



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Economy, Energy and Fair Work Committee

**Tuesday 11 December 2018**

**Session 5**



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**ECONOMY, ENERGY AND FAIR WORK COMMITTEE**  
**34<sup>th</sup> Meeting 2018, Session 5**

**CONVENER**

\*Gordon Lindhurst (Lothian) (Con)

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*Jackie Baillie (Dumbarton) (Lab)  
\*Colin Beattie (Midlothian North and Musselburgh) (SNP)  
\*Angela Constance (Almond Valley) (SNP)  
\*Jamie Halcro Johnston (Highlands and Islands) (Con)  
Dean Lockhart (Mid Scotland and Fife) (Con)  
\*Gordon MacDonald (Edinburgh Pentlands) (SNP)  
\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

John Cook (Accountant in Bankruptcy)  
Dr Richard Dennis (Accountant in Bankruptcy)  
Jamie Hepburn (Minister for Business, Fair Work and Skills)

**CLERK TO THE COMMITTEE**

Alison Walker

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Economy, Energy and Fair Work Committee

*Tuesday 11 December 2018*

*[The Convener opened the meeting at 09:45]*

### Decision on Taking Business in Private

**The Convener (Gordon Lindhurst):** Good morning and welcome to the 34th meeting in 2018 of the Economy, Energy and Fair Work Committee. I ask everyone to turn electrical devices off or to silent mode in case they interfere with the sound system.

We have apologies from Dean Lockhart.

Agenda item 1 is a decision on whether to take items 6 and 7 in private. Do we agree to do so?

**Members indicated agreement.**

## Subordinate Legislation

### Common Financial Tool (Scotland) Regulations 2018 [Draft]

09:45

**The Convener:** Our next item of business concerns a piece of subordinate legislation. I welcome the Minister for Business, Fair Work and Skills, Jamie Hepburn. He is accompanied by Richard Dennis, the Accountant in Bankruptcy and agency chief executive, and John Cook, executive director of case operations and depute accountant in bankruptcy.

I invite the minister to make an opening statement.

**The Minister for Business, Fair Work and Skills (Jamie Hepburn):** I am pleased to have the opportunity to appear before the committee to discuss the issues and the concerns that have been raised in connection with the common financial tool, as applied to Scotland's statutory debt solutions.

I recognise that I have twice withdrawn the regulations, and I accept that that is unusual. I want to be clear that I do not intend to make that a habit when it comes to bringing secondary legislation to the committee. The first time that the regulations were withdrawn, it was done in response to stakeholder feedback, as we had been told that people needed some more time to get ready for the regulations coming into force. The second time that the regulations were withdrawn was due to the concerns that this committee had heard, which I wanted to explore further.

I am aware that the committee has already taken evidence from two panels of witnesses on the adoption of the standard financial statement. I welcome the fact that the committee has written to me following the evidence sessions to set out some of the concerns that have been identified. As you will have noted from the letters that Richard Dennis and I have sent to the committee since those evidence sessions, I am still of the view that we should move to adopt the SFS, but I recognise that the concerns that have been expressed need to be discussed and addressed. The letters that have been sent set out my position in relation to the concerns, so I do not propose to go into that in detail just now. I am, of course, happy to explore those matters during today's session.

My overriding concern is that the continued use of the common financial statement, which is, of course, the tool that is currently used even over the short term, could be detrimental to people in Scotland who are faced with problem debt. That

will be the outcome if the current regulations remain in force.

The committee has taken evidence to the effect that there should be consideration of an entirely new way of assessing contributions that are made in insolvency, and the experience of other countries and the models that are used elsewhere have been highlighted. That opens up a debate that is welcome, because we should always look to learn from others and improve the regulatory landscape in Scotland.

That would require consultation and a far more detailed assessment of the wider impact of such a change. I am happy to have those discussions, and plans are already in place to consult on the reforms that were introduced in 2015. However, the legislative process will be slightly more longer term.

We have a decision before us in the simplest terms. The choice at present is straightforward: we either remain with the status quo and use the CFS, or we switch to adopting the SFS as the common financial tool. For the reasons that I have set out, I remain of the view that the adoption of the SFS provides advantages for those who are dealing with debt, which is critical.

As the committee will know, I met stakeholders last week to find out at first hand the practical issues that have arisen in relation to the common financial tool and its application. I invited all those who had provided evidence to the committee, and many of them attended. The discussion was enormously helpful, and it revealed to me that the concerns from the advice community are predominantly about the application of the common financial tool, either under its current guise, the CFS, or under the proposed SFS, rather than about the tools themselves. That brought into sharp focus the need for ever closer collaboration between the Accountant in Bankruptcy and the advice community in order to develop and agree guidance that affords the flexibility and pragmatism that are required.

I think that everybody around the table agreed that we desire a system that serves to protect those who are in a financially vulnerable position, and one that does not create an unnecessary administrative burden for all those who are involved. That aspect is critical, and it is a priority that the work on revised and agreed guidance progresses apace.

The meeting also touched on a more general debate about the other models. As I have made clear, that is open for discussion through the planned policy review of the reforms that were introduced in 2015.

My next proposed steps are that we engage quickly with stakeholders. The standing working

group that looks at the common financial tool will meet tomorrow to discuss the guidance that should accompany any new regulations, and the concerns about the burden of evidence that is required through either mechanism. Those whom I met last week, many of whom were already on the working group, will be involved in the process. That will ensure that we have revised clear guidance for the operation of the common financial tool when it is in place, and that we secure buy-in to the process. I am very keen for the committee to be part of the process, too.

Once the guidance is in place, I plan to provide the revised guidance alongside regulations to introduce the SFS, which, at present, I plan to lay before Parliament in the new year. I look forward to discussing the issue with the committee this morning.

**The Convener:** Thank you, minister. I do not need it now, but could you provide the committee with a list of those who were invited to, and those who attended, the meeting that you mentioned? Could you also provide the committee with a record of what was discussed at the meeting?

**Jamie Hepburn:** The short answer is yes. I could read out the list, but it is rather lengthy.

**The Convener:** I am not asking you to do so. My point is whether a list of those who were invited to, and those who attended, the meeting, along with a record of the meeting, could be provided to the committee.

**Jamie Hepburn:** I will stick with the short answer: yes.

**The Convener:** Excellent.

I want to briefly clarify one or two things in the letter that you wrote in response to my letter, as convener of the committee, on the matter. In the fourth paragraph of your letter, you mention StepChange Debt Charity, the standard financial statement trigger breach issues and so on. You refer to "supplementary written evidence" that was provided to the committee. Is all the evidence to which you refer in that paragraph evidence that has already been provided to the committee, or does it include supplementary information that might have been given to you or to the AIB?

**Jamie Hepburn:** My understanding is that, in that paragraph, I refer to evidence that was provided to the committee. However, as I have said, I was provided with information and feedback at the meeting to which you have referred.

**The Convener:** I want to clarify whether your letter referred to any evidence other than that.

**Jamie Hepburn:** As far as I am aware, I referred to the evidence that was provided to the committee.

**The Convener:** The methodology for calculating trigger figures used in the standard financial statement is different from that used in the common financial statement. Given that different methodologies are used, are comparisons between the figures arrived at valid and useful, or are they misleading?

**Jamie Hepburn:** I do not think that they are misleading. The tool that we propose to move to is available now and has been updated for the coming year. The organisation that developed the other tool and has been keeping it available for license—the Money Advice Trust—proposes no longer to maintain it. We have made our best efforts to have as valid a comparison as possible. If another way of making the comparison is suggested, time is available to look at that again. We have not done anything that could be construed as an attempt to mislead.

**The Convener:** Do you accept that there is a difference in the methodologies? You are saying that there has been an attempt to make as good a comparison as can be made between the figures arrived at by the different methods.

**Jamie Hepburn:** Yes. It is certainly our best attempt to have as accurate a comparison as is possible, although we recognise that the tools are not identical. I can ask Richard Dennis or John Cook to elaborate on that.

On the uprating of the figure, we have undertaken a similar exercise, applying the Office of Budget Responsibility's predicted rate of inflation for the coming financial year to the CFS in another attempt at comparison, which we are happy to share with the committee. It shows that the position that we have laid out—that there are fewer trigger breaches under the tool that we propose to move to than under the tool that is now in place—continues to be the case.

**The Convener:** It would be helpful to have an explanation, from you or other witnesses, of the changes made to the SFS methodology and the effect that they have had on the trigger figures.

**Jamie Hepburn:** I am happy to hand over to Richard Dennis or John Cook.

**Dr Richard Dennis (Accountant in Bankruptcy):** I will try to keep this as simple as I can. The two tools have different methodologies. They use different ways of calculating the trigger figures, and there are different categories within each set of trigger figures. The SFS has three triggered categories, while the CFS has four, and different things are included in the two sets.

The 2017 trigger figures for the standard financial statement produced some surprising results when applied in practice, as they generated higher contributions than might have

been expected. The methodology was looked at again, and two things were done when the figures were updated for 2018. First, when average spending was calculated for the group that is used set the trigger figures, outliers were disregarded—people who report very low expenditure and very high expenditure. That is because the methodology is based on income and not expenditure.

Secondly—this is one of the most significant changes made in the SFS—rather than using people who were reporting expenditure below the level of the jobseekers allowance disregard, the methodology moved to using people who were reporting expenditure below the level of the universal credit disregard. As the minister and some members of the committee will have heard some creditors say, they were surprised at the extent to which that drove up the trigger figures in the SFS.

The changes in methodology for the SFS from 2017 to 2018 were made because the 2017 figures were widely perceived as being too low. There were no such concerns about the CFS numbers, for which the methodology has rolled forward for five or six years since it was last reviewed and has not been changed.

Does that help?

10:00

**Jamie Hepburn:** If there is a suggested further assessment that we can undertake and that it would be sensible to undertake, we are open to that prospect.

**Jackie Baillie (Dumbarton) (Lab):** I want to follow up that specific point. I am grateful to you for simplifying the issue for the committee. If universal credit is the base cut-off for the standard financial tool and the effect is to drive up the trigger figures, why did you not use that to assess the common financial tool?

**Dr Dennis:** It is slightly more complicated than that. There are lengthy documents explaining the methodologies for the two, which the committee is welcome to see. If we made the methodology for calculating the trigger figures the same in both tools, we would get the same answer, because the two tools would be the same. In effect, all that we would be doing is changing the CFS to adopt the SFS trigger-figure methodology and categorisation. There would be no point, because we would have only one tool rather than two.

**Jackie Baillie:** Okay, but the point is that, as you have acknowledged, you are not comparing the same things. Therefore, the advantage or disadvantage is not instantly obvious, because we are not starting from the same baseline.

**Jamie Hepburn:** My observation in response to that would be about the scale of assessment that has been undertaken in respect of both. If I remember correctly, I think that there was an assessment by Money Advice Scotland. We have Money Advice Scotland, the Money Advice Service and the Money Advice Trust, so it can get confusing on occasion.

**Jackie Baillie:** It is complicated.

**Jamie Hepburn:** I need these things simplified for me as well, Ms Baillie.

The numbers that Money Advice Scotland assessed were quite small, although that is not a criticism, incidentally. The first time round after the figures were updated, we assessed 1,500 cases and, when the figures were updated again, I think that it was about 2,100 cases. That is a substantial body of evidence. However, if the committee desires us to do more, we will go back and see whether it can be done. We will make that commitment, although, as Dr Dennis pointed out, our expectation would be that the result would not be substantially different.

**Jackie Baillie:** We would welcome the information that you choose to send us.

**The Convener:** I have one final question of clarification on an issue that is covered in your letter, minister, although it may be more for Richard Dennis to respond to this. You note that the AIB consulted with Christians Against Poverty, or CAP, and you state:

“Their Chief Executive has confirmed that the organisation is fully supportive of the SFS”.

What does that mean? You have been relying on information from the AIB, so it might be easier for the AIB to respond to that.

**Jamie Hepburn:** I can certainly hand over to Dr Dennis. Ministers always rely on their officials to provide evidence.

**The Convener:** I am not questioning that; I am just saying that, for that reason, it might be easier for the officials to address the basis of that statement in your letter, if you are happy for them to do that.

**Jamie Hepburn:** You can address your questions to whomever you wish, but I will hand over to Dr Dennis.

**Dr Dennis:** I think that that particular reference might have been to PayPlan, but both it and Christians Against Poverty have confirmed that they are moving to use the SFS in their systems by, I think, the end of March. They have both already committed to adopting the SFS.

**The Convener:** That is for the United Kingdom.

**Dr Dennis:** Yes, it is for the UK. If Scotland were to maintain the CFS, we would be asking both those organisations to run two systems.

**The Convener:** I presume that they would have to move to the SFS for England anyway, if that is the system used. To be clear, I am interested in the suggestion that they are fully supportive of the change. I am interested in what precisely they have been asked and have said. Is there a record of that information confirming their position that could be provided to the committee? What were you referring to when you said that?

**Jamie Hepburn:** Yes, I think that we can provide further evidence on that.

**Dr Dennis:** Yes, we can. I think that the letter from the PayPlan chief executive is quoted verbatim in one of my letters to the committee.

**The Convener:** Right. I was interested in CAP, but you referred to PayPlan.

**Dr Dennis:** Again, we have written material from CAP, which we are more than happy to make available to the committee.

**John Mason (Glasgow Shettleston) (SNP):** As I understand it, one of the bodies that took part on Thursday—by phone conference, I think—was the Money Advice Trust, which currently operates the common financial statement. It does not plan to carry on maintaining the CFS after March or April, but does not rule it out as a possibility. Could the Money Advice Trust, the Government or somebody else maintain the CFS after March?

**Jamie Hepburn:** Yes. I will be candid and say that that is a practicality that we must explore now, given that we do not want a gap in provision. It would be presumptuous of me to pre-empt the committee's decision, so we are engaged in that territory. As you would expect of the AIB, as an organisation that has at its heart the best interests of vulnerable people, it, too, does not want a gap in provision.

On a practical basis, maintaining the CFS is something that the Money Advice Service could do, but the question is what the long-term governance arrangements would be for either tool. As far as I am aware, there is currently a steering group on which a range of agencies is involved in assessing the efficacy of the CFS. The Money Advice Trust does not envisage continuing the CFS, so that infrastructure will no longer exist, but there is an equivalent group for the SFS. Citizens Advice Scotland, Money Advice Scotland and the Accountant in Bankruptcy would be part of that, whereas they are not involved just now in the CFS. That is a moot point, however, because the group will disappear. The point is that there will not be a wider group with all the relevant stakeholder



interests involved in monitoring the efficacy of the tool. However, theoretically, that is an option.

**John Mason:** The committee was worried when we were shown spending guidelines under SFS and CFS because—as has been said this morning—the SFS guidelines were relatively low for 2017 and increased for 2018, but we still got the impression that they were lower than the equivalent spending guidelines for CFS. Are you saying that that is not the case?

**Jamie Hepburn:** I recognise that that is the nub of the issue. Our analysis says that that is not the case; some of the evidence with which the committee has been provided is also to the contrary. We think that our evidence is robust and that, given the scale of the assessment, we can demonstrate that. After the previous uprating, some 1,500 cases were reviewed, and after the latest one, just over 2,100 were reviewed. We will provide that supplementary information to the committee.

**John Mason:** So, are you saying that there were more trigger breaches? Are those the figures that you are talking about?

**Jamie Hepburn:** No—I am saying that we undertook a fairly comprehensive assessment. There were fewer trigger breaches.

**John Mason:** Okay. I am talking about the spending guidelines in terms of pounds sterling. We were told that the guideline amounts are high, which means that people had more to live on under CFS in 2018 than they would have under—

**Jamie Hepburn:** I am not sure that that is the case. I will hand over to John Cook on that point.

**John Cook (Accountant in Bankruptcy):** We believe that that is not the case; the standard financial statement gives more sustainable returns. It is interesting that the Money Advice Trust, which set up the common financial statement, made it clear at the meeting last week that the SFS is an evolution of that tool. The trust supports implementation of the SFS, which will allow more sustainable outcomes for debtors. It is in the best interests of the people of Scotland that we make the move at this time.

**John Mason:** When you say “more sustainable outcomes”, do you mean more money?

**John Cook:** Essentially, yes. We have mentioned there being fewer trigger breaches. If a trigger is breached, we would normally seek evidence from the person who submitted the application in order that we could establish their circumstances. If there are fewer breaches, that would not have to happen so much: we would not need to go through that process and it is unlikely that people would pay more. The likelihood is that people who breach triggers would have to pay

bigger contributions. This process should stop that happening in as many cases as it currently happens, which is what our statistics show.

**John Mason:** It was suggested last week, I think, that for travel, the trigger is zero, because all travel has to be evidenced.

**John Cook:** That is a good point. I think that the minister would like to continue.

**Jamie Hepburn:** This, too, is at the heart of the issue. The concern is about the burden of evidence and how reasonable the Accountant in Bankruptcy will be in undertaking the assessment. As the responsible minister, I expect that the Accountant in Bankruptcy will be reasonable. I have no doubt that both Richard Dennis and John Cook would say that they are reasonable in their application of guidance and rules.

To be candid, I say that there was a sense at last week’s meeting that some stakeholders feel that that is not always the case. There is a disconnect there, so I have concluded that the most appropriate thing for us to do is to get everyone together to discuss the matter further so that we can produce agreed guidance that shows that the Accountant in Bankruptcy will not expect every single bus ticket to be returned, when that is unnecessary. That is because it would not be possible for everyone to do it and, more so, because it will be unnecessary, because such costs are so low.

That will apply to all products for dealing with debt situations. We need to take the creditors with us—certainly on the elements on which they must agree terms, such as the debt arrangement scheme. We need also to make sure that there is still a mechanism in the system for evidence to be provided, otherwise we will be in danger of losing creditor buy-in.

When I attended the committee recently, we all agreed that the debt arrangement scheme is a very good model because it prevents people from ending up bankrupt or in a protected trust deed. My concern is that if creditors do not buy into the system, more people will be pushed down that avenue. However, we have to get the balance right. I am determined to do that: I want people, including the committee, to buy in.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** The only apparent driver for introducing the SFS is the achievement of a standardised approach to income assessment across the UK. Does the minister accept that, as a result of the introduction of the CFS for statutory debt solutions, Scotland already has standardised income assessment in both formal and informal debt solutions?

**Jamie Hepburn:** On the latter question, my answer is, largely yes. On the former question, I would not say that a standardised approach is the only driver. If that had been the overwhelming concern, and the assessment that had been undertaken showed that more people would be negatively impacted, you can imagine what my response would have been. The inherent advantages of having a more straightforward system that uses one tool would have been outweighed by my concern that more people would be negatively impacted. I will bring in Richard Dennis on that.

**Dr Dennis:** I will add a rider to what the minister has said. The common financial statement is common across the statutory debt solutions, but it is not necessarily in widespread use in the non-statutory debt solutions. We cannot tell you the exact numbers, but there are more non-statutory debt solutions—there are a lot—than there are statutory debt solutions. Increasingly, because they are run by big firms that work at UK level, they will be running off the standard financial statement.

**Colin Beattie:** In the past, the cost of running two systems for debt advice organisations that operate in Scotland and south of the border has been highlighted. However, the cost would not arise for organisations that operate only in Scotland. Do you have a breakdown of the bodies that provide debt advice in Scotland? What percentage of the market is covered by organisations that work only in Scotland?

10:15

**Jamie Hepburn:** I do not have that information before me. To be candid, I do not know whether it is available. I will let John Cook answer the question. If the information is not available, we will pull it together, although I do not know how readily that could be achieved.

**John Cook:** We keep statistics on trustees in bankruptcy, protected trust deeds, and the money advisors for the debt arrangement scheme. We can pull out those statistics for the committee. Some of the products are dominated by big providers that operate north and south of the border.

**Colin Beattie:** It would be interesting to see the figures. Are there any other ways in which adopting the SFS, rather than continuing to use the CFS, will benefit debtors and advisors in Scotland?

**Jamie Hepburn:** The fundamental benefit for debtors is that more of them will benefit from there being a lower number of trigger breaches. The assessment that we undertook demonstrates that.

**Colin Beattie:** Is your primary concern to reduce the number of triggers?

**Jamie Hepburn:** That will certainly always be a feature of my consideration; it will be uppermost in my mind, although there are a variety of other issues at play. First, there is the matter of having a straightforward system for those who provide advice. We have touched on that. There is also the very practical consideration that the existing mechanism—the CFS—is about to be switched off by the people who administer and license it, although I have conceded the point that you could work around that.

**Colin Beattie:** My memory tells me that there are a number of different systems in use south of the border. Is it the intention to bring in the SFS as a standardised system there?

**Jamie Hepburn:** Yes, that is my understanding, although clearly we take a different approach in Scotland and we have had the matter in legislation for a long time.

**Colin Beattie:** Can standardisation be achieved, given the diversity of the organisations and their differing priorities?

**Jamie Hepburn:** I will hand that practical question to Richard Dennis, who is more likely to be in touch with the people who are involved south of the border.

**Colin Beattie:** My concern is that down the line we may have to revisit the use of the SFS because a major organisation south of the border decides to—

**Jamie Hepburn:** We can never preclude that possibility. I have already made the point that we intend to review the legislation and the system. We are open minded about having the discussion about what is, ultimately, best for people who utilise the system. There was consultation at the time of introduction of the regulations. A majority of people felt that we should use an existing tool, and a majority of those said that we should use what is already in place.

The possibility of revisiting the matter cannot be ruled out, because of practical eventualities. We should keep such things under review; Parliament will call for regular review. That seems to be a sensible thing to do. I will hand over to Richard Dennis on the wider point.

**Dr Dennis:** We can have a fair degree of confidence. The system of money advice down south is different from Scotland's, in that local authorities effectively stepped out of this world some time ago, when the Money Advice Service was set up. The SFS is their tool and it is transferring to the single financial guidance body. Putting it in place in England and Wales involves the three biggest third sector providers of money

advice signing up. They are the Money Advice Trust, StepChange Debt Charity and Citizens Advice. Between them they make up the majority of free advice provision south of the border. They also have more creditors signed up than has been previously managed. Therefore, we can expect to see the spread of the SFS down south.

Our opposite numbers in the Insolvency Service have adopted the SFS for calculating contributions in debt relief orders, for example. It was flagged in the Treasury's "Breathing space scheme: call for evidence response" that it intends to use the SFS as a way of assessing what debtors can contribute to the English version of our debt arrangement scheme. That is already being discussed with HM Courts and Tribunals Service and others, so there is a genuine opportunity for it to be seen as the single tool. It might not work: there have been many previous attempts, none of which has worked, although this has the best chance.

I also say that I find it particularly compelling that the Money Advice Trust, which runs the common financial statement, has said that it sees the standard financial statement as an evolution and as a better tool, which is why it is moving. If the organisation that actually runs the previous scheme thinks that the new one is better, that is quite compelling.

**Colin Beattie:** It sounds a wee bit like a step in the dark.

**Jamie Hepburn:** I do not think that that characterisation of the new mechanism is a fair assessment. You could have argued the same when we passed the legislation, when we said that there had to be a statutory mechanism and we put in place the CFS. However, when we change any mechanism we clearly have to be informed by what happens at the practical level, and to keep that under review, which we are committed to doing. A committee of the Parliament could also undertake such a review and tell us what it thinks.

**The Convener:** Richard Dennis said that the situation in England is different, in that the local authorities are not involved in money advice provision, whereas in Scotland they are. How is that difference reflected in the SFS being applied to Scotland?

**Dr Dennis:** England and Wales are going through the process of getting the SFS adopted by local authorities. I think that something like 140 local authorities have made a commitment to adopt it, in their role as creditor. The others are being worked on one by one. On whether most debtors south of the border will go through a process that uses the standard financial statement, that will depend on whether the advice agencies use it. In Scotland, most free advice is funded by local authorities, so a debtor going for

free advice is more likely than not to be going through a process that is funded by a local authority. Local authorities therefore have a hugely important role in Scotland.

On whether the situation is the same down south, the key question to ask would be how many local authorities have signed up to using the tool. However, that is not the key question down south, because free debt advice there comes from the Money Advice Trust, StepChange Debt Charity and Citizens Advice, and it is funded by the Money Advice Service, which draws on the levy that is paid by the consumer credit sector. For a debtor down south, the question is whether those three third sector bodies are all signed up. Previously, StepChange had its own tool, and the Money Advice Trust used the common financial statement. All three bodies have already committed to using the standard financial statement. StepChange is ready to switch on its new computer system on 1 April, and Citizens Advice in England and Wales has already moved to using it.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** What I took from the meeting last Thursday afternoon was that a lot of people are very concerned about the administrative burden that is to be placed on debt advisers. We were already aware that, in Scotland, the Accountant in Bankruptcy's requirements for evidence to be collected are more onerous than the requirements in England and Wales. We have heard that in the two previous evidence sessions.

If we adopt the standard financial statement, we will need to gather more information as evidence for fixed costs, because it shifts more areas of expenditure across to fixed costs. Under the SFS, categories including transport, the costs of school uniform and school trips, and other things that are difficult to evidence will be moved so that they always require to be evidenced, and people will need to gather even more evidence, which could prolong the process by an extra three or four weeks. Given that background, do you accept the concern of many debt advisers about the administrative burden, and what will we do about it?

**Jamie Hepburn:** I must accept that the debt advisers are concerned about the administrative burden, but it is a question of perspective whether they should be concerned. That is why I have committed to putting in place guidance that will demonstrate that we do not want the requirement to be burdensome or onerous. We do not want it to delay the process and, thereby, to cause difficulties for the money adviser that provides advice and assistance. We also do not want to put in place a system that will cause difficulties for the debtor.

My take-away from last week's meeting was that people were expressing that fundamental point, rather than taking a strong position on which tool we should use. Such concerns were expressed equally about the CFS as it is practised now. The Accountant in Bankruptcy might feel that that is not fair, but the concern has been stated and it has been heard. We are committed to working to bring people together in order to understand why that is a concern, and to make sure that whatever guidance we put in place does not create a burden for people.

**Gordon MacDonald:** You talked about tightening up the guidance. It would be helpful if you could say in what areas you are looking to tighten up the guidance, so that we can see whether that would have an impact on the administrative burden.

You spoke about having a review in the long term. Should we not have the review first? The Institute of Chartered Accountants of Scotland said in its evidence:

"We would strongly encourage the AiB and Scottish Government to defer any decision on the use of CFS or SFS and instead urgently carry out an assessment of the policy effectiveness behind the CFT."

It would surely be more sensible to review the common financial tool first and then decide on the best way forward.

**Jamie Hepburn:** That goes back to the fundamental point that we are coming to a juncture at which the tool that we use now will be switched off by the organisation that created it and which administers and licenses it. That organisation says that the tool that we propose to use is better than the one that it is about to turn off. It is therefore sensible that we now determine whether we will continue to use a tool that will increasingly not be used by the sector and which will not be administered or have its efficacy looked at by the wider stakeholder group. The trusts do not intend to continue with that tool, so why would they maintain the stakeholder group?

**Gordon MacDonald:** They did not totally rule that out.

**Jamie Hepburn:** They have said nothing about continuing the steering group that they have in place. I do not think that they will do that. Why would they do it? Ultimately, they would be keeping the tool in place just for the use of the Accountant in Bankruptcy. Then the question arises of who determines how it is uprated and so on. It could come back to the Government to do that. If the committee feels that it is appropriate to do so, we can consider that. That is the juncture that is causing us to consider how we move forward.

Because we have reached that juncture, we need to decide what we will do in the immediate term. People say that we should review this on a wider basis. We already intended to do that, we have committed to doing it and I am saying now that we will do it. I am keen to hear what the committee's perspective is on that. That work will be under way.

The statutory mechanism has been in place for almost five years and the average bankruptcy process lasts about five years. For me, therefore, this seems to be an appropriate time to look at whether it has been an effective mechanism. That is why we have been working to that timescale.

I have talked so long about that point that I have forgotten the first part of your question. Perhaps you could reacquaint me with it.

10:30

**Gordon MacDonald:** I was asking about the administrative burden. You said that you were going to change the guidance.

**Jamie Hepburn:** Fundamentally, it would be about what the threshold for requiring really detailed evidence would be. There will be cases where that is necessary. I go back to the point that we need to have a system that creditors can buy into and have faith in as being proportionate and fair. We must remember that there are many creditors. Credit unions are a prime example. They have a customer base that contains many vulnerable people from low-income households but, ultimately, a credit union's finances are there only because of those individuals—it is their money that the credit union is handling.

We need to take creditors with us, but we also need to ensure that, through the guidance that you put in place, the threshold for detailed evidence is appropriate, proportionate and correct. That is the area that I think we need to undertake the most work on.

**Gordon MacDonald:** The standard financial statement is based on a tool that has been used by a number of debt advisers, starting in 2003. There is a long history of that model being used. Has the Government done any work on whether there is another agency that could continue uprating the CFT and what the cost of that would be?

**Jamie Hepburn:** No, I do not think that we have. There clearly would be a cost if we were to ask the Money Advice Trust to continue doing it, but I do not know precisely what that would be. I have to be careful what I say, because it is coming up to budget time and the finance secretary could be watching this, but I do not think that it would break the bank for us to do that.

However, there are a couple of issues that follow on from that. First, we could not compel the trust to do that in the long term, and it could determine that it does not want to do it. There would then be a question of who would be the appropriate people to do it—we would need to find someone.

These are not impossibilities; I am not suggesting that it would be impossible to do these things. However, we would need to consider the matter in detail and work out who would be the most appropriate people to do it. I suppose that it could even be done in-house, but some people might feel that that would be appropriate. I think that, in your first evidence session on the matter, the Institute of Chartered Accountants of Scotland suggested that, but the representative of R3 immediately came back and said that they did not think that that would be appropriate.

**Gordon MacDonald:** The Fraser of Allander institute has also suggested that approach.

**Jamie Hepburn:** Well, there could be many suggestions, and we would need to consider whether we thought that they were appropriate and sensible ones.

The point that I was trying to make is that there would be a diversity of views on that issue. Just as we will never be able to satisfy everyone with whatever we put in place, we would not be able to satisfy everyone in respect of that decision. Of course a decision could be made.

**Dr Dennis:** Before the Bankruptcy and Debt Advice (Scotland) Act 2014 came into force in 2015, the money adviser sat down with the client and decided whether they needed to go bankrupt. That concerned a consideration of whether they could cover their debts, whether they were insolvent, whether they had assets and so on. All that the money adviser was focused on was whether their client needed to go bankrupt. Bankruptcy would be awarded and the case would be referred to a trustee, who would then go through the process of setting the contribution.

In the period of consultation in the run-up to those reforms—from 2007 to around 2012-13, when the policy was set—the decision was taken that the debtor ought to know what their contribution might or might not be before they decided whether to go bankrupt. As a result of that, the administrative burden of going through the financial tool and coming up with the calculation has been brought forward from being done by the trustee after the award of bankruptcy to being done by the money adviser before the award of bankruptcy. We know that that imposes a burden on money advisers that they did not have to face previously, but we went into that with our eyes open because it allows us to put the debtor in

a more informed position when making the choice, and it allows us to tailor what their contribution is to their specific circumstances.

That is a fundamental policy issue, but we will look again at the assessment. The fact that it has imposed an administrative burden should not be any surprise, because we have brought forward a lot of work from being done post-award by somebody different to being done pre-award by the money adviser.

**Jamie Hepburn:** Of course, that has been designed with the best interests of the debtor at heart, and I think that we would all agree that that is the sensible thing to do. We do not want to push people into solutions that they do not necessarily have to be pushed into. If that is the outcome that we desire, and I think that money advisers would want it, they would have to go through the evidence-gathering process anyway so that they can make sure that the person who is before them can make a fully informed decision based on their advice.

**Gordon MacDonald:** To go back to the administrative burden, my final point is again on something that we heard in committee. Insolvency practitioners and money advisers could use their professional judgment to sign certificates declaring someone insolvent, but they are unable to do so at the moment. Are you willing to look at that?

**Jamie Hepburn:** I would not close down any option. We need to take the creditor community with us, however, and we need to hear what it has to say about that. I go back to the point that creditors constitute a wide variety of individuals or organisations, some of whom represent people who are on low incomes and who could also be described as vulnerable. We need to have a system that requires some level of evidence gathering and sign-off, but it has to be done on a proportionate basis to look after the interests of the debtor and to make sure that the creditors are with us. I will bring Richard Dennis in on that.

**The Convener:** Sorry but—

**Dr Dennis:** The question was technically slightly wrong. I apologise for butting in, convener, but it is important to get this right.

The insolvency practitioner and the money adviser can sign the certificate of insolvency and declare the debtor apparently insolvent. What they cannot do is set the debtor's contribution, because the law says that it is set by us.

**John Cook:** The reason for that is—

**The Convener:** Before someone else butts in here, Jackie Baillie wants to come in on the issues that have already been raised.

**Jackie Baillie:** I welcome the minister's commitment to providing additional guidance. However, Money Advice Scotland, Citizens Advice Scotland, ICAS, and Alan McIntosh all sit on your common financial tool working group and already have a voice. The evidence that they have given to the committee should not come as a surprise, because they have been raising their concerns in that group, but they are not listened to. If their participation is not translating into better practice, what comfort can we take from you offering more guidance and their input to developing it, given that they already have input?

**The Convener:** Who wants to butt in on that?

**Jamie Hepburn:** I do, convener, although I hope that you do not consider it to be butting in.

I hope that this would reassure them, Ms Baillie. This is a new area to me, as I have not been involved in the process previously. When I heard the concerns of the committee, the first thing that I determined was that, because serious concerns had been raised, we should withdraw the regulations and not proceed as we had previously envisaged. It is incumbent on me to sit down with those who are involved, so all those individuals and organisations were invited to a meeting with me and most, though not all, attended. That was precisely so that I could hear directly from them. My commitment to them was to continue doing that.

**Jackie Baillie:** Was that meeting a one-off, or are you going to chair the working group now?

**Jamie Hepburn:** I will not chair the working group because I am quite a busy person, Ms Baillie.

**Jackie Baillie:** Really? If it is that important, you will find time to do it.

**Jamie Hepburn:** I find the time to engage with organisations. That was just meant to be a bit of a jocular remark, Ms Baillie. I will engage—

**Jackie Baillie:** This is about debt. There is nothing funny about it.

**Jamie Hepburn:** I am not suggesting that there is anything funny about it, Ms Baillie.

**Jackie Baillie:** Okay.

**Jamie Hepburn:** Let me go back to the fundamental point that I was making. At the meeting that I held last week, I committed to engaging regularly with the organisations on a round-table basis. I do not know whether that has happened in the past, but I found it instructive and useful. I am clear that, as the minister with responsibility for the area, I devise the policy. I can do that only if I am properly and adequately informed, and part of that will be about me

engaging regularly with those who were round the table. I am committed to doing that.

**Jackie Baillie:** Who chairs the working group? Have you not been receiving information from it?

**Jamie Hepburn:** I do not think that it is fair to say that I have not been receiving information from the working group. It will meet tomorrow. It has been convened quickly. It was scheduled to meet at the request of some of the participants. It had suggested that it should not meet, but I asked the Accountant in Bankruptcy to go back to it and say, "Given the position that we're in, we need to undertake this work quickly, so please reconsider." I am grateful that it agreed to do that, and it will meet tomorrow. I hope that that indicates the urgency and seriousness of the matter. I will, of course, look to hear what has been discussed there, and I will be fully involved in the process.

**Jackie Baillie:** Can I go back? Sorry—I do not mean to nit-pick, but I want to understand the process.

**Jamie Hepburn:** That is okay.

**Jackie Baillie:** Can I ask you again who chairs the group?

**Jamie Hepburn:** Sorry—yes. I will—

**Jackie Baillie:** Also, if you were getting reports, were you told about the concerns well before the regulations were laid?

**Jamie Hepburn:** I will ask Richard Dennis to come in on who chairs the group. Clearly, I rely on the Accountant in Bankruptcy to provide me with information and I am satisfied that the Accountant in Bankruptcy has provided me with the necessary information for me to move ahead as I see fit.

**Dr Dennis:** The meeting tomorrow will be chaired by John Cook. It is usually chaired by another member of my staff but, given the importance of the topic, we have raised it to the deputy accountant tomorrow.

**Jackie Baillie:** Who is it normally chaired by?

**John Cook:** Graeme Perry.

**Jackie Baillie:** Thank you.

**Angela Constance (Almond Valley) (SNP):** Like Ms Baillie, I would like some categorical assurances. Mr Cook said earlier—that is an important point—that if there are fewer breaches, less evidence is required by the Accountant in Bankruptcy, but if there are breaches, evidence is required for contributions to be waived. What options does the minister have to ensure that there are robust assurances that Mr Dennis and his colleagues will in all circumstances be proportionate and reasonable? Over and above guidance, what thoughts do you have about that,

minister, given that your role in—forgive me, but I like to call a spade a shovel—bearing down on the AIB is pivotal in this circumstance?

**Jamie Hepburn:** It is certainly my expectation that the Accountant in Bankruptcy should be proportionate. This relates to the point that I made to Ms Baillie—and, I hope, to what I have said throughout my answers to questions today. If there are people out there expressing concerns, it is incumbent on me to hear them. That is why we have put in train the process that is under way.

I want to be as categorical as I can be. Not only is it my expectation, I want us to devise some guidance that sets that out, as much as any guidance can. It will always be subject to interpretation and, ultimately, there will be different points of view from time to time. That is inevitable. However, as much as we can within the form of written guidance, I want to be clear about the level of evidence that will be required in circumstances where the trigger has been breached. That will speak largely to common sense.

Where things absolutely cannot be demonstrated, we need to reflect that in consideration of these matters. If something can be demonstrated as a regular occurrence, for example for travel, that can readily be assessed by looking at public transport costs or an assessment of petrol costs and can be undertaken by the Accountant in Bankruptcy looking at the specific situation.

What has not come out so far in the evidence that the committee has gathered today is that a mechanism is already in place—I will ask John Cook to remind me of its exact name—by which an adviser who is concerned that the present process has not been proportionate or fair can challenge it. I do not think that that happens often. The guidance might need to reflect better that there is a way of challenging decisions.

10:45

**Angela Constance:** We will come back to the issue of advisers. I am pursuing a line of questioning about the role of the minister.

Guidance is important, and the more detailed the better. I am not demurring from the central importance of guidance. However, what options other than guidance do you have for a belt-and-braces approach to ensuring that the AIB is reasonable and proportionate? Is it appropriate or possible for there to be some sort of protocol for the minister, the AIB and stakeholders?

Over and above detailed working groups, are there forums to provide ministerial oversight and input? What other options are there to ensure that, on an on-going basis, guidance is not issued as a

one-off but there is a collective endeavour to ensure fairness? The crux for many stakeholders is that they are concerned about the burden of evidence and concerned that Dr Dennis and his colleagues are not reasonable and proportionate on all occasions.

**Jamie Hepburn:** There is the working group that meets on an on-going basis. I will want to be updated on its considerations, and that will be informative and instructive. I have already responded to Ms Baillie. The evidence that we will provide to the committee in the form of the note of the meeting with stakeholders expressly states that I found the meeting useful. I intend to meet stakeholders on a regular and on-going basis to allow them to raise issues with me directly.

I cannot become involved in the direct application of a specific case. That would be inappropriate. If I get a sense through people contacting me directly and parliamentarians contacting me on behalf of their constituents that there is a general issue, that allows me to have a straight conversation with Dr Dennis and his colleagues as appropriate.

**Angela Constance:** I move on to the issue of evidence, which the minister just mentioned. When Mr Cook was questioned by Mr Mason, he said that he believed that the standard financial statement would give more folk more to live on. Is that just a belief, or can it be stated categorically, based on the current evidence?

**John Cook:** It is based on the evidence that we have. The difficulty is that trigger breaches do not necessarily mean higher contributions. It depends on the person's circumstances and whether they can evidence that the breach is reasonable in those circumstances. That muddies the waters.

I want to add a point to what the minister said. At the moment, there is a review process. If someone does not like their contribution, they can ask for a review, which is carried out by a separate part of the Accountant in Bankruptcy. They can also go to the sheriff for a formal appeal.

In addition, there is an independent review committee, which is made up of external stakeholders and which looks at decisions that have been reviewed to see whether they were right. That gives us external scrutiny and allows us to reflect on our decisions. We take on board any criticism that we get from the external stakeholder group. We try as much as possible to be transparent in the process so that we can learn from the experiences of people who use the service. If the truth be told, we get very few review requests in debtor application/contribution cases.

**Angela Constance:** That is an interesting point, which leads me on to my next question. From the information that the committee has before it, there

does not appear to have been any direct consultation with debtors on the approach to assessing income or on their experience more broadly of statutory debt solutions. Will the minister reflect on that and rectify it?

**Jamie Hepburn:** Yes. I have already said that we will undertake a review of the legislation, and we will seek to involve debtors in that process. The Accountant in Bankruptcy is regularly in contact with debtors, so that will be instructive, but we will also do that formally. One of the issues in the convener's letter to me was a concern about the process of consultation in the lead-up to the proposals, but we followed the normal process of consultation that we would follow with any form of legislative change. If there were to be more legislative changes, there would be a normal process of consultation, and individuals, including people with direct experience as debtors, would be able to contribute to that.

It is probably fair to point out that there can be a tendency—committees and the Government can be subject to this, which is a challenge for us as legislators—that when we engage in consultation we hear mainly and most directly from what we call stakeholder organisations. There is always the challenge of reaching out to others whom we want to engage. In this case, we want to engage with debtors, and we will ensure that that engagement is part of the process.

**Angela Constance:** I am conscious that we—either ministers or committees—can diligently follow the processes that are expected of us, but the reality is that some folks are harder to reach. In other areas of Government, we have worked hard to overcome that. For example, we have heard from those with lived experience of the social security system or homelessness. What further specific endeavour can you and your officials make to reach those whom we need to reach, bearing in mind that they can be difficult to reach?

**Jamie Hepburn:** I suppose that my point is that that is always an inherent challenge and a frustration for us. We would all recognise that. You were involved in trying to widen the reach of the consultation on the Social Security (Scotland) Bill and the social security agency, learning from previous experience. Through on-going engagement, the Accountant in Bankruptcy has been undertaking a survey of those with direct experience, and the results are being collated. That was the point that I tried to make when I talked about regular engagement. I cannot say what the answers are just now, because we are going through that process.

**Angela Constance:** What kind of survey is that? Does it involve phone calls, face-to-face contact or focus groups?

**Jamie Hepburn:** John Cook will speak on that.

**John Cook:** The survey involves a variety of media. We normally write to people to ask them to participate in a survey. We have done that with IPs, money advisers, creditors and debtors—people who experience the system. The feedback from that has been positive, and we hope that that continues. We need to learn lessons from that experience. The current process involves the advice sector, which advocates on behalf of its clients, but we now have the chance to speak directly to the people who experience the system. We will report on that and produce a release that gives details about what people think of our service.

**The Convener:** I am conscious of the time, but we will move on to a further question from John Mason.

**John Mason:** It is a short question. I realise that both the common and standard financial statements are controlled by outside bodies. Whichever one we go with, we do not have full control. They are both tied into legislation. What would happen if the standard financial statement were to be changed quite dramatically? For example—perhaps for political reasons—things might become harsher for debtors. Such a decision would be made in England, but how would we react to it?

**Jamie Hepburn:** Such a characterisation of the process is not necessarily how it would work in practice—I again make the point that I alluded to earlier. I can understand why people have come to that conclusion. We are moving from a system that has been used in a widespread, standardised way in Scotland to one that will be used more widely across the UK, and it has been suggested that there will be a loss of direct influence or control.

You made the point that, ultimately, such products are operated by organisations that are not directly within the Scottish Government's influence. In contrast to the steering group that existed—in my estimation, it is not likely to exist for the CFS, because the Money Advice Trust does not intend to continue it—we have more influence over the equivalent group of organisations for the SFS, on which we have more Scottish representation through Citizens Advice Scotland, Money Advice Scotland and the Accountant in Bankruptcy.

That said, we cannot preclude the possibility that the tool will develop in such a way that it is felt that it should not be used in future. That could have happened with the CFS just as much as it could happen with the SFS. We would then need to make a judgment and perhaps alter the system for the future—we could not have precluded that possibility with the CFS—and then come back to



the committee to say what we intended to do and to seek the committee's assent.

**John Mason:** Okay. Thank you.

**Andy Wightman (Lothian) (Green):** Minister, I have a brief follow-up question on your comments about the guidance. For clarity, in relation to elements such as a travel allowance, the guidance cannot change the fact that the allowance is zero. However, it could be determinative of the kind of evidence that would be required. Is that what you are saying?

**Jamie Hepburn:** Yes and no. There is a tendency to look at such things as allowances, whereas the advice community would agree that they are not intended to be seen in that way. However, that might be a slightly moot point.

In essence, the point is about the guidance that we put in place for the practical implementation of the system. From my discussions, it has become clear to me that that is the concern about the tool as it stands, through the CFS, and would be the concern with the SFS. Ultimately, it is what we do practically to implement whichever tool we have before us that is critical for the advisers and the organisations that are involved in supporting debtors. I am very committed to trying to get that right. Self-evidently, given the concerns that the committee has had, I will have to get that right if members are to agree to any change.

**Andy Wightman:** You said that we are at this juncture because of the impending ending of the maintenance of the common financial statement. My understanding is that when the AIB undertook its consultation, two thirds of those who responded said that they did not agree with the standard financial statement and were interested in alternatives, but that no work had been done to explore those. Clearly, one such alternative would be to continue the common financial statement, conduct a review of the methodology that determines how much money a debtor is left with, look at minimum living standards, set trigger figures and so on, and then make a decision on whether we should embrace the standard financial statement.

11:00

**Jamie Hepburn:** I would not necessarily posit those as contradictory or alternative steps. It would not be fair to say that no work has been undertaken. For example, minimum income standards have been suggested as an alternative, and an assessment was undertaken that showed that using the SFS will result in broadly the same outcome. I do not think that no work has been undertaken, but I agree that more work can be undertaken. I have already committed to doing that.

**Andy Wightman:** The criticism has been that there has not been the kind of work that would inform a decision on whether to move to the standard financial statement. In the absence of that work, we are being invited to make the change purely because the current tool is being discontinued. However, there are bridging mechanisms that could keep that tool going.

**Jamie Hepburn:** That is potentially the case. Whether that would be a satisfactory process is a matter of perspective. Stakeholders could raise any number of concerns about our having that bridging process, including in relation to having a variety of tools for different assessments, having to operate more than one tool, and whether it is appropriate to ask the organisation that currently operates and licenses the tool—and which has said that the alternative that we are seeking to adopt is better—to maintain it solely for out utilisation.

Again, it is not fair to say that no work has been pursued in the process that has been undertaken thus far. There has been a fairly comprehensive assessment to compare the CFS and the SFS. If the committee thinks that there is more work that we should do, and if we can do it, we will do that work. However, I am not convinced that the argument that we have not done anything in the lead-up to the decision being made is true.

**The Convener:** That concludes our questions on the matter at this time. I thank the minister, Mr Dennis and Mr Cook for coming to give evidence.

11:02

*Meeting suspended.*

11:04

*On resuming—*

### **Insolvency (Scotland) (Receivership and Winding up) Rules 2018 (SSI 2018/347)**

**The Convener:** Agenda item 3 is an evidence-taking session on a piece of subordinate legislation. I again welcome to the meeting the Minister for Business, Fair Work and Skills, Jamie Hepburn. I also welcome his officials: Graham Fisher is head of branch, legal directorate—constitutional and civil law, at the Scottish Government; Alex Reid is head of policy development at the Accountant in Bankruptcy; and David Farr is policy manager—corporate insolvency, also at the Accountant in Bankruptcy.

I ask the minister to briefly outline the instrument's purpose.

**Jamie Hepburn:** I will be very brief, convener, because I am happy to move to the committee's

questions. The aim of my letter of 28 November was to set out the background to the instrument. I recognise that it is a very weighty document, but that is of necessity, given that the rules that it seeks to replace are also a weighty document.

This is largely an exercise in updating the rules, which relate to past legislation—indeed, they relate to legislation from more than 30 years ago—and it is designed to update the language and make the rules a bit more transparent to allow people who provide advice and insolvency solutions to understand them. In short, the instrument does not substantially change the rules—it is really just a straightforward exercise in updating and modernising them to make them easier to understand.

**The Convener:** As members have no questions, I suspend the meeting to allow the witnesses to leave. Thank you very much for coming in.

11:06

*Meeting suspended.*

11:06

*On resuming—*

**The Convener:** Agenda item 4 is consideration of the instrument. If members have no substantive comments to make on the instrument, is the committee content for it to come into force?

**Members indicated agreement.**

## European Union (Withdrawal) Act 2018

### Public Procurement (Amendment) (EU Exit) Regulations 2019

11:07

**The Convener:** Agenda item 5 is consideration of a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the European Union (Withdrawal) Act 2018 in relation to a proposed UK statutory instrument, the Public Procurement (Amendment) (EU Exit) Regulations 2019. Much of the instrument will not apply to Scotland but will apply to England and Wales. The relevant part for Scotland is where the UK Government seeks to amend retained direct European Union legislation that has effect across the UK and relates to minor matters. Scottish ministers will bring forward a separate amending instrument in respect of the equivalent Scottish regulations.

The notification suggests that this is a category A proposal—that is, the changes are technical with minimum policy choice or only one obvious policy solution. Is the committee content for the matter to be dealt with by statutory instrument laid at Westminster?

**Members indicated agreement.**

**The Convener:** I will write to the cabinet secretary to notify him of the committee's decision.

11:08

*Meeting continued in private until 12:15.*

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