



FINANCE AND CONSTITUTION COMMITTEE

AGENDA

26th Meeting, 2017 (Session 5)

Wednesday 8 November 2017

The Committee will meet at 9.30 am in the David Livingstone Room (CR6).

1. **European Union (Withdrawal) Bill (UK Parliament Legislation):** The Committee will take evidence on legislative consent memorandum LCM (S5) 10 from—

David Mundell, Secretary of State for Scotland;

Robin Walker, Parliamentary Under Secretary of State, Department for Exiting the European Union.

2. **Subordinate legislation:** The Committee will take evidence on the Budget (Scotland) Act 2017 Amendment Regulations 2017 [draft] from—

Derek Mackay, Cabinet Secretary for Finance and the Constitution, and Scott Mackay, Head of Finance Co-ordination, Scottish Government.

3. **Subordinate legislation:** Derek Mackay, Cabinet Secretary for Finance and the Constitution to move S5M-08385 - That the Finance and Constitution Committee recommends that the Budget (Scotland) Act 2017 Amendment Regulations 2017 [draft] be approved.

Jim Johnston
Clerk to the Finance and Constitution Committee
Room T3.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5215
Email: James.Johnston@parliament.scot

The papers for this meeting are as follows—

Item 1

Note by the Clerk

FCC/S5/17/26/1

PRIVATE PAPER

FCC/S5/17/26/2 (P)

Item 2

Note by the Clerk

FCC/S5/17/26/3

Finance and Constitution Committee

26th Meeting 2017 (Session 5), Wednesday 8 November 2017

European Union (Withdrawal) Bill: Scottish Government Legislative Consent Memorandum

1. The purpose of this paper is to provide information for the Committee's evidence session in relation to the European Union (Withdrawal) Bill at which it will take evidence from the following UK Government ministers—

- David Mundell, Secretary of State for Scotland; and
- Robin Walker, Under Secretary of State at the Department for Exiting the European Union.

Correspondence to Under Secretary of State

2. The Committee wrote to the Under Secretary of State on 24 October¹ highlighting the lack of a majority in the Scottish Parliament for the passing of a Legislative Consent Motion in respect of the Bill as currently drafted. The letter went on to invite him to provide, in advance of the meeting, “an initial response from the UK Government to the proposed Scottish Government and Welsh Government amendments² including those areas of the Bill related to the devolution settlement that you are open to consider lodging Government amendments.”

3. The Committee further invited the Under Secretary of State to provide a view on “the options which exist to address the strong opposition of the Scottish Government and Welsh Government to Clause 11” of the Bill.

4. Finally, the Committee asked the Under Secretary of State for his views on what amendments to the Bill would need to be brought forward by the UK Government to respect the devolution settlements and the democratic accountability of the devolved legislatures across the UK, as set out in the statement of principles³ agreed at the JMC (EN) meeting on 16 October.

5. The letter is attached at **Annexe A**. The response from the Under Secretary of State is attached at **Annexe B**.

**Committee Clerks
November 2017**

¹ [http://www.parliament.scot/S5_Finance/General%20Documents/Letter to Parliamentary Under Secretary of State from Convener 24 October 2017.pdf](http://www.parliament.scot/S5_Finance/General%20Documents/Letter_to_Parliamentary_Under_Secretary_of_State_from_Convener_24_October_2017.pdf)

² [http://www.parliament.scot/S5_Finance/General%20Documents/Letter Minister for UK Negotiations on Scotlands Place in Europe Convener 19 September 2017.pdf](http://www.parliament.scot/S5_Finance/General%20Documents/Letter_Minister_for_UK_Negotiations_on_Scotlands_Place_in_Europe_Convener_19_September_2017.pdf)

³ [http://www.parliament.scot/S5_Finance/General%20Documents/Report back from JMC 16 October 2017.pdf](http://www.parliament.scot/S5_Finance/General%20Documents/Report_back_from_JMC_16_October_2017.pdf)

**ANNEXE A: LETTER FROM CONVENER TO UNDER SECRETARY OF STATE
AT THE DEPARTMENT FOR EXITING THE EUROPEAN UNION**

24 October 2017

Dear Minister,

Thank you for your letter dated 12th October confirming that you are happy to give evidence to the Finance and Constitution Committee on the EU (Withdrawal) Bill supporting the Secretary of State for Scotland. As you will be aware no majority exists in the Scottish Parliament for the passing of a Legislative Consent Motion in respect of the Bill as it is currently drafted.

The Committee is therefore keen to explore with you on 8 November the options for amending the Bill to address the concerns of both the Scottish Government and the Welsh Government as set out in their respective Legislative Consent Memoranda and proposed amendments to the Bill.

It would, therefore, be helpful if you were able to provide in advance of the meeting an initial response from the UK Government to the proposed Scottish Government and Welsh Government amendments including those areas of the Bill related to the devolution settlement that you are open to consider lodging Government amendments.

In particular, the Committee would welcome your view on the options which exist to address the strong opposition of the Scottish Government and Welsh Government to Clause 11.

Finally, the Committee notes that a set of principles to guide negotiations around any potential UK or GB wide frameworks after Brexit was recently agreed at the JMC (EN). This includes respecting the devolution settlements and the democratic accountability of the devolved legislatures and the Committee would welcome your views on what amendments to the Bill the UK Government intends to bring forward to respect that principle.

I am copying this letter to the Secretary of State for Scotland.

Yours sincerely,

Bruce Crawford MSP
Convener

ANNEXE B: RESPONSE FROM UNDER SECRETARY OF STATE AT THE DEPARTMENT FOR EXITING THE EUROPEAN UNION

Dear Bruce,

Thank you for your letter of 24 October regarding the Finance and Constitution Committee's scrutiny of the EU (Withdrawal) Bill. The Secretary of State for Scotland and I look forward to discussing these issues with you when we appear before the Committee on 8 November.

As we leave the EU, it is the Government's overriding objective to deliver a smooth and orderly exit and as part of that, ensure no new barriers to living and doing business are created within the UK.

The European Union (Withdrawal) Bill will ensure we have a functioning statute book on the day we leave the EU. The Bill also temporarily replicates the current frameworks that exist under EU law, so businesses and individuals know which laws apply while we undertake discussions with the devolved administrations on where common approaches will and will not be required in future. The UK Government has been clear that we will only seek to establish common frameworks where they are needed and that we expect this process to result in a significant increase in the decision-making power of each devolved administration. The Government has always been open to suggestions as to how the Bill could be improved – though we have also been clear that we cannot accept any changes that risk undermining the Bill as a whole and the benefits of the UK internal market. The UK Government will carefully consider the views expressed by the Scottish Parliament and the Scottish Government, as well the views of the UK Parliament and the other devolved administrations.

Since the Bill's introduction to the UK Parliament, the First Secretary of State and the Secretary of State for Scotland have met with the Scottish Government's Deputy First Minister and Minister for UK Negotiations on Scotland's Place in Europe. The Joint Ministerial Committee on EU Negotiations met last month where, as your letter notes, principles were agreed that will guide the analysis on where common approaches are needed and where they will not be needed. Further to this Ministerial engagement, official level engagement is ongoing on the Bill, including discussion of the amendments put forward by the Scottish and Welsh Governments.

The Bill is at an early stage of its consideration by the UK Parliament and as you will appreciate we cannot pre-empt the debate in the Committee stage of the Bill, which will commence on 14 November. I note that the Bill's Committee stage in the House of Commons will include debate of amendments put forward by MPs that reflect the Scottish and Welsh Governments proposals. The Government looks forward to this debate and would also welcome any further observations from the Finance and Constitution Committee in the course of its scrutiny of the Bill.

The Secretary of State for Scotland and I look forward to discussing these issues in more detail with you during the evidence session scheduled on the 8 November.

I am copying this letter to the Secretary of State for Scotland .

A handwritten signature in black ink, appearing to read 'Robin Walker', written in a cursive style.

**ROBIN WALKER MP
PARLIAMENTARY UNDER SECRETARY OF
STATE FOR EXITING THE EUROPEAN UNION**

Finance and Constitution Committee**26th Meeting, 2017 (Session 5), Wednesday 8 November 2017****The Budget (Scotland) Act 2017 Amendment Regulations 2017 [draft]****Introduction**

1. The purpose of this paper is to set out background and procedural information for the Committee's scrutiny of the Budget (Scotland) Act 2017 Amendment Regulations 2017 [draft] ("the Regulations"). Copies of the Regulations and the accompanying Autumn Budget Revision (ABR) document are available via the following links—

- [The Budget \(Scotland\) Act 2017 Amendment Regulations 2017](#)
- [Autumn Budget Revision](#)

2. Briefings on the Regulations and ABR have been prepared by the Financial Scrutiny Unit in SPICe and by the Scottish Government. These briefings are attached as **Annexes A and B** respectively.

Purpose of the Regulations and the scrutiny procedure

3. The Regulations were laid on 28 September and amend the Budget Scotland Act 2017 which authorised the Scottish Government's spending plans for the current financial year. The ABR provides supporting information on the revised spending plans for which the Scottish Government is seeking Parliamentary approval.

4. The Regulations are subject to the affirmative procedure under Rule 10.6 of Standing Orders. Under this procedure, the Parliament has a 40 day period in which to consider the Regulations, including consideration by a lead committee and the Delegated Powers and Law Reform Committee (DPLRC). The DPLRC considered the Regulations at its meeting on 24 October 2017 and had no issues to report.

5. As lead committee for the Regulations, the Committee will be asked to consider the following motion from the Cabinet Secretary for Finance and the Constitution—

- S5M-08385—That the Finance and Constitution Committee recommends that the Budget (Scotland) Act 2017 Amendment Regulations 2017 [draft] be approved.

6. During formal consideration of the motion, Standing Orders provide that only the Cabinet Secretary and Members may participate in the debate. In order to inform the Committee's consideration of the motion, there will therefore be an opportunity to take evidence on the Regulations from the Cabinet Secretary and his officials before moving to formal consideration of the motion.

7. The deadline by which the Finance and Constitution Committee must report on the Regulations is 22 November.

Clerk to the Committee, November 2017

ANNEXE A: Financial Scrutiny Unit Briefing on Autumn Budget Revision 2017-18

Introduction

The 2017-18 Autumn Budget Revision (ABR) amends the Budget (Scotland) Act 2017 which authorises the Government's spending plans for the financial year 2017-18. Details of the proposed changes are set out in the [2017-18 Autumn Budget Revision to the Budget \(Scotland\) Act for the year ending 31 March 2018](#) published on 25 September 2017. The Scottish Government has also produced a Brief Guide to the 2017-18 Autumn Budget Revision.

The proposed changes detailed in the ABR 2017-18 result in an increase in the approved budget of £19.0 million (from £39,300.2m to £39,319.2m).

The ABR seeks Parliamentary approval for these changes. Note this is much smaller than the changes in the ABR 2016-17 (£259.4m). This substantial difference arises mainly from changes made during Stage 1 of the Budget (Scotland) Bill (on 2 February 2017), including the allocation of £125m from Budget exchange which would normally have been allocated at a later point in the financial year.¹

The main changes to the Government's spending plans in the ABR arise from:

- Funding changes amounting to a net increase of £7.7m to reflect deployment of available resources to portfolios
- Whitehall transfers and Treasury allocations to the Scottish Government (£5.2m)
- Technical changes in respect of Motorways and Trunk Roads and Prisons PFI (net increase of £6.3m)
- Transfers of resources ("Scottish block changes") between Scottish Government portfolios which are budget neutral (but show as -£0.2m due to rounding)

Table 1: Revisions by type

	DEL	AME	Other	Total
Funding changes	7.7			7.7
Whitehall Transfers	5.2			5.2

¹ The Scottish Government made changes after the publication of the Draft Budget 2017-18 and announced on 2 February 2017 it was making an additional £220m available for 2017-18. At Budget (Scotland) Bill Stage 2 proceedings on 8 February 2017, Cabinet Secretary Derek Mackay stated that the additional £220m was provisionally made up of:

- £191m from the following sources:
 - £125m from Budget exchange (£47.5m in resource departmental expenditure limits, £42.5m in capital and £35m in financial transactions) – this would normally have been allocated at a later point in the financial year, as part of budget revisions
 - £60m from the non-domestic rates pool
 - £6m from non-profit-distributing programme borrowing
- £29m in additional income tax revenues following the decision to set the higher rate at £43,000 instead of £43,430.

Technical changes	3.9		2.4	6.3
Scottish block transfers	-0.2			-0.2
Total	16.6			19.0

Funding changes (£7.7m)

The funding changes arise from a combination of use of the Budget Exchange Mechanism (BEM),² Barnett consequentials from UK fiscal events and additional tax receipts.

The ABR and the Brief Guide to the Autumn Budget Revision do not specify what the split is between these three factors. It is also not clear what tax receipts are involved. The Committee may wish to ask why this is not separated, particularly given the growing relevance of Scottish tax receipts.

A summary of all the funding changes, totalling £7.7m, is presented in Table 1.

Table 1: Summary of ABR funding changes, 2017-18

Portfolio	£m	To/from
Economy, Jobs and Fair Work	10.0	Scottish Growth Fund
Environment, Climate Change and Land Reform	-2.3	Coastal Communities Fund

Whitehall transfers and HM Treasury allocations to the Scottish Government (£5.2m)

There are two ABR Whitehall Transfers, shown in Table 2.

Table 2: ABR Whitehall transfers, 2017-18

Portfolio	£m	Purpose
Environment, Climate Change and Land Reform	5.1	Coastal Communities Fund
External Affairs	0.1	Edinburgh Cultural Summit

² The Budget Exchange Mechanism (BEM) that existed in previous years allowed the Scottish Government to carry over unspent resources up to 0.6% of Departmental Expenditure Limit (DEL) Resource and 1.5% of DEL Capital. This will no longer apply for budgets passed after April 2017 i.e. underspends/surplus tax receipts in 2016-17 were placed in the BEM and used in 2017-18, but any underspends from 2017-18 will go into the "Scotland Reserve" which will replace the BEM and will be capped at £700m. Annual drawdowns will be up to £250m for resource and £100m for capital. There will be no annual limits for payments into the Scotland Reserve.

Technical Adjustments (£6.3m)

The Short Guide to the Budget Revision states that technical changes are “essentially budget neutral and do not provide additional spending power for the Scottish Government.” Table 3 shows the main changes that are made.

Table 3: Main ABR technical adjustments, 2017-18

Budget category	Area	Portfolio/body	£m	Reasons
ODEL non-cash	Motorway and Trunk Road budget	Rural Economy and Connectivity	5.0	To align the budget with accounting requirements
ODEL non-cash	Prisons		4.9	To align the budget with accounting requirements
Not within Scottish Parliament budgets	Transfer to Judicial salaries to fund summary sheriff posts	Scottish Courts & Tribunal Services	- 1.0	Presentational change
Non-cash budget	Transfer from National Records of Scotland to Historical Environment Scotland ³		- 2.0	Shows as a reduction as only NDPB cash grant-in-aid is included in Scottish budgets

Two other minor adjustments of £-0.6m are made “to allow bodies to access cash reserves.” This concerns Education & Skills (£-0.4m) and Justice (£4.7m). The Committee may want to ask the minister for more detail on this.

Transfers between and within portfolios (£-0.2m due to roundings)

Although these transfers, which all fall under DEL, do not impact on the overall aggregate Scottish budget (though this appears to be the case due to rounding), there have been some internal transfers between portfolios.

Internal transfers either reflect changes in responsibility between portfolios, changes in payment mechanisms and ceremony intended to maximise the use of available resources.

Table 4 shows the ABR transfers over £5 million, listed in Annex B of the Short Guide to the Budget Revision.

³ National Records of Scotland is a Non-ministerial Department while HES is an executive Non-departmental public body.

Table 4: ABR transfers over £5 million, 2017-18

Transfer from portfolio	Amount (£m)	Transfer to portfolio	Purpose
Health & Sport	55.0	Education & Skills	Midwifery education
Health & Sport	6.6	Education & Skills	Clinical academics and senior clinical GPs
Rural Economy and Connectivity	5.2	Economy, Jobs and Fair Work	Food and Drink Industry Team
Rural Economy and Connectivity	6.1	Environment, Climate Change and Land Reform	Pentland Restoration Programme
Rural Economy and Connectivity	5.0	Forestry Commission	Strategic Timber Transport Scheme

The issue of the first two transfers listed above has been raised in the Committee discussion of ABRs previously. Similar transfers have taken place in recent years. For instance the transfer in respect of nursing in the 2016-17 ABR was £54.0m (£1m less than this year, and the transfer in respect of clinical academics and senior clinical GPs was £6.6m, the same as this year).

A transfer for nursing and midwifery education has been in the ABR in each year since 2008-09. Given that it is now a recurrent transfer, it is not clear why this transfer has not been incorporated into the draft budget plans at the outset of the budget process each year. By not being incorporated into the Draft Budget document and then the Budget Bill, it has the effect of making the Health Budget by Parliament passed by Parliament look higher than it is in reality, and the Education & Skills budget look lower.

Other transfers that may be of interest include a transfer of £4.0m from the Health and Sport portfolio to Communities, Social Security and Equalities to support the Empowering Communities Fund. The Committee may wish to ask what caused this transfer.

Budget Review Group recommendations

The Short Guide to the Budget Revision states that: “Two new tables have been added to the supporting document this year, to aid transparency in response to the recommendations of the Budget Scrutiny Review Group.” This concerns Tables 7(a) and (b) which provide details of the sources of funding changes.

Anouk Berthier
Financial Scrutiny Unit, SPICe
October 2017

ANNEXE B: SCOTTISH GOVERNMENT

A BRIEF GUIDE TO THE 2017-18 AUTUMN BUDGET REVISION (ABR)

Background

1. The Autumn Budget Revision is part of the annual Budget process. The Budget process commences with the publication of the Draft Budget and the subsequent consultation process. This is followed by the annual Budget Bill and the parliamentary approval of the Scottish Government's spending plans.
2. Once the Budget Act has been approved by the Scottish Parliament, there are usually two opportunities to amend the budget as the year progresses - the Autumn Budget Revision and a Spring Budget Revision.

Autumn Budget Revision

3. The Autumn Budget Revision is routine Parliamentary business that proposes amendments to better align the Government's budget with its planned spending profile. The aim of the Brief Guide to the Autumn Budget Revision is to explain the main changes to the Budget since the approval of the Budget Act, and give some further background on why the changes have been made.
4. The changes proposed in the Autumn Budget Revision result in an increase in the approved budget of £19.0 million from £39,300.2 million to £39,319.2 million.
5. The changes to the Budget are broken down in to four main areas:
 - Funding Changes which have arisen since the Budget Bill (£7.7 million)
 - Whitehall Transfers (£5.2 million)
 - Technical Changes (£6.3 million)
 - Transfers between Scottish Government Portfolios (budget neutral but shows as -£0.2m due to roundings)

Funding Changes (£7.7m)

6. Funding changes mainly represent additional budget that provides spending power within portfolios and programmes. The additional funding is mainly sourced from Budget Exchange, Barnett consequentials and additional tax receipts.
7. The net impact of the two funding changes on the Scottish Budget is an increase of £7.7 million. The first of these changes is to allocate £10 million to the Economy, Jobs and Fair Work portfolio in respect of the Scottish Growth Fund and this is offset by a second transfer funding from the Coastal Communities Fund of -£2.3 million.

Whitehall Transfers / Allocations from HM Treasury (£5.2 million)

8. There are two Whitehall Transfers recognised as part of the Autumn Budget Revision. A budget transfer of £5.1 million from the HM Treasury for the Coastal Communities Fund and another of £0.1 million for the Edinburgh Cultural Summit.

Technical Adjustments (£6.3 million)

9. In line with past years, the Autumn Budget Revision recognises technical changes which are essentially budget neutral and do not provide additional spending power for the Scottish Government.
10. The Autumn Budget Revision reflects net technical adjustments of £9.9 million to align the IFRS based budgets with the year-end accounting requirements for the Scottish Budget for revenue financed infrastructure projects in the Justice and Rural Economy & Connectivity portfolios.
11. In addition, there are ring-fenced RDEL budget transfers to NDPBs and a transfer to Judicial salaries from the Scottish Courts and Tribunal Service, totalling -£3.6m, which lie outwith Scottish Budgets and therefore show as negative transfers.

Internal Transfers

12. There are a number of internal transfers within the Scottish Block as part of the Autumn Budget Revision process to assist robust internal budget monitoring. Virement between and within portfolios is a “zero-sum” approach. Annex B provides details of the main internal transfers, over £5.0 million, between portfolios.

Table 2: Summary of Revisions by type

Change Type	DEL	AME	Other	Total
	£m	£m	£m	£m
Funding Changes	7.7	-	-	7.7
Whitehall Transfers	5.2	-	-	5.2
Technical Changes	3.9	-	2.4	6.3
Scottish Block Transfers	-0.2	-	-	-0.2
Total Changes	16.6	-	2.4	19.0

Transparency

13. Two new tables have been added to the supporting document this year, to aid transparency in response to the recommendations of the Budget Scrutiny Review Group. The new tables, 7 (a) and (b) provide details of the sources of funding that support the changes applied and the movement on available resources.

Scottish Government
Finance Co-ordination
October 2017

Annex A – Summary of Changes from Budget Bill

2017-18 Budget Approved at the Budget Bill		39,300.2
<u>FUNDING CHANGES</u>		
Economy, Jobs & Fair Work		
Scottish Growth Fund	10.0	
	<u>10.0</u>	
Environment, Climate Change & Land Reform		
Coastal Communities Fund	(2.3)	
	<u>(2.3)</u>	
		<u>7.7</u>
<u>WHITEHALL TRANSFERS / ALLOCATIONS</u>		
Environment, Climate Change & Land Reform		
Coastal Communities Fund	5.1	
	<u>5.1</u>	
Culture, Tourism & External Affairs		
Edinburgh Cultural Summit	0.1	
	<u>0.1</u>	
		<u>5.2</u>
<u>TECHNICAL ADJUSTMENTS</u>		
Education & Skills		
Utilisation of NDPB cash reserves – Skills Development Scotland	(0.4)	
	<u>(0.4)</u>	
Justice		
Utilisation of NDPB cash reserves – Risk Management Authority	(0.2)	
Prisons – IFRS accounting adjustment	4.9	
	<u>4.7</u>	
Rural Economy & Connectivity		
Motorways & Trunk Roads – IFRS accounting adjustment	5.0	
	<u>5.0</u>	
National Records of Scotland		
Transfer of Ring-fenced DEL to Historic Environment Scotland	(2.0)	
	<u>(2.0)</u>	
Scottish Courts & Tribunals Service		
Transfer to Judicial Salaries	(1.0)	
	<u>(1.0)</u>	
		<u>6.3</u>
<u>NET TRANSFERS WITHIN SCOTTISH BLOCK</u>		
		<u>(0.2)</u>
Proposed Budget following Budget Autumn Revision		39,319.2

Annex B - Details of inter-Portfolio Transfers over £5 million**Health & Sport**

- Transfer to Education and Skills portfolio for nursing and midwifery education (£55.0 million)
- Transfer to Education and Skills portfolio to fund salary costs of Clinical Academics and Senior Academic GPs (£6.6 million)

Education and Skills

- Transfer from Health in respect of nursing and midwifery education (£55.0 million)
- Transfer from Health in respect of funding for Clinical Academics and Senior Academic GPs (£6.6 million)

Economy, Jobs and Fair Work

- Transfer from Rural Economy and Connectivity for Food and Drink Industry team (£5.2 million)

Environment, Climate Change and Land Reform

- Transfer from Rural Economy and Connectivity for Peatland Restoration Programme (£6.1 million)

Rural Economy and Connectivity

- Transfer to Environment, Climate Change and Land Reform for Peatland Restoration Programme (£6.1 million)
- Transfer to Economy, Jobs and Fair Work for Food and Drink Industry team (£5.2 million)
- Transfer to the Forestry Commission for the Strategic Timber Transport Scheme (£5.0 million)

Forestry Commission

- Transfer from Rural Economy & Connectivity for the Strategic Timber Transport Scheme (£5.0 million)