015, cols 33 & 34
\textsuperscript{113} CIPFA, para. 5.2
\textsuperscript{114} Prof. C. Leith, paper
\textsuperscript{115} Prof. Hughes Hallett, paper
because, apart from the Basque region of Spain, no other country has fully devolved income tax to a region. The Institute for Fiscal Studies referred to a recent review of 13 fiscal federations in the context of the EU’s increasing fiscal integration and to Australia and Canada as potential sources. But the only lessons they draw are the negative ones that most devolved income taxes are in the form of a local or state income tax which is in addition to federal income tax and that the no detriment principle is almost without precedent. The latter suggests that, to keep the system workable, recourse to no detriment should be limited.

56. Professor McEwen observed that cases of detriment or spillover effects between levels of government happen routinely in the countries she is aware of. Belgium combines a level of fiscal autonomy for its regions with cooperation agreements which minimise tax competition. That and EU competition policy were the only examples she could offer which resembled the proposed no detriment principles. Professor Jeffrey observed that on-going intergovernmental relationships in other countries offer an institutional framework for dealing with spillover effects in a mutual way and he offered discussions and agreements around tax competition amongst Spain, the Basque Country and Navarre as an example. Currently, our intergovernmental relations are not systematically organised.

57. Professor MacDonald also referred to the experience in Spain. Nearly all taxes other than VAT are devolved to the Basque Country and Navarre but there are constraints preventing the overall tax burden from varying too much from the rest of Spain. There are also constraints on borrowing. Despite these constraints, there is evidence that the freedom to adjust at the margin has resulted in economic growth. Professor Keating elaborated on this. The borrowing constraints handed down from Brussels to Spain are apportioned to the 17 autonomous communities by agreement reached in a fiscal council and taking into account the fiscal and economic circumstances of each community. With its tax autonomy, the Basque Country has slightly reduced corporation tax and has made income tax more progressive to compensate but the real benefit has come from stimulus to research and development through measures such as tax credits. The Basques credit their success to their integration of tax into their broader social and economic strategy and business likes being close to, and in dialogue with, the tax authority and government. Canada also illustrates how diverse tax strategies can coexist within a federation and recent evidence suggests that Quebec, through a different tax and welfare mix, has resisted the tendency to greater social and economic inequality in the rest of Canada.

58. Doctor Cuthbert observed that federalism generally provides a framework in which the issues of fiscal devolution can be resolved, while John McLaren noted that in most countries the central government either retains very strong strings or devolved tax collection is combined with fiscal transfers to maintain a general

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116 FAS, paper
117 IFS, sect. 9
118 Prof. McEwen, OR 29 April 2015, col. 18
119 Prof. Jeffrey, OR 29 April 2015, cols 19, 20 & 22
120 Prof. MacDonald, OR 20 May 2015, col. 28
121 Prof. Keating, OR 20 May 2015, cols 28, 29, 42 & 43
122 Dr Cuthbert, OR 22 April 2015, col. 37

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parity.\footnote{J. McLaren, OR 22 April 2015, cols 37 & 38} Professor McEwen observed that intergovernmental relations are generally more developed elsewhere and she endorsed the SPICe paper's caveat in drawing conclusions from other countries:

- the UK is not a federation;
- the UK is incredibly asymmetric; and
- it is a multinational state.\footnote{Prof. McEwen, OR 29 April 2015, cols 14 & 15}

59. Professor Hughes Hallett offers the following as a key feature of fiscal federations: the existence of a central budget with flows to and from regional economies. In that sense the UK is already a fiscal federation because there is a central budget and local revenues. However it is a federation by default, not by design, as there have hitherto been no powers to set taxes locally and because regional taxes are not collected locally. He notes that, close to home, there are countries that act like a full fiscal federation, having debt limits, a deficit rule, monitoring by a fiscal commission, borrowing but a contingency reserve, the use of taxes as a policy lever, and so on. These are Guernsey, Jersey and the Isle of Man.\footnote{Prof. Hughes Hallett, paper}

60. The Austrian Parliamentary Budget Office presented a full account of how the Austrian fiscal framework operates amongst the federal government, the Laender (states) and the municipalities. It includes statutory powers and fiscal rules and principles of vertical and horizontal allocation, recognizing various factors such as taxes raised, population and needs. While the circumstances are significantly different from Scotland in the UK, it usefully displays the types of issues that will be faced in the future and some of the ways in which they may be tackled.

Gavin McEwen

28 May 2015

\footnote{123 J. McLaren, OR 22 April 2015, cols 37 & 38} \footnote{124 Prof. McEwen, OR 29 April 2015, cols 14 & 15} \footnote{125 Prof. Hughes Hallett, paper}
Finance Committee

17th Meeting, 2015 (Session 4), Wednesday 3 June 2015

Carers (Scotland) Bill: Scrutiny of Financial Memorandum

Introduction

1. At its meeting on 13 May 2015, the Committee took evidence from the Scottish Government Bill team on the Financial Memorandum (FM) for the Carers (Scotland) Bill (“the Bill”). Following that evidence, the Committee agreed to ask the Minister in charge of the Bill to provide written clarification of some of the issues raised in evidence and to give oral evidence to the Committee. The Committee’s letter and the clarification received from the Minister are attached as annexes A and B to this paper.

2. The paper sets out the relevant background from the FM and summarises the evidence received on the issues that the Committee has invited the Minister to discuss. A hard copy of the FM has been provided and can also be found at page 23 of the Explanatory Notes.

The Financial Memorandum

3. The Policy Memorandum (PM) sets out the Scottish Government’s intentions that carers “should be better supported on a more consistent basis so that they can continue to care, if they so wish, in good health and to have a life alongside caring.” The intention is similar in relation to young carers “but that young carers should have a childhood similar to their non-carer peers.” The PM states that the “objective of the Bill is to make real this ambition by furthering the rights of both adult and young carers.”

4. The duties and provisions of the Bill that are addressed in the FM are—

- duties to prepare and review the adult carer support plan (ACSP) for adult carers
- duties to prepare and review the young carer statement (YCS) for young carers
- duties to establish and maintain an information and advice service for all carers and young carers in the local authority area
- duties to provide support to both adult and young carers where needs fall within local eligibility criteria and powers to provide support where needs do not fall within local eligibility criteria
- duties to prepare a local carer strategy
- waiving of charges for support to carers

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1 Policy Memorandum, paragraph 2
• training and development of the statutory health and social care, third sector and education workforce and awareness-raising with carers and young carers

• the implications flowing from the regulations and guidance underpinning the Bill

5. The FM provides the Government’s best estimates but also states that—

“It is recognised, however, that it is challenging to predict the demand profile with complete accuracy. The Scottish Government is, therefore, very willing to work in partnership with COSLA if any new information comes to light about the cost estimates. The Scottish Government would be prepared to consider any such information.”

6. The total costs\(^3\) of the Bill, as set out in the FM are—

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<tbody>
<tr>
<td><strong>Adult carer support plan</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>(min)</td>
<td>0.74</td>
<td>1.82</td>
<td>2.35</td>
<td>5.75</td>
<td>3.42</td>
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<td>8.37</td>
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<tr>
<td><strong>Young carer statement</strong></td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>(min)</td>
<td>0.13</td>
<td>0.21</td>
<td>0.27</td>
<td>0.43</td>
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<td></td>
<td></td>
<td>0.80</td>
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<tr>
<td><strong>Information and advice service</strong></td>
<td>3.30</td>
<td>3.04 (recurring)</td>
<td>3.04</td>
<td>3.04</td>
<td>3.04</td>
</tr>
<tr>
<td><strong>Duty to support adult carers</strong></td>
<td>3.721</td>
<td>9.935</td>
<td>17.079</td>
<td>24.808</td>
<td>51.218</td>
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<tr>
<td><strong>Duty to support young carers</strong></td>
<td>0.732</td>
<td>1.465</td>
<td>2.930</td>
<td>4.395</td>
<td>6.493</td>
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<tr>
<td><strong>Additional short breaks component</strong></td>
<td>2.36 (recurring)</td>
<td>2.36</td>
<td>2.36</td>
<td>2.36</td>
<td>2.36</td>
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<tr>
<td><strong>Local carer strategies</strong></td>
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<td>0</td>
<td>0</td>
<td>0.16</td>
<td>0</td>
</tr>
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<td><strong>TOTAL</strong></td>
<td>11.303 (min)</td>
<td>19.415 (min)</td>
<td>29.329 (min)</td>
<td>42.143 (min)</td>
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<td>12.463 (max)</td>
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<td>34.579 (max)</td>
<td>52.163 (max)</td>
<td>83.501 (max)</td>
</tr>
</tbody>
</table>

\(^2\) Financial Memorandum, paragraph 7

\(^3\) Unless otherwise indicated in the table costs are recurring from 2012-22
Adult Carer Support Plans (ACSPs) and Young Carer Statements (YCSs)

7. The Committee asked for clarification of the assumptions underpinning the estimated unit costs for ACSPs and YCSs. Annexes A to C of the letter from the Minister respond to this request. The letter states that the Minister sees—

“…merit in further work to refine the assumptions set out in the Financial Memorandum and the detail which underpins them. We intend to set up a Finance-led Group with key stakeholders… The Group would consider, amongst other things, the cost estimates in further detail and an extension of the time period beyond 2022-23, and would review any relevant additional information which comes to light. It would also review appropriate methods of funding distribution and would establish procedures for monitoring demand, costs and achievements against the Bill’s objectives. The Group should also aim to establish a clear understanding of risks and play a role in ensuring that risks are understood, shared and mitigated as far as is possible.”

Adult Carer Support Plan

8. Under the Bill local authorities would be required to prepare an ACSP with individual adult carers. This would “replace the current carer’s assessment which is available to carers of any age…who under take a substantial amount of care on a regular basis.”

9. Paragraphs 38-54 of the FM set out detail about the methodologies used in calculating the levels of uptake, and therefore costs of providing, ACSPs. The estimate reached “is that over time 34% of adult carers will be the highest percentage of carers who will have an ACSP.” This estimate is “based on a number of factors relating to the evidence”. Details of what has been factored in are set out in paragraph 56 of the FM and include information gathered from the Scottish Health and Care Experience Survey and the 2012 and 2013 Scottish Health Surveys.

10. A range of costs is provided based on three separate unit costs for providing an ACSP. The highest point in this range is £176.

11. Based on the unit costs the total costs for ACSPs estimated are—

<table>
<thead>
<tr>
<th>Year</th>
<th>% carers receiving ACSP</th>
<th>ACSPs per annum</th>
<th>Additional ACSPs per annum</th>
<th>Unit cost of £72 (£m)</th>
<th>Unit cost of £110 (£m)</th>
<th>Unit cost of £176 (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017-18</td>
<td>3</td>
<td>22,350</td>
<td>10,350</td>
<td>0.745</td>
<td>1.138</td>
<td>1.821</td>
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<tr>
<td>2018-19</td>
<td>6</td>
<td>44,700</td>
<td>32,700</td>
<td>2.354</td>
<td>3.597</td>
<td>5.755</td>
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<td>2019-20</td>
<td>8</td>
<td>59,600</td>
<td>47,600</td>
<td>3.427</td>
<td>5.236</td>
<td>8.377</td>
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<tr>
<td>2020-21</td>
<td>14</td>
<td>104,300</td>
<td>92,300</td>
<td>6.645</td>
<td>10.153</td>
<td>16.244</td>
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<tr>
<td>2021-22 (recurring)</td>
<td>16</td>
<td>119,200</td>
<td>107,200</td>
<td>7.718</td>
<td>11.792</td>
<td>18.867</td>
</tr>
</tbody>
</table>

4 Financial memorandum, paragraph 36
12. By comparison, current recurring costs for providing 12,000 carers assessments per year at each unit cost would be £0.86 million, £1.32 million and £2.1 million.

13. The evidence received in response to the Committee’s calls for evidence contained a number of comments about the estimates provided in the FM in relation to the provision of ACSPs. Comments address both the anticipated level of uptake and the estimated unit costs.

14. COSLA’s submission set out three “areas of concern” in relation to ACSPs – the unit cost of assessment, the speed at which carers will come forward for assessment and the total number of carers that will come forward for assessment.

15. In relation to unit costs, COSLA observed that the FM “makes no clear recommendation” about which of the three unit cost estimates provided is thought to be most accurate and states that it—

“has concerns about the representation of these unit costs as alternative options as these could lead to a presumption that the lower unit costs are realistic. Given that the FM itself describes the £176 as the average unit cost, it is COSLA’s view that, in presenting a range of unit costs in the FM with £176 at the top of the range, this is misleading.”

16. Glasgow City Council stated that it “estimated that a carer assessment in Glasgow costs around £280” and for young carers “submitted an estimated unit cost of £394.” These figures contrast the FM estimates of unit cost ranges of £72-£176 for ACSPs and £106-£167 for YCSs.

17. SWS also commented on the unit costs in the FM stating that—

“…the selection of the lowest and highest options is biased. Footnote 32 explains that the questionnaire survey of Scottish local authorities yielded unit costs for 14 LAs of between £72 and £342 per carer assessment, after excluding the highest and lowest unit costs. The average unit cost was £176…This would normally generate low, medium and high estimates of £72, £176 and £342. Instead the FM takes the average of £176 as the high end estimate.”

18. On the speed at which carers come forward, COSLA noted the “low and slow” uptake that is anticipated in the FM which estimates moving from 3% of adult carers with and ACSP in 2017-18 to 34% in 2012-22. COSLA states that “there is no evidence presented to support the year-on-year increases profiled in Table 1 regarding the speed at which carers will come forward for assessment.”

19. COSLA went on to state that—

“Whilst councils have indicated that further consultation is needed locally to estimate the likely patterns of demand, the broad view from councils is that the duty to provide an ACSP, along with the removal of the ‘regular and substantial test’, will lead to an increase in uptake well above the estimates provided in the FM.”
20. Comparing these estimates to previous experience of the uptake of entitlements, COSLA commented that for “Free Personal Care, for instance, growth was closed to 30% of the eligible population over the first 3 years of the new policy coming into place, compared with 16% over 5 years for take up of ACSPs estimated in the FM.”

21. The assumptions about the build up of demand were also questioned by SWS which considered that a faster build up of demand is likely because—

“(1) The Scottish Government wishes to ensure that all carers who request an assessment will get one – that is bound to increase demand for assessments significantly.

(2) Previous social care legislation known to increase demand did so more quickly. Published Free Personal Care statistics from implementation in July 2002 to 2013 show three distinct periods: (a) early take-up period of just over 3 years from July 2002 to September 2005; (b) a period of lower growth up to the end of 2010 (with demography a key driver); and (c) a flatter period of growth from 2011 in response to increasing austerity and resource constraint.

(3) The UK Government has implemented very similar legislative changes for England within the Social Care Act 2014: their analysis of new demand for carer’s assessments assumes only two years of build-up before saturation in year three.”

22. In relation to the assumption of assessment levels, both for ACSPs and YCSs, SWS stated that—

“While there are many statistics quoted in the Finance Memorandum from different carer surveys and research, none of this evidence leads to these particular estimates, or to the “steady state” cumulative estimates of 34% of the total number of adult carers ever having had an ACSP, and 64% of young carers ever having had a YCS. It would be helpful if the FM had achieved greater transparency about the basis for the estimates: clearly many are matters of judgement.”

23. North Ayrshire Council stated that it has “estimated that 1,430 carers within North Ayrshire will require an ACSP” and went on to say that it “would expect that through the annual review of the service user, the ACSP will be completed for each carer” and that this is estimated at “53% in the first year not as stated in the bill “when carers come forward”, this wording suggests that it is only on requests and contradicts the duty to prepare an adult care and support plan.”

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5 Their estimated increase in the number of assessments has been criticised as too low by leading academics – see Linda Pickard, Derek King and Martin Knapp (2015): The ‘visibility’ of unpaid care in England, Journal of Social Work online, 1-20.
6 We use this term to denote the period after the initial increase in assessment requests following implementation of the Bill.
7 Paragraph 56 states that: “The estimate is that over time 34 per cent of adult carers will be the highest percentage of carers who will have an ACSP”.
8 Paragraph 60 says “about 60%”, however Table 2 in paragraph 64 gives 64%.
24. Argyll and Bute Council believed “that there has been a significant underestimate of the increase in demand which will emanate from the introduction of adult carer support plans” and goes on to caution that the “potential worst case scenario is arriving at a position where the role of local authorities in targeting limited resources to those of greatest need is displaced by a demand driven by a formal assessment of all carers irrespective of need.”

25. The National Carers Organisations (NCOs) noted that “the costing for the duty in relation to the provision of Adult Carer Support Plans appears to be based on the model of a one-off intervention” but that “an outcome based support plan is a process, rather than a single event.”

26. The FM states—

“The largest cost element in assessments and reviews is the pay of the professionally qualified, and other, staff who carry them out. The biggest contribution to reducing the costs of the ACSP might come from considering changes to the mix of staff grades and skills.”

27. In relation to this point, the NCOs stated that—

“…it is important that all staff who carry out this task have the correct skills to do so and are experienced in working directly with carers. This does not mean that staff at lower grades are necessarily less skilled at working with carers, but that additional training and learning may be required and will have associated costs.”

28. The submission went on to suggest that, for the third sector, resourcing “will be required if the local authority wants a carers centre or other third sector organisation to carry out the ACSP on their behalf” and that it would therefore “be useful to explore the costs of completing a carers’ assessment for the third sector in the same way as the costs have been estimated for completion by the local authority, especially as the Financial Memorandum states that contracting the third sector may lead to cost savings.”

29. The Committee sought clarification from the Bill team about how the unit cost for an ACSP had been estimated. The Bill team explained that—

“…it would be a difficult, challenging and detailed exercise to try to build up a unit cost based on the different types of assessment, the number of days it takes to carry them out and so on. We know from the returns that some assessments are carried out by social workers, some by health professionals, some by social care assistants and some by the voluntary sector, and as the financial memorandum itself points out, the efficiencies involved need to be looked at…

It is difficult to look across the piece, and we have done our best with the information that has been presented. Concern was expressed that we had not taken account of the figures over £300, but the fact is that only two of the returns were at that level. Although the median unit cost in England is £116, we agree that there is merit in considering whether the unit cost should be
increased towards £176 to take account of rurality and other issues, but that issue would be explored by the finance group.”

30. The Committee also sought clarification of whether the estimated unit cost had taken into account the number of assessments carried out in each local authority or whether an average figure for each local authority had been taken and the calculation made on that basis. The Bill team responded that—

“For each questionnaire return that we received, the unit cost itself was not presented. What was presented was the number of assessments carried out in a year and the cost of carrying out those assessments. We then calculated the average unit cost for each authority, based on that. It was an arithmetical calculation. To that extent, the number of assessments carried out in each local authority area was taken into account.”

31. The Bill team explained that they recognised the concerns expressed in written evidence to the Committee that the estimates in the FM are their best estimates at the time the FM was published. In terms of considering any new evidence and reviewing those estimates, the Bill team said—

“We propose to do something similar to what we did for the Public Bodies (Joint Working) (Scotland) Bill on the integration of health and social care and create an expert finance group, with representatives of all key stakeholders, including COSLA, to review the costs as we move towards implementation, taking on board any new evidence.”

32. Asked about the concern expressed by SWS that the average unit cost of £176 was set out as the highest unit cost estimate in the FM, the Bill team stated that—

“It was a minority of local authorities that gave unit costs of more than £176. The reason why the unit cost for the adult carer support plan was set out in that way was to give the Finance Committee an indication that assessments can be carried out in different ways. I mentioned telephone assessments and so on. The lowest figure, which is £72, was not originally the lowest. We took out of the equation the lowest and the highest figures, because they were at the extremities.

The £176 figure is presented as the average across a good number of local authorities. There are ones at the higher end, so I understand Social Work Scotland saying, “You haven’t presented the higher ones.” That is the case, but there would appear to be a good reason for that, especially given what we know about the costs of assessment down south. However, it is something that will be looked at and considered further.”

Young Carer Statement
33. The current assessment landscape for young carers differs from that for adult carers with a number of different assessment types which “include the child’s plan,

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9 Official Report, 13 May 2015, cols 51-52
10 Official Report, 13 May 2015, col 55
11 Official Report, 13 May 2015, col 50
children’s plan, integrated comprehensive assessment and third sector assessment.”\textsuperscript{13}

34. The FM states that there “are challenges in estimating the average until cost of a carer’s assessment (or other assessment) for young carers.” The FM goes on to note that in reaching unit cost estimates, the higher costs provided by local authorities have not been taken into account “as they encompass comprehensive integrated assessments which will be more costly than a YCS…because the comprehensive integrated assessment tends to address all the needs of a child and the capacity of his or her parents to respond appropriately to these needs within the wider family and community context.” By comparison the YCS “addresses the caring situation only on a personal outcomes basis.”\textsuperscript{14}

35. The YCS would be available to all young carers. The FM assumes that over time about 60 per cent of 37,500 young carers might want the YCS. The 37,500 estimate is based on a total of 44,000 young carers across Scotland less 3,500 supported in dedicated young carers’ services and an estimated 3,000 young carers receiving a good service from mainstream services such as schools and youth clubs.

36. As with the ACSP, costs for the YCS are based on a range of three unit costs—

<table>
<thead>
<tr>
<th></th>
<th>% carers receiving YCS</th>
<th>YCSs per annum</th>
<th>Additional YCSs per annum</th>
<th>Unit cost of £106 (£m)</th>
<th>Unit cost of £125 (£m)</th>
<th>Unit cost of £167 (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017-18</td>
<td>12</td>
<td>5,280</td>
<td>1,280</td>
<td>0.135</td>
<td>0.160</td>
<td>0.213</td>
</tr>
<tr>
<td>2018-19</td>
<td>15</td>
<td>6,600</td>
<td>2,600</td>
<td>0.275</td>
<td>0.325</td>
<td>0.434</td>
</tr>
<tr>
<td>2019-20</td>
<td>20</td>
<td>8,800</td>
<td>4,800</td>
<td>0.508</td>
<td>0.600</td>
<td>0.801</td>
</tr>
<tr>
<td>2020-21</td>
<td>25</td>
<td>11,000</td>
<td>7,000</td>
<td>0.742</td>
<td>0.875</td>
<td>1.169</td>
</tr>
<tr>
<td>2021-22 (recurring)</td>
<td>30</td>
<td>13,200</td>
<td>9,200</td>
<td>0.975</td>
<td>1.115</td>
<td>1.536</td>
</tr>
</tbody>
</table>

37. By comparison, current recurring costs for providing 4,000 assessments for young carers per year at each unit cost would be £0.424 million, £0.500 million and £0.668 million.

38. The build up to 60 per cent of young carers with a YCS over a five year period is set out in a table on page 43 of the FM.

39. SWS commented on the range of units costs estimated for this part of the Bill, noting that the “lowest cost of £106 appears to be based on one return, while the £125 middle cost is an “average across five LAs with a unit cost of less than £200”, and the higher cost of £167 is an “average across seven LAs with a unit cost of less than £300”.”

40. SWS went on to state—

\textsuperscript{13} Financial Memorandum, paragraph 57
\textsuperscript{14} Financial Memorandum, paragraph 62
“The exclusion of all assessment unit costs above £300 may or may not be valid; if it is, then we can take a weighted average of the three unit costs in terms of the number of LA questionnaire returns behind each figure: that suggests an average of £146 across the 13 LAs. Quite why the assessment cost should be lower for young carers is not clear, and there may be an argument for using a common unit cost for young carers and adults.”

41. In relation to young carers of pre-school age, the health board would be the authority responsible for preparation of the YCS, although approval of the YCS would rest with the local authority where the young carer lives. The estimated number of pre-school age young carers is 200. The costs of this work for health boards is estimated “to be around £1,800 in 2017-18, £2,250 in 2018-19, £3,000 in 2019-20, £3,750 in 2021-22 and £4,500 in 2021-22 on a recurring basis. (This is a maximum 120 YCS in 2021-22 and on a recurring basis from 2021-22 @ £125 unit cost assuming that a proportion of young carers in pre-school will not have a YCS.)”

**Duty to support carers**

42. Clarification was also sought of the assumptions underpinning the estimated unit costs for support to carers. The response to this is provided in Annexe D of the letter from the Minister.

43. Under the Bill, local authorities will have a duty to support carers with eligible needs and will be required, in particular, to consider whether that support should include or take the form of a break from caring. The FM states that the “eligibility criteria will be locally determined but overlaid by matters set out in regulations which the local authority must have regard to” and that these matters “will include the desirability of providing support to meet carers’ needs at a stage where doing so is likely to prevent those needs from escalating.”

44. Paragraphs 72-76 of the FM discuss the number of carers who will need targeted or bespoke care under this duty. This discussion includes consideration of the percentage of carers who currently feel supported to carry on caring, the number of carers who would benefit from access to information and advice services and access to community based services through local carers centres.

45. The estimates assumed in the FM are that 21 per cent of adult carers and 40 per cent of young carers would be eligible “for targeted or bespoke support which does not include the support or services which are provided to members of the public or adult carers generally, or are being met through services provided to the cared-for person.”

46. The FM assumes an average spend on carer-specific support to be £1,000 per carer over a period of 2-3 years but that this would “vary according to the individual circumstances of carers.” The FM goes on to state that it is “challenging to estimate how quickly an increase in ACSPs and YCSs and provision of support might occur”

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15 Financial Memorandum, paragraph 102
16 Financial Memorandum, paragraph 71
17 Financial Memorandum, paragraph 77
18 Financial Memorandum, paragraph 78
and that this will “largely depend on the time it takes local authorities and the third sector to recruit additional staff to prepare the ACSP and YCS.”

47. Based on a spend of £1,000 over three years equating to a unit cost of £333 per year. In evidence to the Committee, the Bill team explained that “the Government has based the £333 figure...on fairly recent published research from the Carers Trust.” The table below sets out the estimated costs provided in the FM for providing support to carers—

<table>
<thead>
<tr>
<th></th>
<th>Estimated numbers receiving support and % of carer population</th>
<th>% of ACSP holders</th>
<th>Costs to support adult carers at £333 unit cost (£m)</th>
<th>Estimated numbers receiving support and % of young carer population</th>
<th>% of YCS holders</th>
<th>Costs to support young carers at £333 unit cost (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017-18</td>
<td>11,175 (2%)</td>
<td>50</td>
<td>3.721</td>
<td>2,200 (5%)</td>
<td>42</td>
<td>0.732</td>
</tr>
<tr>
<td>2018-19</td>
<td>29,837 (4%)</td>
<td>50</td>
<td>9.935</td>
<td>4,400 (10%)</td>
<td>45</td>
<td>1.465</td>
</tr>
<tr>
<td>2019-20</td>
<td>51,288 (7%)</td>
<td>50</td>
<td>17.079</td>
<td>8,800 (20%)</td>
<td>57</td>
<td>2.930</td>
</tr>
<tr>
<td>2020-21</td>
<td>108,973 (15%)</td>
<td>60</td>
<td>24.808</td>
<td>13,200 (30%)</td>
<td>61</td>
<td>4.395</td>
</tr>
<tr>
<td>2021-22</td>
<td>153,811 (21%)</td>
<td>60</td>
<td>51.218</td>
<td>19,500 (40%)</td>
<td>69</td>
<td>6.493</td>
</tr>
<tr>
<td>(recurring)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

48. While the estimates in the table cover support including short breaks, the FM states that there is a need to build in a further estimate. The FM states that this is “due to the Bill’s provisions and also because short breaks are required by some carers.” Based on information from Scottish Health Surveys and the Scottish Health and Care and Experience Survey, the FM uses information about those carers who reported neutral or negative views that they had a good balance between caring and other things in their life as a proxy for carers requiring short breaks. The estimate of this is £11.8 million by 2021-22 or £2.36 million per year, which is reflected in the table at paragraph 10 above.

49. Paragraph 83 of the FM states that the “Bill has a power for local authorities to support carers who do not meet the eligibility for support” and that the “resources for implementation of the power can be found from within the resources that the Scottish Government is making available to local authorities for the Bill’s provisions.”

50. The NCOs were “unsure how the estimate of need has been calculated” and “are concerned that this is likely to be an underestimate of demand, both of the number of carers requiring support and also of the cost of providing adequate support.” The submission also commented that that unit cost estimate of £333 is “drawn from research which does not include the cost of providing a short break to the carer.” According to the submission, the estimate “is based on the average cost of providing support through a local carer support organisation, for services such as

19 Financial Memorandum, paragraph 79
20 Financial Memorandum, paragraph 80
information and advice, peer support and carer training and does not include the cost of providing short break services.”

51. COSLA commented in similar terms stating that “little in the way of justification is given in the FM for the estimate of 21% of adult carers and 40% of young carers being eligible for targeted or bespoke support.” COSLA went on to state that it is also “unclear from the FM whether 40% and 21% are the percentages of those carers who come forward for assessment or of the total carer population.”

52. The unit cost of £333 per year was also commented on by COSLA—

“…should only be viewed as a component used to arrive at an overall costing. This cannot be seen as an actual entitlement as the actual cost will vary depending on the nature of support provided, which is entirely driven by the eligibility criteria determined locally.”

53. COSLA also stated—

“…there is a tension between the two duties insofar as the Bill will establish a universal entitlement to assessment through the provision of ACSPs, whilst at the same time councils will need to manage demand for direct support to carers in light of the funding available for this. Within the context of a finite resource being made available under the Carers Bill, there is the concern therefore that resources which could have been available for direct support are instead required to be diverted to assessment.”

54. The NCOs pointed to data showing “an overall decrease in provision [of respite care] over the last 12 months of almost 2,000 weeks despite continued additional government funding to local authorities to sustain levels of respite care.” They “believe strongly that future funding to support carers, including short breaks, has to be provided within a robust monitoring and evaluation framework to ensure funding is being used for purposes intended. In the absence of ring-fencing we believe there must be clear, measurable success indicators in place so that progress can be reliably tracked and corrective action taken if necessary.”

55. Shared Care Scotland submitted a response which also highlights a question about the funding of carer short breaks in which it contends that if “sufficient funding is not attached to the Bill, particularly to cover the costs of implementing the Duty to Support, then local authorities will adjust their eligibility criteria thresholds ‘upwards’ to reduce the number of carers falling within the scope.”

56. Paragraphs 10-12 of the Shared Care Scotland submission set out their calculations of the potential cost of supporting carer short breaks. It concluded that this would produce a cost of £47.3 million annually recurring and comments that—

“However, the total amount identified in 2017-18 to cover all costs associated with the Duty to Support only amounts to £6.8m. This eventually rises to £60m by 2021-22. The position therefore appears to be that the estimated levels of eligible need, which exists now, will not be met until at least 2021-22. We believe this needs explanation.”
57. Both Shared Care Scotland and the NCOs commented that the FM does not include any costs for replacement care that might be needed by the carer-for person in the period in which the carer is taking a short break.

58. SWS considered that the “cost of meeting this new duty is likely to be far larger than anticipated in the FM” noting that the—

“The FM assumes that the proportion of carers assessed who are also eligible for support will be 60% for adults who have had an assessment and 69% for young carers by 2012-22 (para 79). The numbers who have had an assessment are cumulative, but are adjusted for people ceasing their caring role – estimated at 13% per year for adults and 20% for young carers – and also for “renewals”: people already assessed whose ASP or YCS is revised (re-assessed), also assumed at 20% for both adults and young carers. This brief description shows the complexity of the calculations, which are highly sensitive to the various assumptions.”

59. SWS went on to comment that—

“The evidence “taken into account” in these estimates includes a finding from one survey that “44 per cent [of carers] on average are positive about feeling supported to continue caring” (FM, para 72). However, the Policy Memorandum quotes from a different survey that “70% of carers said they receive no support with their caring responsibilities” (PM para 17, fifth bullet). Moreover, support needs change over time in a way that snapshot surveys are unlikely to capture.”

60. In the FM calculations for the cost of support to adult carers in 2020-21, SWS identified “what seems to be an error” where the figure in the FM should be £36.288 million but is given in the published FM as £24.808 million. The Bill team confirmed that this is an error and that they will take the new figure into account.

61. Paragraphs 88-98 of the FM set out background to the options that local authorities currently have to waive charges for services provided in relation to support for carers, including challenges being faced by local authorities in implementing the regulations, the main challenge being identified as “the categorisation of replacement care provided to a cared-for person at the point when a carer takes a break.”

62. The FM states the Scottish Government is working with COSLA to revolve the difficulties and that resolution “would be expected to result in a favourable position regarding breaks from caring” but that it is “not possible to set out in this Financial Memorandum the position that the Scottish Government and COSLA are working towards as the position has not been finalised and would be subject to further discussion with key interests.”

63. The FM goes on to state that—

21 Financial Memorandum, paragraph 95
“In moving forward on what is a challenging issue for local authorities, with repercussions for carers, any cost implications of changes to the waiving of charges regulations would be considered by the Scottish Government.”

64. In concluding on this section, the FM states that—

“It is fully expected that regulations will be made to waive charges for support to carers. It is further expected that the regulations would be different from the present regulations given the current challenges experienced by local authorities. If there are cost implications to the Scottish Government arising from the regulations, the Scottish Government would present these in a revised Financial Memorandum.”

65. The NCOs explained that the “current regulations prevent carers being charged for support they receive in their own right, which is identified in a Carers Assessment.” The NCOs “welcome this statement of expectation that regulations will accompany the Bill to waive charges for carers” but express concern about the expectation that those regulations would be different from the current regulations. They state that—

“It is difficult for us to comment on the financial memorandum in respect to this without sight of the proposed regulations and accompanying financial memorandum. However, once the Scottish Government and CoSLA discussions are complete and these are forthcoming (along with accompanying financial information), the NCOs will make a full response.”

66. SWS noted that the current regulations on waiving charges went through “without any additional Scottish Government funding to councils to implement.’ In relation the statements in the FM regarding the “challenges” of implementing the current regulations, SWS notes the FM suggests—

“…that this is due to practical ambiguities as to whether care is provided to benefit the carer (not chargeable), or to benefit the cared-for person (chargeable, unless free personal care for older people), or to benefit both. However, in our view, the fact that there was no implementation funding is at the very least an equal ingredient in the “challenging” mix.”

67. Argyll and Bute Council commented that the waiving of charges—

“is a core matter that requires resolution and associated full acknowledgement of the financial loss to local authorities. There is a case for a means tested approach to charging as with many areas of social care services and delegated decision making for charging that reflects the additional costs in rural and island locations.”

68. In its response to the COSLA questionnaire on this issue, Inverclyde Council commented that—

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22 Financial Memorandum, paragraph 96
23 Financial Memorandum, paragraph 98
"The waiving of costs and charges has a direct negative impact on current budgets and would lead to tightening of eligibility criteria reduced provision which is counter intuitive to the principals driving the Carers Bill. Further funding is required to offset this and to increase the provision and availability of short breaks and respite."

69. The issue of waiving charges and the potential cost implications of this was one of the main issues explored in taking evidence from the Bill team. The Bill team explained the background to the waiving of charges—

"The previous Minister for Public Health gave a commitment when the Social Care (Self-directed Support) (Scotland) Bill was going through Parliament. That bill—now the Social Care (Self-directed Support) (Scotland) Act 2013—contains a power to support carers, and the minister gave a commitment that, if the power is used, charges will be waived for the support that the carer receives, because carers are providers of services and should not be charged for the services that they provide.

The Scottish Government developed regulations and guidance around that waiving of charges, and it was stated that, if local authorities use that power under section 3 of the 2013 act, after going through the carer’s assessment and so on, the charges will be waived…

Referring to support under section 3 of the 2013 act, the issue and the challenge that have arisen are around replacement care. COSLA and some local authorities have told us that it is unfortunately not possible to say whether replacement care benefits the carer or the cared-for person. If it benefits the carer, the charges would be waived. If it benefits the cared-for person, normal charging would apply. Charging would be waived where it supports the carer."

70. The FM estimate of £333 for the unit cost of providing support to carers does not include costs for the provision of respite care. Asked about the comparison between the FM estimate and the figure of £967, given in COSLA’s submission as the average cost per year for carers requiring short breaks/respite, the Bill team stated—

"If we were to include a similar figure for respite care in Scotland, it would be a figure of more than £600 rather than a figure of £900 because that is the national care contract figure for residential care, so that would be the figure. We have not included such figures for respite care or replacement care because the Scottish Government, along with COSLA and others, is considering waiving charges, which I can speak about later, and that will have an impact."

71. The Bill team went on to explain that—

"The £609 figure that has been quoted is the per-person cost of respite care in a care home. That would be for a cared-for older person going into a care home
so that the carer gets a short respite... However, the figure down south of £900 is not directly comparable to the figure here.  

72. The Committee sought to clarify the impact on the overall costs of the Bill if the waiving of charges is not resolved. The Bill team stated that the “type of support to carers will vary and that “it would not be appropriate to say that, in all cases, the unit cost will be over £600.” Expanding on this point in relation to short breaks, the Bill team said—

“There can be a variety of short breaks, including some that are not traditional. Although some traditional forms of respite are very much relevant, we can try to get in an element of innovation regarding the type of holiday break. Even purchasing a greenhouse is quoted as providing a break for some people, and although that is not seen as traditional respite, we know from feedback that there are carers who would say that with that sort of facility they can do what they want and get time out from caring. That is what they want. Respite does not have to mean that the cared-for person is in a care home.”

73. Asked whether the cost of replacement care could be the major cost of the Bill, the Bill team stated—

“The cost of replacement care could be in the region of £30 million across Scotland—that is at present prices. Replacement care could be support primarily for the cared-for person or primarily for the carer, or it could be of benefit to both. As I say, categorising replacement care is challenging.

74. When clarification was sought from the Bill team as to why this figure was not provided in the FM, the Bill team responded—

“The figure was worked out fairly recently, after the financial memorandum was submitted. We did not mean not to be straightforward about it. Also, the waiving of charges issue is still outstanding. I think that it is fair to say that a further financial memorandum should be presented, but it probably would not have been appropriate to present a figure of £30 million, had it been known, because some replacement care could certainly be of prime benefit to the cared-for person rather than the carer.

75. Clarification was also sought from the Government about the operation of any system to waive charges where replacement care is provided by a private company rather than by a local authority. In his letter, the Minister explains that—

“If a private care provider (for example, Four Seasons Care Home) is commissioned by the local authority to provide care home places, and if the local authority has made the decision that the cared-for person should be placed there for a period in order to support the carer and meet needs identified in the course of a carer’s assessment, then the local authority may not charge the carer in respect of that support. The cost of care in this instance will be met

26 Col 56-57
27 Col 57
28 Col 68
29 Col 68
by the local authority. This is because a local authority is obliged to waive charges where services or support are provided to adult carers under section 3(4) of the Social Care (Self-directed Support) (Scotland) Act 2013 Act.

If, however, the cared-for person is in the home as a result of the local authority’s decision that the cared-for person’s own needs call for the provision of such accommodation, then the local authority would charge the cared-for person for the accommodation (subject to the rules which apply in relation to free personal and nursing care and means testing).

If any respite care is purchased privately by the carer or the cared-for person (rather than through arrangements made by a local authority), then the care provider would charge directly for the provision of that service in accordance with its normal terms. The regulations do not apply to such private arrangements.”

Voluntary sector short breaks fund

76. The Committee also asked for clarification of the Scottish Government’s intentions in relation to the continuation of the voluntary sector short breaks fund beyond the end of the current spending review period. The Minister states that “Given there is currently a baseline budget for the Short Breaks Fund, the current working assumption would be that this would continue, subject to the Spending Review process.”

Conclusion

77. The Committee is invited to consider the above.

Catherine Fergusson
Senior Assistant Clerk to the Committee
ANNEXE A – LETTER TO THE SCOTTISH GOVERNMENT

At its meeting today the Finance Committee took evidence from Scottish Government officials on the Financial Memorandum (FM) accompanying the Carers (Scotland) Bill.

In the course of the evidence-taking it became apparent that there are a number of areas where the information set out in the FM requires further clarification.

I am therefore seeking clarification from you on—

- details of the assumptions underpinning the estimated unit costs for Adult Carer Support Plans, Young Carer Statements and support to carers
- resolution of the issues in relation to the waiving of charges given the impact that this may have on the costs of providing support to carers
- the position in relation to the waiving of charges if the carer taking a short break involves respite care being provided for the cared-for person in a private facility
- the intention to continue funding the voluntary sector short breaks scheme, currently funded at £3 million per year, which is due to end in 2016.

The Official Report of today’s meeting, which is due to be published by Monday 18 May, will provide full details of the Committee’s consideration of these issues.

The Committee invites you to provide written clarification of these issues by Thursday 28 May and to provide oral evidence on Wednesday 3 June. The Committee will then aim to provide a submission to the lead committee by 18 June.

I am copying this letter to the Convener of the Health and Sport Committee.

Kenneth Gibson MSP
Convener
13 May 2015
ANNEXE B – RESPONSE FROM THE SCOTTISH GOVERNMENT

Thank you for your letter of 13 May to the Cabinet Secretary for Health, Wellbeing and Sport seeking further clarification in a number of areas regarding the Financial Memorandum accompanying the Carers (Scotland) Bill. I am replying as the Bill is within my area of responsibility.

Estimated unit costs for the adult carer support plan, young carer statement and support to carers

Annexes A to D attached set out the detailed assumptions. Annex A provides the background to the unit costs for the adult carer support plan (ACSP) and young carer statement (YCS), Annex B sets out the assumptions underpinning the estimates for the ACSP and Annex C sets out the assumptions underpinning the estimates for the YCS.

I see merit in further work to refine the assumptions set out in the Financial Memorandum and the detail which underpins them. We intend to set up a Finance-led Group with key stakeholders. The exact membership of that Group is being determined, but I will write to you again as soon as that is finalised. The Group would consider, amongst other things, the cost estimates in further detail and an extension of the time period beyond 2022-23, and would review any relevant additional information which comes to light. It would also review appropriate methods of funding distribution and would establish procedures for monitoring demand, costs and achievements against the Bill's objectives. The Group should also aim to establish a clear understanding of risks and play a role in ensuring that risks are understood, shared and mitigated as far as is possible. Again, I am happy to keep you informed of the work of that Group.

Resolution of the issues in relation to the waiving of charges

Work is on-going in order to resolve the issues of whether any replacement care provided through a local authority is to be categorised as support for the carer or as a community care service for the cared-for person, and whether any charges should be made by a local authority in respect of the provision of replacement care. There is an additional issue concerning the extent to which the carer, cared-for person or both should make decisions about the provision of replacement care. We intend to bring resolution to that for Stage 2 of the Bill. Paragraphs 88 to 98 of the Financial Memorandum provide background to the waiving of charges issue. They were included at the request of the Scottish Parliament's Legislation Team in order to meet Standing Order requirements. I recognise of course that the Committee has an interest and critical role to play in scrutinising any commitment to public expenditure that will arise as a result of any decisions made in this area. If there is an impact on the cost of providing support to carers, as stated in paragraph 98 of the Financial Memorandum, I will provide a revised Financial Memorandum for the Finance Committee's consideration. Paragraph 98 states: "if there are cost implications to the Scottish Government arising from the regulations, the Scottish Government would present these in a revised Financial Memorandum."
The position in relation to the waiving of charges if the carer taking a short break involves respite care being provided for the cared-for person in a private facility

The term 'waiving of charges' refers to the charges which a local authority would have been entitled to make in respect of services which it provides under specific provisions of social care legislation. Section 87(1) of the Social Work (Scotland) Act 1968 generally permits a local authority to recover such charge as it considers reasonable from a person to whom it provides such a service (subject to more specific rules about charges for personal and nursing care and residential accommodation, and a general requirement not to charge more than is practicable for the person to pay). This rule applies to services provided directly by the local authority itself, or by the local authority having made arrangements with other statutory, independent or third sector bodies in pursuance of the local authority's functions under that social care legislation.

The Carers (Waiving of Charges for Support) (Scotland) Regulations 2014 require the local authority to waive any charges which it would have been entitled to make under section 87(1), where the service or support in question is provided under section 3(4) of the Social Care (Self-directed Support) (Scotland) Act 2013 (support to adult carers) or provided to a child who requires it because they are a young carer under section 22 of the Children (Scotland) Act 1995. The regulations have no application to the charges made for the provision of services by any body other than a local authority (i.e. a private or third sector provider).

If a private care provider (for example, Four Seasons Care Home) is commissioned by the local authority to provide care home places, and if the local authority has made the decision that the cared-for person should be placed there for a period in order to support the carer and meet needs identified in the course of a carer's assessment, then the local authority may not charge the carer in respect of that support. The cost of care in this instance will be met by the local authority. This is because a local authority is obliged to waive charges where services or support are provided to adult carers under section 3(4) of the Social Care (Self-directed Support) (Scotland) Act 2013 Act.

If, however, the cared-for person is in the home as a result of the local authority's decision that the cared-for person's own needs call for the provision of such accommodation, then the local authority would charge the cared-for person for the accommodation (subject to the rules which apply in relation to free personal and nursing care and means testing).

If any respite care is purchased privately by the carer or the cared-for person (rather than through arrangements made by a local authority), then the care provider would charge directly for the provision of that service in accordance with its normal terms. The regulations do not apply to such private arrangements.

To be absolutely clear, 'waiving of charges' do not relate to any charges levied by private organisations to commissioning bodies or individuals. To be clearer still, I do not believe that the Parliament is even empowered to legislate for such at provision,
even if it were the Scottish Government's intention to legislate for that, which I reiterate it is not.

The intention to continue funding the voluntary sector short breaks scheme, currently funded at £3 million per year, which is due to end in 2016

I value the voluntary sector short breaks fund. Paragraph 32 of the Financial Memorandum states that "subject to Spending Review decisions, this funding would continue for short breaks." Given there is currently a baseline budget for the Short Breaks Fund, the current working assumption would be that this would continue, subject to the Spending Review process.

I am copying this letter to the Convener of the Health and Sport Committee.

Jamie Hepburn  
Minister for Sport, Health Improvement and Mental Health  
28 May 2015

Annex A

Carers Bill

Estimated Unit Costs of the Adult Carer Support Plan (ACSP) and Young Carer Statement

Background

1. COSLA issued a questionnaire to local authorities seeking information on a range of issues to help inform the Financial Memorandum. This questionnaire was designed in collaboration by Scottish Government and COSLPI officials and with input from Social Work Scotland.

2. Questionnaire returns were submitted to COSLA by 21 local authorities. In addition, Glasgow City Council submitted its return directly to the Scottish Government. NHS Highland's return is relevant too as it is the lead agency for adult carers in Highland. One council, Inverclyde, submitted its return directly to the Finance Committee and it is posted on the Finance Committee's website.

3. The questionnaire included the following questions:

   a) On average, how many carer's assessments do you currently undertake in a year for adult carers?

   b) What is your total spend in a year on carer's assessments carried out, excluding the cost of any self-assessments and excluding spend on community care assessments and assessments for disabled children?

   c) On average, how many carer's assessments other assessments do you currently undertake in a year for young carers?
d) What is your total cost in a year on carer's assessments for young carers carried out, excluding the cost of any self-assessments and also excluding the cost of community care assessments and assessments for disabled children?

4. The questionnaire included a footnote that "total spend" covered, as appropriate for each individual local authority, cost of staff time 011 initial contact, assessment, inputting data into the database, travel time, review, and developing a support plan. It was stated that the cost will depend too on whether the assessment is being carried out by a qualified social worker or not. It was also stated that local authorities should not include the cost of any support provided.

5. Based on the answers provided to the questions, the Scottish Government calculated for each local authority the average cost in a year of a carer's assessment for adult carers and of a carer's assessment/other assessment for young carers. The reason that other assessments were taken into account for young carers is that a number of different types of assessment are undertaken with young carers - see paragraph 57 of the FM.

Annex B

Carers Bill

Assumptions Underpinning Estimated Unit Costs of the Adult Carer Support Plan (ACSP)

1. The assumption underpinning the estimated unit cost of the ACSP is:

   a) the average unit cost of preparing the ACSP should be approximately the same as the unit cost of a good quality carer's assessment (paragraph 52 of the Financial Memorandum (FM)). A good quality carer's assessment is one which is co-produced with the carer in an empathetic way based on conversation rather than being a tick-box exercise. The aim is to provide the ACSP as efficiently as possible.

2. An average unit cost (Scotland-wide) was calculated by looking at the unit cost of completing a carer's assessment in 14 local authorities. The Scottish Government removed from the calculation the lowest and highest unit costs in two local authorities in order to provide a level of confidence with the figures as both the lowest and highest unit costs were extreme by comparison with the other unit costs. Even then, the range of costs is between £72 and £342 (footnote 32).

3. The average unit cost works out at £176 (table at paragraph 54 of FM) and this is presented as option 3 (highest cost) in the Financial Memorandum.

4. The lower unit costs in the Financial Memorandum (options 1 and 2) are presented to show that the lowest unit cost within the group of 14 local authorities

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1 Carers assessment and outcomes focussed approaches to working with carers. A joint project between Midlothian Council Community Care Team and VOCAL Midlothian Carers Centre. A series of research projects about health and social care for older people - 2013
was £72 and the mid-range was £110 based on a comparison with the Surrey Council average of £100 and other factors (paragraph 50 of FM). The unit cost of £176 compares very well with the median unit cost of £116 presented in the final Impact Assessment for the Care Act 2014 in England.

5. The unit cost will vary according to a number of different factors including rurality, level/grade of staff involvement, whether the assessment is carried out by the third sector and the degree to which assessments are carried out with the most vulnerable and isolated carers (paragraph 48 of FM).

Annex C

**Carers Bill**

**Assumptions Underpinning Estimated Unit Costs of the Young Carer Statement (YCS)**

1. The assumption underpinning the estimated unit cost of the YCS is:

   a) the YCS should not cost more than the carer's assessment for young carers (paragraph 64 of FM)

2. The average unit cost (Scotland-wide) was calculated by looking at the unit cost of completing a carer's assessment in five and then in seven local authorities. Five local authorities presented unit costs of less than £200 giving an average unit cost of £125. Seven local authorities presented unit costs of less than £300 giving an average unit cost of £167. These average unit costs are set out in paragraph 63 of the Financial Memorandum.

3. The Financial Memorandum at paragraph 62 states that there are challenges in estimating the average unit cost of a carer's assessment for young carers. Comprehensive integrated assessments undertaken in some local authorities are more costly than a YCS and the costs of these were excluded from the estimates.

4. Three local authorities presented unit costs at over £1,000. Two of these were for integrated assessments and were excluded. A third said that the young carer's assessment provided by the voluntary sector covers a 6-8 week period with individual or group work or referral on. This was considered to be a different type of assessment from the YCS and was also excluded from the calculations.

Annex D

**Carers Bill**

**Assumptions Underpinning Estimated Unit Costs of Support to Carers**

1. The estimated unit cost of supporting one adult or young carer is £333 every year (paragraph 78 of FM).

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2 Includes other types of assessments completed for young carers
2. The £333 is a figure used in a survey by the Princess Royal Trust for Carers (now the Carers Trust). Footnote 51 in the FM states that a more recent Carers Trust review\(^3\) of personal budgets and direct payments of carers in England shows wide variation in the financial amounts carers receive. However, 19 out of 30 authorities reported a maximum of between £250 and £500. On this basis, £333 was deemed therefore to be reasonable.

3. The £333 would exclude information and advice to carers as additional separate resources are being made available for the information and advice services. Paragraphs 65 to 70 of the FM set out the estimated costs of the information and advice services. The £333 could include the cost of a short break if appropriate. Paragraph 82 of the FM sets out an additional short breaks element at an estimated unit cost of £300.

4. The unit costs do not include the costs of replacement care. This is because the costs of replacement care are linked to the waiving of charges issue. Paragraph 96 of the FM states that "any cost implications of changes to the waiving of charges regulations would be considered by the Scottish Government. It is not possible to provide further information in this Financial Memorandum as discussions between the Scottish Government and COSLA are on-going."