



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Public Administration Committee

Tuesday 7 November 2023

Session 6



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FINANCE AND PUBLIC ADMINISTRATION COMMITTEE

28th Meeting 2023, Session 6

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

Michael Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Ross Greer (West Scotland) (Green)

*Jamie Halcro Johnston (Highlands and Islands) (Con)

*John Mason (Glasgow Shettleston) (SNP)

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

*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tom Arthur (Minister for Community Wealth and Public Finance)

Niall Caldwell (Scottish Government)

Daniel Johnson (Edinburgh Southern) (Lab) (Committee Substitute)

Craig Maidment (Scottish Government)

Janet McVea (Scottish Government)

Alexander Quayle (Scottish Government)

Lorna Slater (Minister for Green Skills, Circular Economy and Biodiversity)

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 7 November 2023

[The Convener opened the meeting at 09:30]

Circular Economy (Scotland) Bill: Financial Memorandum

The Convener (Kenneth Gibson): Good morning, and welcome to the 28th meeting in 2023 of the Finance and Public Administration Committee. We have apologies from the deputy convener, Michael Marra. His substitute today is the former committee stalwart Daniel Johnson, whom I welcome back.

The first item on our agenda is to take evidence on the financial memorandum to the Circular Economy (Scotland) Bill from the Minister for Green Skills, Circular Economy and Biodiversity. I intend to allow up to 75 minutes for this evidence session. The minister is joined by Scottish Government officials. Ginny Gardner is head of the circular economy unit; Janet McVea is head of the zero waste unit; Alexander Quayle is team leader, recycling; and Gareth Heavisides is circular economy team leader. I welcome our witnesses to the meeting and invite the minister to make a short opening statement.

The Minister for Green Skills, Circular Economy and Biodiversity (Lorna Slater): Thank you, convener, and thank you for the opportunity to speak with the committee today.

The Circular Economy (Scotland) Bill will establish the legislative framework to support Scotland's transition to a zero waste and circular economy, significantly increase reuse and recycling rates, and modernise and improve waste and recycling services.

The bill takes powers to give ministers and local authorities the tools that they need in order to achieve our ambitions for a circular economy. Those represent a package of new powers and responsibilities that will be underpinned by support and investment, such as the £70 million recycling improvement fund. That builds on over £1 billion of funding provided through the former strategic waste fund between 2008 and 2022 to assist local authorities in the implementation of a zero waste plan.

At the heart of many of the bill's provisions is the recognition that co-design, based on the principles of the Verity house agreement and the new deal

for business, will be central to delivering the transformation that we need.

Regulations made under the enabling powers in the bill will be subject to further consultation, parliamentary scrutiny and impact assessments, including business and regulatory impact assessments. As a result, the financial memorandum provides strategic-level cost-and-benefit data. That will be refined as part of ongoing work with local authorities, householders, businesses and other stakeholders through, for example, the development of the waste route map.

The bill is necessarily narrow in the topics that it covers. It sits in the space where the Scottish Government needs new powers to take action: between powers that are reserved and matters that are devolved on which we have already taken powers.

Legislation is, of course, only part of the solution. A wide range of other measures is in train. Alongside the Circular Economy (Scotland) Bill, we are developing our circular economy and waste route map, which will provide strategic direction for how we will deliver our system-wide, comprehensive vision for sustainable resource use and Scotland's circular economy to 2030. An updated draft route map will be published later in 2023 for further consultation, and it will be finalised in 2024.

Extended producer responsibility for packaging, which we are introducing alongside other United Kingdom Governments, will require producers to pay local authorities the full net cost of operating an efficient and effective household packaging collection service. That will provide substantial funding to local authorities, which is estimated to be £1.2 billion per annum across the UK.

Let me finish by underlining that building a more circular economy is an environmental imperative, but it is also an economic opportunity for Scotland. It will open up new market opportunities, improve productivity, increase self-sufficiency and provide local employment opportunities.

I look forward to answering your questions.

The Convener: Thank you very much for that very helpful opening statement. I have already scribbled down a huge number of notes from the comments that you made. It would, of course, help if I could read my writing; that might make life a little bit easier.

I will start by referring to some of the evidence that we received a couple of weeks ago—obviously, you will be familiar with that. We took evidence from the local authorities of Dundee, South Lanarkshire and West Lothian. It is fair to say that they are not so enamoured with the

direction of travel, but they are definitely on board with the policy.

Obviously, the committee is concerned about finance and how things will be funded. Dundee City Council, which was the first to give evidence, said that there is “insufficient financial detail” and that

“the £70 million is not sufficient for all of Scotland.”—*[Official Report, Finance and Public Administration Committee, 24 October 2023; c 1.]*

It said that the finances that are being made available do not take into account the real cost of running the infrastructure facilities, that additional facilities and resources will be required to manage the facilities, and that that has not been taken into account. It went on to say that, in its view, the costs are underestimated to the tune of about 50 per cent—that is, the £70 million should be more like £140 million. How do you respond to those concerns?

Lorna Slater: I absolutely understand that councils have concerns about future planning. We are all looking ahead, and we know that budgets are tight and that we need to make the just transition to net zero.

In response to that, I will say that the main point of the bill is that it is very much a framework bill. It is the start of a journey for us to go on to bring our recycling and reuse rates up to the levels that we know that we can achieve and that we know are needed for net zero.

You are absolutely correct, convener: councils are on board with the journey that we need to go on. I have committed in writing and through the Verity house process to co-designing with councils. Each of the provisions in the bill will have underneath it detailed policies to be introduced on things such as charges for single-use items.

At this time, we are looking at an enabling framework to allow the Scottish Government and the Scottish Parliament to bring forward such legislation, but the exact items to be included, how they would be managed, exactly how the charges would be collected and implemented, and what benefits and savings for litter and waste management those charges would bring for local authorities are to be developed in detail with local authorities as we move forward. The recent discussions about single-use vapes, for example, have brought to our attention that such matters can come up quite quickly, and they need to be handled quite urgently. We cannot see exactly all the different ways in which the framework may be used down the line. We have the costs for looking strategically at the framework and indicative costs for some of the initial policies that we intend to introduce with the framework.

The Convener: Of course, local authorities want to be able to plan ahead. Just last week, we produced a report on the importance of forward planning. In their evidence to us, which you will be aware of, local authorities said that they do not feel that they can do that if they do not have a commitment that the resources that they require will be made available.

Kirsty McGuire of South Lanarkshire Council said:

“Co-design is where we want to be.”—*[Official Report, Finance and Public Administration Committee, 24 October 2023; c 9.]*

The resources to be able to deliver that have to be available, but she and the others who gave evidence said, “I’m sorry, but the money just isn’t going to be there to deliver this.”

Let us consider enforcement officers, for example. The costs in the financial memorandum for enforcement are only about half of what the witnesses suggested the real costs would be, and the suggestion in the financial memorandum that 100 per cent of the littering fines would be collected bears no resemblance to the 10 to 15 per cent that the witnesses thought would be collected, based on their experience. Indeed, local authorities get nothing back from fiscal fines.

How do you address the cogent points that our witnesses made two weeks ago about some of those issues?

Lorna Slater: I absolutely understand that businesses and local authorities need certainty. That is why we have committed to the co-design process. I cannot second-guess what the outcome of that process will be, but the policies will be developed over many months following the co-design process, after which they would have the opportunity to come through Parliament, whether that is through a Scottish statutory instrument affirmative procedure or negative procedure, so that they can be scrutinised. All the details for each specific policy introduced would be worked through and developed with councils, businesses and, indeed, householders so that there would be clarity for each policy as it comes through. We will definitely work with the councils to deliver those outcomes. This is not something that will be imposed centrally.

On enforcement costs, as we go through the financial memorandum in detail, we can look at which provisions allow councils to increase their fixed-penalty notices, for example, so that they are given more opportunities to balance their costs. However, all the enforcement costs for local authorities are at their discretion. Each will look at how much it wishes to spend on enforcement versus the benefits that it might receive from the enforcement. For example, the household

requirements for waste are about contamination of the recycling stream. The powers in the bill are for the councils to use should they decide to do so. There is no requirement for councils to enforce in any particular way, but they may decide that their recycle is becoming so contaminated that they are losing money because they are having to pay for it to be incinerated or to go to landfill, or they cannot sell it for its full value. In such cases, the amount of money that they are losing would make firmer enforcement more worth while, but that would be entirely a calculation for local authorities to make.

The Convener: They cannot take those decisions if they do not have the resources to implement them, regardless of what they may wish to do. They are saying to us, “Look, we actually want to do what the Government suggests, but you cannae squeeze a quart into a pint pot.” The bottom line is that the resources are not being made available. Will the Scottish Government fully fund the bill? That is the issue in a nutshell.

Lorna Slater: The bill is a framework bill, and it allows us to start the journey down the route of imposing charges on single-use plastics, for example. I cannot predict all the items that the Parliament and the Government may wish to impose charges on to get industry to report on the waste and surpluses that it produces. We are looking to start with food waste but, down the line, the Parliament may choose to look at other sectors and industries. The bill is the start of a journey, and each provision provides for taking specific policy actions in line with councils.

The Convener: Hold on a second. If you are taking actions, the costings have to be realistic. The point is that local government is saying that the costings are not realistic. Therefore, even if councils agree to take things forward to the nth degree, which is what they want to do—nobody wants to have contaminated waste, and everyone wants to maximise recycling: that is a given across the Parliament—that has to be funded.

Each local authority is different. For example, Dundee City Council talked about half of its citizens living in flatted properties. Enforcement and behavioural change are extremely difficult, and the cost of educating people will be extremely difficult to meet if we are going to get the long-term behavioural change that we want. Councils have said that they are putting huge amounts of money in, but they are still unable to reach recycling targets and they need additional resources.

We know that the bill is a framework bill, that there will be co-design and that there is going to be secondary legislation, but will the Government make a commitment up front, through the Verity house agreement or whatever, that, if its partners in local government go down that road, they will be

funded? Local authorities will be quite reluctant to go down that road if they think that they will not be resourced to do so. It is one thing to say that it is up to them to do this or that, but they cannae do it if they havenae got the money. That is why they want a commitment from the Government that they will be funded.

Local authorities want realistic funding, not an airy-fairy promise that they will collect 100 per cent of fines when that has never happened and never will happen. It has to be realistic, and our concern is whether the financial memorandum is realistic. The evidence that we have suggests that there are elements of it that are not realistic, such as the examples that I have already given.

Lorna Slater: I know that members will understand that the bill, as a framework bill, sets out strategic intentions and actions. The costs in the financial memorandum are therefore also at that level. At the detailed level of policy implementation, there would be another full set of business and regulatory impact assessments for Parliament to scrutinise. Those are part of the co-development processes.

From what you are saying, some of the concern is specifically about the code for local authorities and the household requirements. That seems to be what you are alluding to. There is an indicative cost of £88.4 million in paragraph 48 of the financial memorandum, which is an estimate by Zero Waste Scotland. The paragraph details how the estimate was reached. That would bring all our local authorities into alignment with the existing code of practice. That is a reasonable indicative figure of the investment that is required in Scotland to move us substantially in that direction.

The indicative figure of £88.4 million is quite good, and it is comparable to the £70 million that we have invested through the recycling improvement fund. The difference divided through the local authorities is a relatively modest amount. Members can see that the level of investment is proportionate to the kind of changes that we are looking for.

09:45

The Convener: Okay. I will move on a wee bit from that to the area of co-design. You have emphasised a number of times the importance of co-design. I have already pointed out that local government is keen on the co-design element, but there are still one or two issues in relation to that. For example, Charlie Devine of Dundee City Council said:

“I think that co-design at this level would be really difficult and it would probably lengthen the process considerably ... The co-design thing can be as big and complicated as you want to make it.”—[*Official Report, Finance and Public Administration Committee*, 24 October 2023; c 28.]

There is a real fear that we will still be discussing the secondary legislation on co-design many months into the future.

Kirsty McGuire of South Lanarkshire Council said:

“It is pretty difficult to attribute costs when you do not have the full picture. We do not know what the secondary legislation will look like, what form the other legislation will take or what form the EPR scheme will take.”—[*Official Report, Finance and Public Administration Committee*, 24 October 2023; c 27.]

Even with co-design, there are considerable concerns that we could be going down a rabbit hole with no clear ending. When will the co-design process be concluded? When would you like to conclude that in order that we can get some of the positive aspects of what the bill is intended to achieve up and running at the earliest possible opportunity?

Lorna Slater: The bill brings forward 11 provisions—I have just counted. Several of those have provisions underneath them for bringing policy forward. There will be separate co-design processes for different elements. For example, under the single-use charges, the initial policy that we are looking to bring forward is a charge for single-use cups. The process for developing that with businesses, householders and local authorities is separate from the process for developing a common code of practice for local authorities and waste, for example. That would be separate from developing targets or, indeed, from developing the reporting for waste and so on.

The bill has many provisions. There will not be a single co-design process. As we bring forward each of the policies under the bill, each will have its own timescale. I believe that those will be enumerated in more detail in the route map. Maybe one of my colleagues can elaborate on that.

Alexander Quayle (Scottish Government): On the co-design timing in particular and the comment from Dundee City Council about the fear that the matter will still be discussed for years, it is helpful for the committee to know that there are two stages to the co-design. The first stage is to agree with local authorities and other stakeholders how we will deliver the co-design. We are looking at concluding that part of the process in the first half of 2024. The intention is that that will set parameters for the co-design that follows so that we avoid a co-design process that does not have a definite end to it and we can provide local authorities and other stakeholders with certainty about the time that will take.

It looks like the co-design for the new household code of practice will take approximately a year, but saying roughly how long that will be will depend on

the outcome of determining the co-design process with local authorities and stakeholders.

The Convener: Another issue that came up in my questioning of Dundee City Council was that of co-design not just between local authorities and the Scottish Government but “with the market” as well. How would that work?

Lorna Slater: I can give you an example of a provision where that would be the case, which is on the reporting of waste and surplus goods. The provision involves putting a burden or obligation on businesses to report on their waste and surpluses. The arrangements for that would need to be developed with businesses. Such reporting is already undertaken voluntarily by many businesses, including Tesco, Hovis, Unilever and IKEA, so there are already industry examples of good practice whereby large businesses report on their waste and surpluses. Tesco has called for all businesses in its industry to do the same.

By engaging with businesses that already undertake that work and with other businesses in that space, we can develop what we think is industry best practice to support them. That is part of the process of introducing that particular provision on reporting on waste. However, I would, of course, be happy to dive into any of the other provisions that you are interested in.

The Convener: In your opening remarks, you mentioned the £1.2 billion per annum that is expected to be brought in through EPR. However, a concern of our witnesses was how that would be distributed to local authorities. For example, that is a UK provision, so how would Scottish local authorities gain from that? What would be the mechanism? Obviously, we want to have certainty about that for forward planning purposes.

Lorna Slater: Absolutely. Extended producer responsibility for packaging, which, I am afraid, does not roll beautifully off the tongue, is a groundbreaking provision that is being brought in, as you correctly said, at UK level. It is a polluter-pays scheme. The idea, at the simplest level, is that all producers of packaging will pay fees to a UK-wide scheme administrator, which will take those fees and allocate them to local authorities all over the UK so that they can run efficient and effective household packaging and collection services.

Those matters are still very much under discussion, and I understand that the discussions are going well. I have been pushing for the process of allocation to be transparent and to take into account the geographic nature of regions—I am thinking, for example, of the additional challenges that lower-density population regions such as islands and rural areas face—so that each council gets a fair allocation. My understanding of

the process so far is that that has been accepted by the four nations and that the allocation of the funding will go directly from the scheme administrator to local authorities. That is my understanding of the state of those discussions. I am very keen that that is additional money, and I have discussed that in the conversations that I have had with my ministerial counterparts in the UK and the other nations. If we are asking councils to do more, they need that additionality so that they can implement the scheme.

The Convener: That would be very helpful. Local authorities would look forward to that, provided that it is additionality.

To go back to the financial memorandum, local authorities are still expressing concern about it. For example, Charlie Devine of Dundee City Council said:

“we need a lot more information ... The financial memorandum is really helpful, because it gives us much more scope for where to think but, at the moment, it is not the finished article that we could give to Parliament to consider.”

Kirsty McGuire backed that up by saying:

“There is too much uncertainty, and there is not enough detail behind things at the moment.”—[*Official Report, Finance and Public Administration Committee, 24 October 2023; c 11, 12.*]

When it comes to scrutinising framework bills, we try to work with what we have in front of us, which is the financial memorandum, as do local authorities. You are not the only minister to come before us with a framework bill, but the problem that we have is that we see the can being kicked down the road a bit. Co-design and secondary legislation look great on paper, but if a local authority is looking to invest in recycling facilities, for example, it needs to know when to do that, what it is going to recycle, what will be included and what will not be included. If it is going to have to enforce legislation, it needs to be able to plan ahead for how it will fund that. The difficulty that local authorities have is that the financial memorandum does not appear to enable them to do that. For example, Kirsty McGuire said:

“Quite a bit of that is missing from the costs that we are looking at.”—[*Official Report, Finance and Public Administration Committee, 24 October 2023; c 13.*]

Another aspect is how much local authorities will have to spend to communicate those changes to the people in their areas.

Lorna Slater: The bill certainly looks ahead. In no way are we standing still. At the moment, local authorities are doing a lot of work. There is a voluntary code of practice in place for Scottish local authorities. Every local authority has signed up to reach a certain standard of recycling, but at present, only a third of local authorities adhere to

that standard. Our local authorities are already on a journey. They already have a destination that they are trying to reach. The bill puts in place provisions for the next step beyond that.

Local authorities know where they are going to meet the existing code of practice. There is the recycling improvement fund, which nearly all local authorities have had money from. They are working very hard to move towards the existing standard. The bill is the very early days of looking ahead at the next stage and bringing recycling, waste management and resource management in Scotland up to a European standard, and more in line with what Wales is doing.

Councils know where they are in the near term; the bill simply represents the starting line for the next step. That is why the co-design process is so important. It will mean that the work on all the stuff in the bill will be able to start, and we can get into detailed conversations so that the councils will be ready for each of the specific provisions—whether on charging for coffee cups or implementing new powers for enforcement around littering—as they come forward.

I understand the challenge that the committee has in scrutinising a bill that has so many provisions in it, and I am happy to dive into any particular provision that you would like to look at.

The Convener: Thank you. I will bring colleagues in in a minute. You said that local authorities know where they are going, but they have said that they do not. For example, Jim Jack of West Lothian Council said:

“I am concerned about the future, what the journey will continue to look like for waste services, our ability to be light enough on our feet, and whether we will be funded to achieve what we need to achieve.”

They do not feel that they know where they are going.

Kirsty McGuire of South Lanarkshire Council said:

“Until we know what our service will look like, we will not know what we are applying for funding for.”

They are in a cleft stick: they are looking for additional resources to deliver the bill, but because it seems to be a moveable feast, they are not sure what they are applying for money for. Kirsty McGuire also said:

“if glass had been included in the scheme, there would have been an opportunity for us to make some efficiencies because glass is about 60 per cent of the material that we collect in our container bin, which is for glass, plastics and cans.”—[*Official Report, Finance and Public Administration Committee, 24 October 2023; c 8.*]

A lot of councils were geared up for the deposit return scheme, but that has changed significantly. Although you are telling us that things seem to be

going well, we have not really heard that in the feedback that the witnesses have given us as part of our scrutiny.

Lorna Slater: I understand that. Councils have been on a journey towards the existing code of practice. Looking ahead, we absolutely need to go through the co-design process. One of the challenges of co-design is that one has to wait for the outcome of that process. In the financial memorandum, we have given some illustrative examples of where we would like to start, such as the single-use coffee cup charge, and food waste and food reporting. Where we know that that is the provision that we intend to work with initially, we have provided funding around those initiatives.

The open question is, after those initial initiatives, how would all of us, collectively, like to move forward? After reporting on food waste has been achieved, what other sectors would be interested? Members have talked to me about textile waste, construction waste and so on. We could take forward reporting on those things after we have brought in reporting on food waste. In the financial memorandum, we have presented all the information that we have about how we are going to start the journey strategically, and about specific provisions, where we already know what those will be.

The Convener: I think that we all want to move forward with the legislation, but some of the local authorities are a bit more cautious than others. One question that has been asked is whether one size should fit all. If one size does not fit all, how do we ensure that we do not move at the pace of the slowest caravan, and that we achieve some of the changes that we want to make?

Lorna Slater: There is great disparity in how our local authorities implement recycling. Some of our local authorities are excellent and have very high recycling rates, whereas some have lower recycling rates, for a variety of reasons.

I think that you are referring largely to the code of practice element of the bill, the purpose of which is to help people to have a standardised experience. One of the wonderful things about, for example, Scandinavian countries is that they have very standardised recycling, which helps the consumer to understand and do the right thing. In Scandinavian countries, whether people are at home, at work or at the train station, they have the same colour bins for paper, for plastics and for food waste. That standardisation helps with, for example, communication and helps to get the recycling level up.

As part of the co-design process, we might—with councils—develop that standard across the country, so that the user experiences it in a better and easier way. At the moment, some councils

collect glass, and some do not. Some councils have different colours and symbols. Standardising that across the country, if that is what the co-design process develops, would make councils' lives easier. It could also open up opportunities for the bulk purchasing of bins or other savings that might be useful to councils. The whole intention of the co-design process is to make life easier for councils and for them to have input. We all recognise that different communities have different geographic and housing stock challenges. We need to take all of that into account during the co-design process, which is why the councils need to be involved at every step.

The Convener: John Mason raised the issue of different councils using different coloured bins, which means that when people move from one local authority area to another, they do not realise that the bins have changed, and all the rest of it. You said that standardisation in that respect might emerge from the co-design process. Is Government's role not to provide some leadership by saying, "This is what we want recycling in Scotland to look like in five years' time," and trying to steer local authorities in a certain direction? Co-design sounds great, but it also sounds kind of woolly. It is as if we are asking, "Where are we gonnae end up?" Therefore, should the Government not provide leadership on this?

Such framework bills appear to me to be something of a cop-out, frankly. We have seen that with the financial memorandum for the National Care Service (Scotland) Bill. People want to know that, when they elect a Government on a manifesto, it will work to deliver that manifesto. It is all very cuddly having everyone in the big tent and all that, but it seems to me that it takes a lot longer to get anywhere and you do not even know at the start of the process where you are going to end up.

10:00

Lorna Slater: Where we need to end up and the outcomes are very clear, because they are based on the targets—the circular economy targets, which are national targets, and the targets for local authorities. The vision here is that we know that we need to achieve a certain level of reuse and recycling in order to hit our net zero targets. That involves putting those targets in place and then having a co-design process in which all of us, as a nation and as local authorities, say, "We want to achieve these things. How do we best do that?" That is where the co-design piece comes in. The leadership piece comes in on the targets. We know that we have to hit net zero, and we know that that means achieving certain recycling rates. It is then up to us to work with councils on how we can best do that,

because the way in which we do that for a tenement in Edinburgh will look quite different from the way in which we do it on a remote island.

The Convener: The first colleague to come in will be Michelle Thomson.

Michelle Thomson (Falkirk East) (SNP): Good morning. Two weeks ago, I asked the witnesses what number, on a scale of zero to 10, where zero is no confidence and 10 is complete confidence, they would give for their confidence in the FM. I ask the same question to you, minister: what number between zero and 10 would you give for your confidence in the FM?

Lorna Slater: I think that I would give a 10 for the FM, because it is a strategic one. The bill, as a framework bill, is a strategic—

Michelle Thomson: For the avoidance of doubt, in giving 10, you are saying that the costs that are set out in the FM will be the final costs to the Scottish Government and to taxpayers of implementing the bill's provisions.

Lorna Slater: Indeed, because it is at a strategic level. The FM is clear on the assumptions that are made and on the ranges that we are looking at. Given that most of the bill's provisions are about setting up frameworks and developing processes and legislation, the costs that are provided are as indicative and as accurate as we can possibly make them for those things.

Michelle Thomson: You are making an argument when you say that the costs are as indicative as you can make them for a framework bill. Following that logic, the estimated costs cannot be very accurate at all, because it is a framework bill, as you have emphasised. That concerns me greatly. I absolutely appreciate the complexity, but our job, as a committee, is to scrutinise the FM. In some respects, we almost need to set aside the policy and the excitement that is generated by the policy and the change. Our job is to look at the FM, as it stands.

You have heard from the convener that concerns were expressed by the representatives two weeks ago. Indeed, in answer to my question, Kirsty McGuire from South Lanarkshire Council gave a four for her confidence level, and someone else gave a five, because they were reflecting that they do not know the final costs.

As it stands, from looking at the FM, we can have simply no idea as to the final costs of implementing the policy. In fact, it is fair to say that, in any project, you never know the final cost until it is done—that is just a statement of fact. I am trying to establish the confidence level, given that, in all your previous evidence to the convener, you have set out exactly why we cannot know and the mitigations that will come through co-design.

How confident are you, having explained that, that the FM represents the final cost to the Scottish Government and the taxpayer?

Lorna Slater: The question, I suppose, is what the member means by “final”. For example, on charging for single-use items, the bill provides an enabling power that the Parliament could use again and again. We do not know when the next product like a single-use vape might be invented; it could be 30 years from now.

Michelle Thomson: You are describing a benefit, not a cost.

Lorna Slater: All of that would require development. The costs that are outlined with regard to the bill include those relating to the development of those policies and the engagement that is required for them, as well as enforcement costs down the line. The framework bill sets things in place so that we can develop processes for the next time a product like a single-use vape is produced.

There is no day on which this will be finished; we will always be on the journey towards a circular economy. The bill takes us to the next step by creating the enabling powers. The financial memorandum shows the funding for the next step in relation to the horizon that we can see. For every step after that, as each regulation is brought to the Parliament, there will be impact assessments and the details will be scrutinised.

Michelle Thomson: The convener made the point that, if those regulations go through as secondary legislation via, for example, an affirmative procedure, that could in no way be considered scrutiny. They might go through automatically, even if they went to a lead committee. For example, I was at a recent evidence session on the Children (Care and Justice) (Scotland) Bill that was all about costs, and there was exactly the same issue. That bill is a framework bill, and the details on costs were starting to come through but were being considered by the Education, Children and Young People Committee.

I am trying to say that I cannot have any confidence in the FM when the fully disclosed estimates are quite vague because of where the Government is in the process. I understand why that is the case. Witnesses from councils have said, “Actually, frankly, we don't know.” There are mitigations, but, with some of the ranges, the costs could be seven times higher.

I will frame it in this way. Imagine that you were going to build your own house and you went to the bank and said, “I think that I want to borrow £250,000, but I might actually need £1.75 million. I will let you know once I've been through all the various stages.” The bank would say, “Eh—I don't

think so.” It would be looking for considerably more detail.

Given that, critically, our fiscal constraints are so tight, why do you think that it is acceptable for us, as a finance committee, to sign off on an FM when, to be frank, we have no clue? I am setting aside the policy; I am just talking about financial scrutiny. We have no clue. I find it extremely difficult to have the right level of confidence, because there are so many variances. To have some ranges in which the costs vary so much—they could be seven times higher—is unbelievable.

Lorna Slater: That is the challenge with a framework bill. We are putting in place structures and taking the initial step of creating enabling powers. We are not detailing in the bill how those powers might be used. That will be done through secondary legislation, as the member rightly points out. I was recently involved in secondary legislation that generated substantial debate in a committee, even though the negative procedure was used. I had a lengthy session in front of the committee answering questions about the legislation, and it was also discussed in the chamber. Depending on how members interact with secondary legislation, there can be extensive scrutiny, if MSPs decide that that is needed.

Those powers will be available as the legislation is brought forward. I have a list in front of me—for example, the affirmative procedure will be used when the Parliament considers the legislation on restrictions on unsold goods. There will be the chance to scrutinise each piece of legislation.

Michelle Thomson: But this committee will not have the chance to scrutinise that legislation. We are gathered as MSPs because—I think that this is fair to say—all of us have some background or experience in finance. I do not think that any of us would claim to be experts, but we have some experience, and we have been selected to represent that. Once legislation goes to general committees, we lose that opportunity.

If we are now agreed that, given that this is a framework bill, we cannot have the confidence that we need in the FM but that there will be further scrutiny, do you share my concerns that that further scrutiny will be much wider? The focus of secondary legislation, by its very definition, will not be exclusively on the costs, although they might be involved. Do you have any worries that that will lead to less control over costs as we go through the parliamentary processes?

Lorna Slater: No, I do not worry that that will lead to less control over costs. It will lead to more specific and detailed certainty around the costs. If I were to set out now what we thought the costs would be for something that was, for example, five

years down the road, you would be right to say, “Do you know what? I don’t think you can stand up those numbers.” The bill will put us across the starting line, and we can then dial into each project—the one for single-use cups, for example—and work out exactly what the costs will be. We will co-develop those projects, so the costs will emerge as options emerge.

For example, we all have experience of the plastic bag charge. It is for businesses alone to implement that charge; local authorities are not involved in implementing it. Businesses can recoup the full costs that they feel are needed from the charge, and then they give the rest away, according to the rules. That is an example of a version of implementation that has almost no cost to local authorities, because the costs are managed in a specific way, but the charge could have been implemented in a totally different way so that there were costs.

As we develop the policies, there will be substantially different options on the table, hence the range. When we go through the co-design process, local authorities might say, “We want to be involved in this one, and we will incur costs,” or they might say, “No, let’s leave that one with business, and that’s where the costs will be.” If I were to specify, that is where the inaccuracy would come in. I need to be accurate in setting out the strategic costs of putting in place this strategic bill, and we will get into the specific costs of each policy at the correct time, as the policies are developed.

Michelle Thomson: I understand that. It is basically a phased approach. I saw such an approach a multitude of times in my previous life, and I understand how it works, but I return to the point that we are the finance committee. After you go away today, that is it—unless we ask you to come back with an updated financial memorandum, the matter is away from the committee that has responsibility for ensuring that the costs are understood.

Given that we agree that you are taking a phased approach, how many meetings have you had with the Deputy First Minister to outline the fact that, as we go from year to year, we cannot have any proper sense of what the costs are until we reach a particular point? Does she, in her capacity as finance secretary as well as Deputy First Minister, know that, for the next few years, she will have no idea of the costs of this bill, which we can add to those of the National Care Service (Scotland) Bill and the Children (Care and Justice) (Scotland) Bill? If I were her, I would be quite nervous about that, because, if I were in charge of controlling the costs, I would want to know, or have a good sense of, what was coming down the track. How many meetings have you had with her?

Lorna Slater: I have not had a meeting with her on that subject, but all the paperwork, including the financial memorandum, is shared with ministerial colleagues so that they can see what is coming down the line. This is a process of development, so the specific cost for each policy will be scrutinised at the appropriate time, following the appropriate process.

I keep coming back to charging for single-use cups, because we have the excellent example of the plastic bag charge. That is the kind of provision that we are looking at. That charge does not incur costs for local authorities, except in relation to some enforcement. Implementation sits with businesses, which are allowed to recoup the costs. There is everything from capital investment and the recycling improvement fund—which are, of course, the subject of budget negotiations—all the way down to measures that can be implemented substantially without Government expenditure. Given that the bill covers that range, each piece will need to be scrutinised, and that, of course, is exactly the process that will be followed.

Michelle Thomson: I absolutely understand that. You are describing an enabling bill—you used the term “framework bill”—and strategic-level costs. I get all of that.

I have a last wee question. How do you know that we will get value for money?

Lorna Slater: From the bill?

Michelle Thomson: From the FM.

Lorna Slater: We know that there will be value for money because of the opportunities that will be unlocked. I will give some examples. We know that the contamination of our waste stream costs local authorities money, that litter on the streets costs them in collection charges and that businesses are producing perfectly good goods that go straight to landfill or for incineration—during a cost of living crisis, perfectly good food is being sent for incineration or to landfill instead of going into people’s mouths.

10:15

There are some really good statistics. For example, for every £1 that we invest in reducing food waste, we get £250-worth of benefit for our local communities, because we not only prevent that waste for the businesses involved but ensure that the product—perfectly good food that might have had a bad label put on it or something—gets into hungry mouths. There are benefits to reaching net zero and to making sure that goods and materials from our society actually get used, especially by people who need them. That is an immeasurable good, and I am so glad that we are able to bring forward such legislation.

Michelle Thomson: Thank you.

The Convener: The saving from cups is estimated to be about £453,000 a year. Compared with the overall costs of this, that is a relatively modest figure.

Liz Smith (Mid Scotland and Fife) (Con): I will follow on from Michelle Thomson’s line of questioning, which is important. Standing orders say that a financial memorandum must set out the

“best estimates of the costs, savings, and changes to revenues to which the provisions of the Bill would give rise, and an indication of the margins of uncertainty in such estimates. The Financial Memorandum must also include best estimates of the timescales over which such costs, savings, and changes to revenues would be expected to arise.”

You have put it on record this morning that you think that this financial memorandum is 10 out of 10 when it comes to confidence. In relation to the timescales that you are setting out, are you absolutely confident that that is correct?

Lorna Slater: It is correct, according to the best estimates and the best information that we have. The assumptions in the financial memorandum are spelt out and we are providing the committee with the best information that we have available.

Liz Smith: I am asking the question because, although Mr Quayle answered the question about some detail of the possible timescales, there is a big question about the on-going co-design of the policies. It is clear from the evidence that we have taken so far that local authorities are not at all confident that the extent of the co-design is either certain or, in terms of the timescales, very clear. I will ask again: why do you have 10 out of 10 confidence in the financial memorandum?

Lorna Slater: Because the financial memorandum sets out how we will do these things. For example, as my colleague Alex Quayle said, the first step of the co-design process is to agree what that process is. We know that it will take some time and we will be working with local authorities. That is all set out in good faith, and we are providing the best information that we have at this moment. I am certain that we are providing you with the best information that we have at this time.

Liz Smith: With respect, minister, it is not enough just to put it out in good faith. As Michelle Thomson rightly said, it is our duty and responsibility in this committee to be rigorous in the scrutiny that we adopt on the financial memorandum. She also cited the National Care Service (Scotland) Bill and the Children (Care and Justice) (Scotland) Bill. I understand why it is important that good policy making is based on co-design, where the stakeholders work in collaboration with the Government. I absolutely get

that, but, if that co-design process is extended almost indefinitely—as it is, as far as I can see, in this case—it is almost impossible for us to scrutinise the final numbers of a financial memorandum. Do you accept that?

Lorna Slater: I absolutely accept that we are all looking at the best numbers that we can provide with the information that we have available to us now, and I know that that information is the best information that we can provide to you now. Yes, if the situation changes in the future, as Michelle Thomson said, the committee is welcome to invite me back. I would be happy to give an updated financial memorandum and look at that, if the situation changes further down the line. This is the best information that we have now, so it is, of course, what I am providing to the committee. The memorandum is clear about the assumptions that are involved, and, yes, the co-design process means that the outcomes of that will be developed through the process. That is exactly what co-design should do.

Liz Smith: If you are making the point that your confidence in the financial memorandum is 10 out of 10, why is it that the witnesses from whom we have taken evidence say that theirs is at four or five? Why is there that discrepancy? What has gone wrong there?

Lorna Slater: The discrepancy is in understanding the difference between a framework bill and the provisions that will follow from that framework.

Liz Smith: Sorry, do they not understand that this is a framework bill?

Lorna Slater: I think that a lot of people are looking at the detail of the policy, for example on what exactly we are looking at in the code of practice for local authorities. What exactly are we expecting from local authorities in terms of targets? Which single-use items are we talking about, and how will those charges look? We do not have that information; getting it is part of the co-development process. When people say that they are uncertain about this, I interpret that as meaning that they want to know exactly what the code of practice will look like. I want to know that too, but that will be the outcome of that co-design process.

Liz Smith: The logic of what you are saying is that, if you have 10 out of 10 confidence in this, you feel that that degree of certainty and clarity is there. We have witnesses who say that that is not the case. I am asking why you think there is this discrepancy in the degree of confidence in the financial memorandum. That is a serious concern for the committee, because it is our job to scrutinise that. I ask you again: why do you think there is that discrepancy?

Lorna Slater: As I have said, I am confident that the financial memorandum lays out the strategic costs, as it intends to do. Where there may be some uncertainty is where people want to know what the detailed costs of the secondary legislation will be, and, of course, we do not have that information, because that has yet to be developed. If there is a discrepancy, I assume that it is because local authorities and businesses and so on are looking for the detail that will come with the secondary legislation but is not part of the bill.

Liz Smith: Do you accept that, because that detail is not there, our job is pretty well impossible?

Lorna Slater: That detail cannot be there as part of a framework bill. That is not really the nature of the enabling bill. However, it will be presented in secondary legislation and it will then undergo parliamentary scrutiny.

Ross Greer (West Scotland) (Green): I want to return to the issues that the convener brought up about the recycling improvement fund and what will be expected of local authorities under the code of practice. Some local authorities made the point that about two thirds of the improvement fund has already been distributed, but they obviously do not yet know what requirements will be placed on them by the code of practice. Can you say a little about what conditions the Government has attached to the improvement fund and how you expect the eventual code of practice to reflect the priorities that have already been set through the distribution of a not insignificant amount of money?

Lorna Slater: Absolutely. We already have a voluntary code of practice for local authorities in Scotland to which every local authority in Scotland has signed up. That is what local authorities are working towards; indeed, the Scottish Government has invested £1 billion in local authorities in addition to the recycling improvement fund, which is around £70 million. Local authorities are working towards the voluntary code of practice, but, at this time, only about a third of them comply with it.

As a direction of travel, all local authorities are moving towards that code of practice, and it is a well-understood code. We know that the investment has been helping local authorities in that direction.

Although the code of practice is good, it will not enable Scotland to reach our waste target. It will need to be upgraded to the existing code of practice plus, and that “plus” is what the co-design process needs to create. The upgraded code will also unlock enormous opportunities for us. For example, most local authorities do not look at textile recycling, but textiles are very valuable materials. I have been hearing from charities that

work in this space that people steal textiles because they are so valuable. If they become part of the upgraded code of practice that local authorities agree on, there will be some financial and revenue-raising opportunities for councils around producing good-quality textile recycling.

There are other opportunities that are not covered in the existing code, such as the collection of pots, tubs and trays and films. Those materials are also hugely valuable. If they can be collected in quantity and kept clean and sorted, there is money to be made. So, with that “plus” will need to come a discussion about how any additional provisions over and above the existing code of practice will reduce litter and waste and help us to reach net zero and ensure that we unlock those opportunities. If the council can say that it can produce X amount of a certain kind of recycling, and that it will be clean and sorted to a certain standard, investors will come in and say, “If you can produce that reliably, I will invest in your site, which will create jobs in recycling plants”. That is the kind of business opportunity that we hope to unlock with the upgraded code of practice.

Ross Greer: Thank you for that. Is it the Government’s position that the money that has not yet been distributed through either the recycling improvement fund or other capital investment in local authorities will be sufficient for implementation of the code of practice plus that you are talking about and that the money that has been invested so far should be sufficient for them to comply with the existing voluntary code of practice—obviously, most local authorities are not complying with it, and we will talk about why in a moment—and the money that is still to be distributed will be sufficient to meet the additional infrastructure requirements on local authorities?

Lorna Slater: We do not know what the code of practice plus will look like; it will be part of the co-design process. As I said earlier in the session—I am just trying to find it in my notes—it is roughly proportionate. Zero Waste Scotland estimates that to bring all local authorities in line with the existing code of practice would cost about £88.4 million. The recycling improvement fund is £70 million. They are proportionate estimates and then some money that is allocated from local authorities’ budgets. The capital investment is broadly in line with the existing code of practice but the upgraded code will need more. That is where we need to look at the benefits from what might come after the recycling improvement fund can be discussed, and at things like the extended producer responsibility for packaging, which represents another source of funding—all the pieces of what the code of practice plus looks like. We are really at the starting point with that, with what the opportunities are and with what the funding might look like.

Ross Greer: I want to look specifically at the estimates of the cost for local authorities of the household waste provision. There is a bit of a dispute about that. The financial memorandum estimates that they will need two full-time equivalent members of staff per 150,000 people for enforcement. Some local authorities that have fed back take issue with the financial cost associated with the two FTE positions and with the two positions per 150,000 ratio.

Usually, with the financial memorandums that we look at, the Government has an interest in seeking to minimise costs whereas, if we were to be cynical about it, we would say that local government often has an interest in overestimating costs because it wants to get its hands on as much money as possible, for perfectly legitimate reasons. It is the job of the committee to figure out who is right or where the point in the middle is. Could you explain in a little more detail the thinking behind the cash estimate for two FTEs—local authorities believe that it would require more than that—and the two per 150,000 ratio and how that balances out across local authorities that range from high-density urban areas to remote, rural and island communities?

Lorna Slater: Yes, I will start, then hand over to colleagues for the details. With all enforcement provisions, there is always a discretionary element whereby the local authority can decide how much enforcement is appropriate for it. For example, in the household requirement space, we were looking at the contamination of recyclate. The bill provides local authorities with new tools, which they asked for, and new fixed-penalty notices to enable them to help people to comply with that so that recycling does not become contaminated. That is not only a source of revenue but a choice that they can make a business case for. If they are losing money because they have to sort contaminated recyclate or pay for it to go to incineration, they might choose to raise their enforcement costs. A lot of this gives the local authority discretion to choose how it wishes to do it. I will hand over to colleagues for the detail.

Alexander Quayle: The two officers per 150,000 of the population was based on a best estimate because we did not have data that was robust enough to account for regional variation. Zero Waste Scotland’s estimate is based on average local authority costs for enforcement officers, but they will not reflect the exact cost and, indeed, might not reflect those at the higher end of the range, which might be the evidence that you have heard. In the development of the secondary legislation, data on the costs incurred for each notice and for enforcement can be reviewed, so there is also an opportunity there to set out the examples and typical thresholds for penalties.

That should give a better picture of the costs to local authorities.

10:30

Ross Greer: Just to confirm, those costs are based on actual existing costs for other forms of enforcement that local authorities already carry out. It is an average—some local authorities will spend less; some will spend more—but that is based on existing costs in similar areas of enforcement.

Alexander Quayle: Yes. It is Zero Waste Scotland's estimates of average local authority costs for enforcement.

Ross Greer: Thank you very much. That is useful.

My final point in that area is about fixed-penalty notices for littering and the point that local authorities make around cost recovery there, which was pointed out a few moments ago. The FM assumes that 100 per cent of fines will be paid whereas some local authorities say that it is only 10 to 15 per cent. Again, I am interested in whether you could speak to that a little more and specifically to what conversations you have had with local authorities about why the payment rate for the existing fixed-penalty notice system is so low. Nobody would expect 100 per cent—I am interested in why 100 per cent is in the FM—but 10 per cent to 15 per cent seems to be remarkably low. Presumably, there are specific barriers in place that Government wants to help local authorities to remove.

Lorna Slater: I will pass that question to Alex or Janet.

Janet McVea (Scottish Government): I can cover that.

Taking a step back, this is the provision that will establish the new civil penalty regime for littering from a vehicle, which a range of stakeholders have supported for a long time. Again, it will introduce a power, with further detail in subsequent regulations.

On how the costs were informed, there was discussion with networks, including local authorities, to get a sense of costs. We referred to that in the financial memorandum, but, as we have noted, enforcement costs vary across local authorities. Again, we cannot say with certainty what the number of penalties that are issued will be, but we have given an illustrative assumption based on around 500 penalty notices being issued and taking account of what we know about historical levels of penalties for littering and the assumption that roadside litter is about 4 per cent of tonnage.

We have given an indicative cost based on advice from at least one of the expert local authorities in our litter manager network on the average cost of dealing with the penalty. On the assumption about whether 100 per cent of those penalties would be recovered, when we were deliberating on the financial memorandum, it did not feel appropriate, in a sense, to assume that the penalty would not be paid. A penalty should be paid by the recipient, but we recognise that there is strong evidence of barriers to effective enforcement. That is a big focus of the new fly-tipping strategy that was published in June. We have commissioned further research with partners to understand what those barriers are. We know that local authorities would suggest that, in some areas, resource can be a constraint. That is obviously one of the issues around having sufficient officers to enforce the penalties, but a big focus of our work through the strategy is understanding what some of the barriers to effective enforcement are.

The purpose of the enabling provision is to respond to strong calls from stakeholders to plug a gap and to level us up with arrangements in England and Wales. We know that littering from vehicles is a problematic area. Under the existing FPN regime, it is hard to identify the instigator. The bill provides a civil regime that will provide greater flexibility to effectively enforce what is currently quite a problematic area and a big gap in our enforcement.

Again, however, we will continue to work on the costings. Further discussions with the local authorities and other agencies are already under way on that and the other enforcement provisions in the bill. Through our strategy, we now have very effective on-going lines of engagement with local authorities and the other enforcement bodies. Those will continue to refine the detailed costs and estimates.

The other thing that we will do through the strategy is, in effect, to strengthen the data around littering and fly-tipping. It is a problematic area, and, as our data improves and through some of the trials on LitterCam technology, for example, we hope to get much better data on the scale of the problem. For the reasons that the minister has set out, they are our best available estimates at a point in time, and they have drawn on some engagement with some local authorities through our existing networks.

Ross Greer: Thanks very much. What is the timescale for the research that you mentioned, and how will that feed into the strategy? I completely understand why the Government would not want to concede that fines are not being paid, but fines are not being paid. The financial memorandum works on the assumption that they

are, so we need to take into account whether the additional measures that you are developing, which the research will, we hope, inform, and which the strategy will deliver on to help local authorities increase the payment rate, will be in place in time for the additional fixed-penalty notice powers coming into place. If they are not, clearly, we will not get close to the 100 per cent payment. It would be good if we understood the timescale for that a little bit more.

Janet McVea: That is not something that I can do today, but we will certainly be able to come back with specific advice on the publication timeline. It has been set in train. The general point is that our efforts to strengthen enforcement and to support effective enforcement will be an on-going process. As for the detail, design and delivery of that provision, we can continue to take account of the evidence that is available to us at this time.

It is important to see the littering from vehicles provision in the context of the wider focus on enforcement through other bill provisions and our existing strategy. Again, this is focused on primary powers. We already have a wide range of work in train through the strategy. Absolutely, we can continue to keep the committee sighted on that. It is perhaps worth making the point that we can also continue to offer further information on the co-design methodology. We have a further meeting this afternoon with the Convention of Scottish Local Authorities, the Society of Local Authority Chief Executives and Senior Managers and other local authority representatives to really kick-start that process. I accept that it is not defined. For the reasons that Alex Quayle set out, we are co-designing the co-design methodology, and we will be able to provide more information as that takes shape, including the timescales.

Ross Greer: Thanks very much. I want to move from local authorities to ask about the Scottish Environment Protection Agency and its enforcement around preventing the destruction of unsold goods. The cost of enforcement for SEPA ranges from £30,000 to £200,000. What scope does SEPA have for cost recovery? Given the discussion around proportionality of enforcement, I imagine that that will be primarily aimed at very large businesses that produce or sell huge amounts of goods and that, potentially, destroy large amounts of the goods that they do not sell. Is there scope for SEPA to recover some of the costs from those businesses through financial penalties in that area?

Lorna Slater: We can absolutely look at that. When the provisions are being developed, we will look at which and how many products are being disposed of and what is being dealt with in what businesses. Absolutely, understanding what cost

recovery might look like can be part of that conversation.

Ross Greer: Excellent. Thanks very much. That is all from me.

The Convener: I am a bit astonished that the 100 per cent collection figure is based on the fact that people should pay fines. People should not break the law in the first place, but we have to deal with reality.

John Mason (Glasgow Shettleston) (SNP): Quite a lot of ground has been covered already, so I will start off by touching on some of that. Minister, you seem to suggest that it would be financially advantageous for councils to enforce the rules on recycling and encourage or educate people to get better at recycling and that that would cover their costs in some way. However, the reality on the ground is that that is not happening, certainly in parts of Glasgow. I live in the greater Easterhouse area, and I see a mixture of issues. Some people do not know what they should put in the bins. They put plastic bags in the blue bins, which, I understand, should not happen. In tenements, we have only a green bin and a blue bin, so they put plastic, cans and paper in the blue bin, and the green bin is for everything else—garden waste and food waste. Glass also goes in the green bin, because most people do not have a car to take it to a recycling centre. In all my experience, I have never seen a leaflet about how to recycle better or had someone come to the door to try to educate me or encourage me to do so. I know that that is happening elsewhere: we heard that West Lothian Council is doing that, with people going round the doors. Maybe it happens in Glasgow when I am here, but I have certainly not seen it happening—maybe they do it on Tuesdays.

Glasgow City Council is very tight for money, so if it thought that it could make money out of encouraging people to recycle better, it would do so. Clearly, it is going to cost that council a lot more money to get the recycling rates up. Do you at least accept that it is not cost neutral?

Lorna Slater: Absolutely; there will need to be investment. I am looking now at the amount of money that we have given Glasgow in this area. It has had £21 million from the recycling improvement fund. The member is correct that there needs to be investment in infrastructure, especially, in order to enable the scheme. That is why we have the recycling improvement fund, and that is why we invested more than £1 billion through the strategic waste fund between 2008 and 2022.

There is an interesting point, though, around designing recycling systems to make things easier. I also live in tenement land, where we have big bins in the streets, and I know that one of the

improvements from the recycling improvement fund in Edinburgh is the change in design of the bin lids to make it more obvious what type of material should go into the bin. Similarly, East Lothian Council has a scheme involving some very clever trucks that makes it easy for people to put in the right type of recycle and more difficult to put in the wrong type. Those sorts of design improvements make a big difference to decontamination. Some of it involves fairly cutting-edge research about how people interact with recycling systems. Sometimes, it is not enough to give people information; you need to make it easy for them to do the right thing. If it is difficult for people to get the big black bin bag into the recycling bin, they will not do it; instead, they will recycle properly.

Particularly in the code of practice, I want to work towards having common good design. That means that, where councils across Scotland are getting good results, we can share the knowledge from those areas with other councils and work together to have the best type of recycling. It is not about just investment. That is one of the challenges that we have seen through the investment in the strategic waste fund. Although that was more than £1 billion, it did not bring us up to the kind of recycling rates that we hoped for, so more is needed. That is why some of the provisions in the bill around targets and the co-design process, which will allow for that information sharing, are also needed. This is not something that you can just throw money at; it needs that design element as well.

John Mason: That is right. I fully accept that design will help. However, some people have the attitude that they will drop litter in the street, because that is what guys do; they will not pick up their dog poo, because macho men do not do that; and they will not recycle, because that is not macho. Sadly, good design is not going to tackle that attitude. Somebody needs to go to the doors.

Lorna Slater: The provision around littering from vehicles is a good example of tackling the type of culture that you are talking about. Research by, I think, Churchill Insurance shows that one in seven people admit to having littered from a vehicle. That is clearly a very high proportion of people. One of our challenges at the moment is that it is difficult to enforce provisions on littering from a vehicle, because the current legislation requires that you go after the vehicle owner. The bill proposes that we change that legislation to allow enforcement to be much more broad and effective. The intention is that that would act as a deterrent, because we know that, if people can be caught and get fined even a relatively small amount, it has a deterrent effect. All those things together, including better design

and more effective enforcement, will help to move that dial along.

John Mason: I was going to ask you about vehicle littering. I believe that the official figure for average costs to councils over three years is £68,000. I also believe that vehicle littering takes place every three seconds. Will that one person really make a difference? What about cameras and so on?

Lorna Slater: The bill will allow councils more enforcement powers and will bring us into line with what is available in England and Wales. Our councils are currently fairly limited in what they can do in relation to littering from vehicles, and the bill will increase that provision.

You are absolutely right that it can be difficult to identify littering from vehicles. We have a pilot programme going on. LitterCam camera technology is being used on the trunk road network to understand how we can identify people who are committing those sorts of offences. We can move that forward. We have some examples. Bradford Council installed closed-circuit television cameras at a cost of £16,000, and, over about three months, the council issued that same amount in penalties. Therefore, once councils have the powers, there can be advantages to them using cameras and so on to collect fines from offenders.

10:45

John Mason: I am afraid that I remain sceptical about the £68,000 figure, but I will move on.

We talked about how recycling bin colour schemes have been more consistent across the country. In places such as Glasgow, there are a lot of other local authorities at a very close distance, so people may have family members who live across boundaries, in places where the colours of the bins are different. You suggested that consistency might be possible going forward, but we asked Mr Devine from Dundee City Council about that, and he said that the cost of changing colour schemes would be “considerable”, which sounded a little bit scary. If 31 councils have to change their colour schemes, that is going to prove very expensive.

Lorna Slater: We have not started the co-design process. Councils may decide that that is an outcome that they would like to go for. Through the co-design process, councils would need to decide that that is where they want to get to. We would then have to come up with a plan for how councils get to that point. I cannot anticipate what might come out of the co-design process.

John Mason: Okay. It probably ties in with what colleagues said earlier about what will come down the road.

I will move on to something else. In the section in the financial memorandum on restrictions on the disposal of unsold consumer goods, paragraph 12 talks about the minimum cost being £30,000 a year but the cost being £200,000 a year under a more proactive regulatory regime. Most of us would quite like a proactive regime in a number of areas, and we have just discussed that. Why does the financial memorandum include the minimum figure of £30,000 instead of even going part of the way to being proactive?

Lorna Slater: We will probably add to the provisions over time. We still need to develop the process and then get it started. Yes, I can see us probably initially estimating a low enforcement level as companies come into compliance, but as more items and businesses are added to the scheme in future years, one can imagine that enforcement might increase.

There is some interesting data on the reuse of items. In France, for example, restrictions have been imposed on clothing, cosmetics, hygiene products and electrical items. Amazon has a charity that deals with those sorts of items, and it has delivered more than 500,000 items, worth £10 million, to families in need. Although the idea is to work with businesses so that they comply, part of the aim of the provisions is to create an overall benefit to society from making sure that not only are we not wasting resources and the valuable materials that go into such products but, where the products are safe and in good working order, we can get them to people who really need them during a cost of living crisis and also create a wider benefit to society rather than let things go to waste. There is, therefore, a need to look at the big picture to understand that the provisions will ramp up over time.

John Mason: I am totally supportive of what you are trying to do. It is absolutely great. Do you know the costs in France? Did France have to put in money itself? Does this need to be front-loaded? Would you need to put in quite a lot of money and resource at the beginning to change the thinking of Amazon and individuals, and the costs would then reduce over time? Would higher up-front costs be needed?

Lorna Slater: The member is talking about costs for communications and development of the process. The costs in the financial memorandum are specifically for enforcement, but I am sure the member is correct that, in order to implement such a scheme successfully, money for communications will be needed up front, which will be determined by the scale of the scheme and the businesses involved.

John Mason: Okay. Thanks.

Daniel Johnson (Edinburgh Southern) (Lab): I am slightly nervous, given the billing that I got at the beginning, when you described me as a “stalwart”, convener. I feel that I have something to live up to.

May I clarify a couple of points based on answers that have already been given this morning? Is it correct to say, first, that we do not know what the full costs of the bill will be, because provisions are subject to co-design, and, secondly, that we do not have a detailed co-design process or timetable in place? Are both correct?

Lorna Slater: There are many provisions in the bill. I assume that you are referring specifically to the code of practice for local authorities, or do you mean more generally?

Daniel Johnson: I mean across the full scope of the bill. We do not know the full costs that will derive from the bill, because provisions are subject to co-design.

Lorna Slater: The costs are also subject to additional provisions being added over many years. For example, we discussed single-use vapes and how quickly that new product has grown in only the past couple of years. If those sorts of products were developed in the future, we would need to react to them. The bill would put in place the enabling powers to allow us to react to those kinds of products coming up in the future, but, of course, we cannot anticipate what they might be.

Daniel Johnson: On the narrow question, we do not, because we cannot, yet know the full cost.

Lorna Slater: Correct.

Daniel Johnson: Can you clarify that we also do not know the co-design process that will be used and, therefore, the total cost of that? Is it correct that that process has not been set out yet?

Lorna Slater: As this is an enabling bill, it puts us in the position of being able to start that process.

Daniel Johnson: The plans for how that design process works are not yet in the public domain. Is that correct?

Lorna Slater: They are not, because, as my colleague Alex Quayle pointed out, the first step is to design the co-design process.

Daniel Johnson: In a number of your answers, minister, you have said that the bill will enable the Parliament to look at the detail when the secondary legislation comes forward. Do you acknowledge that secondary legislation, by its very nature, is a process by which the Parliament delegates its authority and powers to ministers?

Furthermore, the secondary legislation process does not afford the same ability to scrutinise and, critically, amend legislation as the primary legislation process does. Do you acknowledge that secondary legislation gives the Parliament less, rather than more, ability to scrutinise?

Lorna Slater: It is more about having a proportionate level of scrutiny. With any number of single-use items—cups, vapes, plastic bags—one can imagine that requiring primary legislation for each of those products would not only be burdensome on parliamentary time but mean that we would not be able to react as quickly. Primary legislation would take a great deal of time and mean that any potential pollution problem would last for the many years during which the primary legislation was going through its stages. Secondary legislation allows the Parliament to be nimble in reacting to new products that come on line and allows the level of scrutiny that committees and members of the Parliament deem to be appropriate.

Daniel Johnson: Minister, with all due respect, you are here representing the Government, and it is for the Parliament to decide whether it will have a sufficient level of power. You are conflating Parliament and Government powers. On the nimbleness, I accept that secondary legislation might well enable the Scottish Government to be more nimble, but it does not necessarily enable the Parliament to be more nimble because the Parliament, by definition of that nimbleness, has less ability to scrutinise. Indeed, part of the reason why primary legislation takes more time is that we have more ability and a greater length of time to look at the detail. We do not have that with secondary legislation because, in your words, it is more nimble. However, it is more nimble for the Government. Is that not correct?

Lorna Slater: The bill's provisions enable us to start the journey of looking at all the pieces that we need to put into place. Taking all those pieces through primary legislation would not be proportionate to what is being brought in, even in respect of parliamentary time.

We already have very good models for a lot of what is happening here. We have a voluntary code of practice, so bringing into legislation a more mandatory code of practice is a sort of logical next step. We are all familiar with the plastic bag charge and we could be bringing in a cup charge. The level of scrutiny needs to be appropriate to the changes that are being brought in, which is why we are proposing to bring in the detailed measures through secondary legislation. Scrutiny of secondary legislation can, to some degree, be as in-depth as committees and members wish it to be. We have had good recent examples of

negative statutory instruments that underwent detailed scrutiny in committee and so on.

Daniel Johnson: We cannot amend. You understand that fundamental principle: we cannot amend and it is a single-stage process.

Lorna Slater: The provisions will also have gone through the co-design process, which will be transparent and will have had input from the stakeholders.

Daniel Johnson: I quite agree that you do not want individual bits of legislation for individual items or processes. I also totally understand the need for co-design: you have to get the detail right. What I struggle to understand, however, is why that co-design cannot happen prior to legislation being introduced. By all means, why not do that co-design and bring forward legislation in stages to deal with things and package them up together—for example, following consultation and co-design, deal with single-use items and the coffee cup measures in conjunction with measures for plastic carrier bags? Is there not a risk, given the complexities and given that we are seeking to recoup the full costs of the recycling and waste that is incurred? That is inherently complicated. If you take this legislation forward in a piecemeal way without a degree of interrogation and the three-stage parliamentary process, is there not a danger that we will get that wrong? Can you clarify why we cannot do the co-design first, prior to legislation? Do you not accept that, if detail is important, it is better to have more scrutiny rather than less?

Lorna Slater: I think that the correct process for bringing forth legislation of this complexity is to first enable, as the bill does, the start of that conversation. If one does not do that, one will end up in a situation in which councils and businesses are asked to invest a substantial amount of time to undertake the development of legislation that may never get through the Parliament; it may not happen. That would be the wrong way around. You would be asking stakeholders to design a process that we did not even have the powers to implement, and you would be sitting in a committee much like this asking councils to develop something that you would not even know whether you had the powers to implement.

We must understand that we have these enabling powers so that we can then say to councils, "We have the powers to implement this. You can have that certainty. Let us work on the detail together." If you had it the other way around, you could do a whole lot of work without those powers in place, and how would you prioritise that work?

Daniel Johnson: Your answer almost demonstrates my point. At the moment, we do not

know how this will all fit together. We do not know whether the co-design might actually come forward with things that would require different powers and abilities. The point of scrutiny is to look at whether the correct powers, procedures and fiscal measures are in place in order to support the policy intent and the outcomes of that legislation. The point is that you can look at it as a discrete package and not make it up as you go along.

I fundamentally fail to understand why the co-design is not done first, so that local authorities can set out what powers and financial considerations they need so that you can ensure that the legislation is in place to make sure that it works. Why not just do that co-design first, up front, and front-load it prior to introducing legislation? I just do not understand.

Lorna Slater: This morning, I counted 11 different provisions in the bill. Many of those provisions will require co-design. I think that the member imagines that, if we were to do co-design on single-use cups and other products that we do not even know about yet in different industries in respect of reporting, we would then have primary legislation on each of those provisions—

Daniel Johnson: No, I am not.

Lorna Slater: —or that you cannot introduce any legislation until you have done the co-design on all those. That is not a sensible process. The sensible process is to set out what our intentions are: we have these targets to meet; we are going to enable these kinds of powers; and then we will work on the detail of each of them. We will get reporting on food waste. We have had those conversations, but members have suggested that we do textiles or construction next, so that we can then go down that path knowing how those processes work.

There are examples in other countries of how the regulations might look and might be implemented, so we can give an idea today, and I have given several examples of the kind of things that we will bring forward with the bill. The point is that you need to have the framework in place to hang those details off. If you did the details first, you would end up with very cumbersome, specific primary legislation, which you would then have to do all over again for every new product that you wanted to add to that.

Daniel Johnson: I suggest that it is up to the Government to bring forward legislation that works, not legislation that does not. I also direct the minister to the *Official Report* of this meeting, where she will see that I clearly said that co-design could arrive at packages of measures that could be legislated for together. She might want to do that.

Finally, is this not a bit of a “Shakespeare in Love” approach to government? In the film, Geoffrey Rush’s character was frequently asked how on earth he was going to pull it off and deliver the play, and he said, “I don’t know. It’s a mystery.” Is that not the case with this, where we have a big plan, but we do not really know how it will be delivered?

11:00

Lorna Slater: That is absolutely not the case. The legislation is only one piece of what we are doing. Our waste route map contains all the provisions that we are looking at, including matters around education, design, investment and research and development. Legislation is only one part. As I outlined in my opening statement, the bill sits in a very specific place between powers that we already have devolved in Scotland to do things—for example, as far as I am aware, we do not need any new powers to deal with a potential ban on single-use vapes; we already have those powers—and powers that are absolutely not devolved. We would not be able to bring in something such as extended producer responsibility for packaging in Scotland, because that is not a devolved matter. The bill is specifically narrow; it contains enabling powers to start work on legislation and provisions that fit within our devolution settlement for the very specific purposes of helping us on our journey to net zero, reducing waste and unlocking business opportunities for local authorities and the business community. The powers in the bill are to unlock those.

Once we know what those provisions are, we can target them very specifically on some very urgent matters. You will see from the financial memorandum how much handling disposable cup waste costs councils. We can all be outraged that perfectly good food and clothing is being sent to landfill and incineration instead of to those who desperately need it. The bill unlocks powers to take those things forward. It is right and effective that we unlock those enabling powers and target those specific areas of need efficiently, nimbly and proportionately.

The Convener: A stalwart indeed. We want you back.

Jamie Halcro Johnston (Highlands and Islands) (Con): Good morning to the minister and her colleagues. The phrase

“as far as I am aware”

is not exactly a great endorsement of the powers that you believe that you may or may not have. With vapes, I hope that you would be a little bit surer than

“as far as I am aware”.

Also, in relation to the points that Daniel Johnson raised and your response to them, perhaps, if some of that detail had been done before on DRS, we may not have seen the complete boorach that it ended up being. Have lessons not been learned from that? Surely some of that engagement that was done with stakeholders, including businesses, would be of benefit.

What assessment has been done of the economic benefits of the circularity bill?

Lorna Slater: The financial memorandum outlines the cost and potential benefits for each provision. On the overall economic benefits, I can, of course, enumerate to the member the urgency of reaching net zero and the overall intention of reducing waste in our society. Those inefficiencies where resources—

Jamie Halcro Johnston: What about the economic benefits?

Lorna Slater: Those are economic benefits. When a business is wasting materials, that is, of course, a cost to that business. It is also a cost to society when we, as a society, are using the planet's resources to produce goods that do not benefit anybody. There is a larger case to be made: a circular economy, which is the point of this, is one that does not have waste and which is efficient, so that all our resources are put to best use. Those provisions fit in a larger scope of work, with the route map work that the UK Government is doing. They are all designed to improve the economic case and reduce inefficiency in the system.

Jamie Halcro Johnston: Given that you have suggested big-picture economic benefits rather than a financial figure, why is there not more detail on the economic cost to businesses, particularly small businesses, in the financial memorandum?

Lorna Slater: That is exactly the point that we have been discussing, which is about the framework. Look at the example of the plastic bag charge. Businesses are allowed to recoup their costs for that charge. If we had a single-use cup charge, it might be managed along those lines, but it might be managed differently. We do not have that information available because it has not yet been developed to that level of detail.

Jamie Halcro Johnston: You are able to say, "This will have great and wider economic benefit in recycling and wastage," but you cannot be more specific about the potential cost to businesses.

Lorna Slater: The difference is that this is a strategic bill, where we are setting out our strategic intentions to reduce waste, to improve opportunities in recycling, and to be able to create jobs in that circular economy. That is absolutely

our strategic intention, and the bill is strategic. The specific pieces of policy implementation will be part of the secondary legislation and, indeed, work on our route map and so forth as we go forward. The details of specific provisions—for example, the reporting of waste from a specific industry, such as the cosmetics industry—will be developed with that industry. That is exactly the point. At this point, this is the strategic level and, therefore, we are putting in strategic level implications.

Jamie Halcro Johnston: For many in the drinks and hospitality sectors, the experience of the DRS has just been talk of, "We will work with these key sectors," and they would argue that that did not happen enough. Do you recognise that there might be some concern that additional costs will be placed on those sectors, which are already recovering from, first, the pandemic and, secondly, the fallout from the DRS and the investment that they had to make for that? Do you recognise that there will be concerns that this is just another open book on costs that they might have to meet? What confidence can you give them that this will really be of benefit to them?

Lorna Slater: That is a really good question, because a lot of the overall principle of moving to a circular economy is about the polluter-pays model. As previously discussed, a lot of the materials produced by companies have to be cleaned up at the expense of local authorities; that has to be handled, whether they send the materials to incineration or landfill or pick them off the street as litter. As we move to a polluter-pays model—for example, with extended producer responsibility, which is a UK-wide thing—businesses will need to pay into the extended producer responsibility model, so that we have the funding for local authorities to deal with it.

Jamie Halcro Johnston: You cannot tell them how much they will have to pay. As I said, many have already had to pay into and invest in the DRS. Some sectors will have to pay, but you are not able to tell them what they will have to pay.

Lorna Slater: That is because those things are being developed. Extended producer responsibility is being developed UK-wide, led by the UK Government, which is engaging with businesses on how to develop that scheme.

There is a principle that we would not double charge businesses, so, once the UK-wide deposit return scheme gets going, businesses that have those sorts of packaging will do their producer responsibility bit under the deposit return scheme. They would not be double charged with the EPR. In fact, my understanding is that the deposit return scheme will cost some businesses substantially less than what they might be getting charged under a standard producer responsibility model for packaging. That will drive businesses to want to

get the deposit return scheme up and going. It is a big shift in our society from having public funds cleaning up our environment to making sure that private interests, under the polluter-pays model, do it, too.

There is a big point here that I am grateful to Jamie Halcro Johnston for raising. This is also about incentivising businesses to become more efficient and to choose to use packaging that is easier to recycle. At the moment, there is no penalty or advantage, and a business may just decide to use material that is not very recyclable. Once extended producer responsibility for packaging comes in, the fee amount that they will be charged will depend on how recyclable their material is. That will incentivise businesses to change their practice. There is a provision in the bill about reporting on sectoral waste and surplus. It has been shown that, when businesses implement good practice, it helps them to focus on reducing waste and, overall, it reduces their costs. This is part of a big shift in our economy to the polluter-pays model and to efficiency savings. We can drill down into each provision of the bill, if the member wishes, and talk about specific ones.

Jamie Halcro Johnston: I would be very interested to speak to businesses, many of which are struggling in certain sectors and for whom every penny and every pound counts. For those businesses to be lectured on efficiency by the Scottish Government will be interesting.

I will move on because I am conscious of time. What role does the minister see for the Scottish National Investment Bank in supporting some of the infrastructure work that needs to be done?

Lorna Slater: I do not have a particular vision for that. It is for the SNIB to decide what it invests in.

Jamie Halcro Johnston: Have you had any conversations with it at all?

Lorna Slater: No. It is completely independent of the Scottish Government.

Jamie Halcro Johnston: I understand that, but, obviously, it had a role in the DRS and public money was invested in that. You are not aware of any projected role for the SNIB in this.

Lorna Slater: No, and nor would it be appropriate for there to be one. The relationship between the SNIB and Circularity Scotland, the private business that I believe that you are alluding to, was between them. The Scottish Government was not involved in that.

Jamie Halcro Johnston: Okay—thanks.

The Convener: I know that it has been a long session so far, minister, but, just to finish off, I

want to refer to a couple of points that you have made in the evidence that you have given us.

In your responses to Ross Greer and me, you referred to the £88.4 million that Zero Waste Scotland estimates that the cost will be to enable all 32 Scottish local authorities to align with the existing code of practice. With regard to paragraph 48 of the financial memorandum, the deputy convener asked witnesses at our meeting on 24 October whether they were aware of any discussions between colleagues in their local authorities and either Zero Waste Scotland or the Scottish Government about where that figure had come from and whether that detail had been set out. Charlie Devine of Dundee City Council and Kirsty McGuire of South Lanarkshire Council both said, “No”. Although the figure has been set out, our local authority colleagues do not seem to understand where it has come from. Can you explain how Zero Waste Scotland came up with the figure, given the fact that it does not appear to have engaged with local authority colleagues in producing it?

Lorna Slater: Absolutely. That was the result of work by Zero Waste Scotland. Alex Quayle can give us more detail on that.

Alexander Quayle: Zero Waste Scotland engages continually with local authorities. Its figure of £88.4 million reflects the cost for the number of households in local authorities that would need to have a change in order for all households in every local authority in Scotland to become compliant with the existing code of practice.

The £88.4 million is made up of three aspects. The first is containers—the bins that would be needed in order to be compliant.

The Convener: I referred to paragraph 48, but my question was not about the detail of the paragraph. We have been talking about co-design and co-operation with local authorities, and I am concerned that they seem not to have been aware of where the figures came from. Clearly, there is a communication issue with regard to that.

My other question on numbers is about the £70 million that is being allocated for the recycling improvement fund. Ross Greer referred to the fund as well. We were told that, of the £70 million, £53 million is being allocated to 17 local authorities, which means that 15 local authorities have not received an allocation from the remaining £17 million. In response to John Mason, you said that £21 million has been allocated to Glasgow, which is 30 per cent of the fund going to an urban area that has roughly 10 per cent of Scotland’s population. If those figures are right, it means that only £32 million has gone to 16 local authorities,

which seems quite disproportionate. Is there a reason for that?

Lorna Slater: Applications to the recycling improvement fund are made by local authorities. A local authority develops an initiative—a proposal—that comes to the recycling improvement fund board, which established the fund. The board works with the local authority to establish whether the proposal will achieve the outcomes that we need—nationally, we need to hit our net zero targets—how feasible it is, the timescale and so on. Then, the board advises me on whether it feels that the application should be awarded.

The challenge with Glasgow is that, because it is our largest city, the impact of recycling in Scotland is largely affected by what we do there. Basically, if we get recycling in Glasgow right, we impact on our national targets, so it is really important that we get it right in Glasgow. We had discussions around the proportion of the recycling improvement fund going to Glasgow, because I wanted to understand exactly why it was worth doing; it is because it has that impact at national level. To meet our net zero targets, we have to make sure that money is being spent most effectively to reduce our emissions and increase our recycling, and that was the right place for the money to go to achieve that result.

The Convener: I commend Glasgow for its ambition and securing 30 per cent of the fund, but it means that we have only £17 million left for 15 other local authorities. Will the Scottish Government look to top up that fund significantly, given that other local authorities are still looking at what the impact of the legislation might be and where they need to spend money to deliver their recycling targets more efficiently and effectively?

Lorna Slater: We certainly intend to allocate the remainder of the fund as efficiently and effectively as possible, but we would need to discuss what funding might follow on from that.

The Convener: I am just concerned that some local authorities might have missed the boat. Ms McVea, do you want to come in on this?

11:15

Janet McVea: Yes. Just to support and slightly expand on what the minister said, I note, for clarity, that the programme board that oversees the recycling improvement fund and makes recommendations includes representatives from COSLA, SOLACE, Zero Waste Scotland and SEPA.

On the future, I come back to the point that the minister made on the co-design process with local authorities. That will seek to co-design what good looks like and what it will take, including

infrastructure, to deliver that. We very much see what potentially comes next. The minister has recognised the need for on-going support and potential investment. That will be part of considerations throughout the co-design process.

For clarity, the Zero Waste Scotland figure is informed by Zero Waste Scotland's experience of supporting other local authorities to align with the code. That is where it gets its information. It is an estimate and a projection; it is not an exact figure, and it is about the current code.

The Convener: Okay—thank you.

Finally, minister, you said in response to Michelle Thomson that you would be happy to provide an updated financial memorandum. I wrote that down word for word. Do you now believe that, following this evidence session, you should go away and update the financial memorandum as it has been presented to us?

Lorna Slater: No, I am content with the financial memorandum that has been presented. I believe that the context of the question from Michelle Thomson was that, if there were more detail down the line as we develop the policy, I would be happy to come back to the committee. Our information is the best that we have at this time. I am at the committee's disposal, should it wish me to come back if the situation changes and an update is required, but this is the best information that is available and appropriate to the bill.

The Convener: Thank you for the clarification, and I thank you and your colleagues for the evidence that you have given today. It has been very helpful for the committee's deliberations. We will look at the matter further and deliberate in private session in order to produce a report.

In the meantime, we will take a short break to allow a changeover of witnesses.

11:17

Meeting suspended.

11:24

On resuming—

Subordinate Legislation

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

The Convener: The next item on our agenda is an evidence session with the Minister for Community Wealth and Public Finance on the Budget (Scotland) Act 2023 Amendment Regulations 2023. I intend to allow up to an hour for this session. The minister is joined today by Scottish Government officials Craig Maidment, who is a senior finance manager, and Niall Caldwell, who is corporate treasurer. I welcome the witnesses to the meeting.

Before I invite the minister to make a short opening statement, I would like to apologise for the fact that the previous session overran by more than 30 minutes. I certainly hope that this session will not do likewise. I apologise to the minister and his officials.

Over to you, minister, for your opening statement.

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

As the committee can appreciate, we continue to face challenging economic circumstances. Continued inflationary pressures, particularly around public sector pay, are putting real pressure on the Scottish budget. Given those circumstances, tough choices have to be made on how we prioritise spending in order to meet those pressures and support priority areas. Those challenges are not unique to the Scottish Government; other devolved Governments and departments across the UK are struggling with the same issues. The autumn budget revision reflects our response to those challenges.

The funding changes increase the budget by £361.3 million and include providing £265 million to local government to support pay deals, £50 million to health, £44 million to police pensions and £30 million to Ukrainian resettlement. To help to fund those areas, it has been necessary to reprioritise budgets. The technical, Whitehall and internal transfers are presented in the document in the usual way. Some of the technical adjustments, in particular under international financial reporting standard 16, get to the heart of discussions around budget presentation transparency.

I welcome the dialogue that the committee recently had with my officials and the recent correspondence on the issue with the Deputy First

Minister. We are considering the issue in the context of the 2024-25 Scottish budget. The supporting document to the autumn budget revision and the finance update that was prepared by my officials reflect some of those discussions and provide further background on the net changes.

With that, I am happy to conclude and to answer any questions that the committee may have.

The Convener: Thank you for that—as always—helpful opening statement, minister. When we look at the top-line figures, what is interesting is that, although the addition is around £361 million, which is about 0.6 per cent of the total budget, once again we see considerable movement within portfolios. There has been, over the years, as you said, a difference between policy intention and delivery. If we look, for example, at health and social care, we see movement of about £1,059.6 million into other portfolios. There are detailed explanations of that; I am heartened by the information that the minister and his officials can provide. Compared with how it used to be, the information that is provided is, obviously, very extensive.

When we are looking at movements of such scale in-year, would it not be better, in terms of delivery, for the funds to be baselined into the areas where they finally end up? Many of those movements appear to happen almost annually. It almost seems as if, when the policy intention is created, there is a real mismatch between it and, ultimately, delivery. What is your comment on that?

Tom Arthur: As ever, convener, those are fair and reasonable points. I previously set out in committee the rationale for the approach that you touched on in your question. In the context of the discussions that officials have been having with the committee, we are considering those points in detail in order to meet the ambition for improved transparency as part of our deliberations ahead of the budget for the forthcoming financial year. That is under active consideration and it is being done in the context of the Verity house agreement, given that a number of transfers to local government take place. It is very much a live issue, to which we are giving active consideration.

Clearly, we would not want to do anything to unintentionally harm transparency, but the points that you make are fair and we are considering how we can address those matters and how that will inform the presentation of the forthcoming budget.

The Convener: The transparency that you have delivered means that we are not going to spend huge amounts of time, as we would have done otherwise, asking why amounts went here or there. You have provided detailed explanations for

many of them. There are, however, one or two areas that still cause concern, so I am going to ask you something that I have asked in the past.

An additional £44 million has been provided for police pensions to help to fund the gap between the budget that was provided at the start of the year and current forecasts of costs. Last year, I asked something very similar to what I am going to ask you now. The amount is demand-led but, surely, given that you know at the beginning of the year how many police officers are likely to retire, there should not be divergence of £44 million from the initial sum—although you could give or take £1 million here or there. How much is now paid in police pensions? That would give a better picture of what the percentage differential might actually be.

11:30

Tom Arthur: That is an important point. First, as I have said previously, the nature of such budgets is that they are demand-led, as you have highlighted, and volatile, given the flexibilities that exist around retirement options. That is why, historically, that has been something that we have sought to manage in-year. In this particular instance, it is just in police pensions that a transfer has taken place. The total allocated to date for police pensions is £335 million.

The Convener: However, £44 million is quite a substantial percentage of that, which is why one asks why that cannot be envisaged at the start of the financial year. As I said, if it was just £1 million here or there, you might think, “Ok—fair enough.” It seems to be a significant amount that one would think could have been predicted when the budget was being drawn up, therefore we would not have to have the portfolio transfer that we are witnessing now.

Tom Arthur: That is a fair point and is something to which we are giving further consideration. Clearly, devolved pensions differ in terms of the ways in which pensions are handled—through annually managed expenditure lines, for instance. In this case, we are seeking to manage in-year. We will give the matter further consideration and reflect on how we can refine our forecasting in order, we hope, to move to having, at the outset, a number that is much closer to the outturn. Because of the volatile and demand-led nature of the particular line, there is a need to manage it in-year.

However, the points that you make are fair and reasonable, and I am happy to consider how we can refine our forecasting in that area.

The Convener: Colleagues around the table will want to dig into some of the figures. I will just touch on a couple of them, especially given the

fact that I overdid it in the last session. *[Laughter]*. I will give folk a chance to claw back some time.

Under rural affairs, land reform and islands, I will not go into detail other than to mention that you have said the portfolios were reduced by £31 million as part of the budget revision, and you gave some context to that. You also talked about services for agricultural support being reprofiled in future years with no loss of funding. Why does that change have to take place in the first place?

Tom Arthur: Is that question specifically on the agriculture reform line—the £4 million?

The Convener: Yes.

Tom Arthur: Recently, there has been further development of business cases and assessment of multiyear plans. That has identified scope for reduced spend on that programme of activity within this financial year, so we have an opportunity for funding to be returned to the centre. As I touched on in my opening remarks, we face a very challenging set of overall economic circumstances.

Craig, do you want to provide more detail on the portfolio?

Craig Maidment (Scottish Government): I will just make the point that that is a specific £4 million reduction in the agriculture and reform programme line. The £31 million includes additional amounts on which I can provide some detail; there are a few lines that I can touch on. There is £6 million that relates to Forestry and Land Scotland, which has been able to utilise its reserves and return that to the centre in the current year. That will be realigned with some multiyear financial planning. There are demand-led elements to the savings, as the minister has touched on.

There is a £3 million funding reduction for Scottish forestry because the forecasts are lower than were previously anticipated. For the larger amounts, £40 million is coming from a combination of common agricultural policy pillar 1 and environmental and agricultural reform funding, which is also funding that has been returned to the centre because forecasts were lower than anticipated. There is a commitment to return those amounts to the rural portfolio in future financial years. It is a profiling point.

The Convener: Is there a reason why the rural portfolio does not get additional funding, rather than the funding being returned in future years? Why is it not just kept within the rural portfolio? Is it because there are pressing needs elsewhere?

Craig Maidment: Yes—exactly. That is done to fund the significant amounts that are going to other areas as part of the budget revision.

The Convener: With regard to using reserves, we have heard that Creative Scotland also did that. Is it now the Scottish Government's position that, as we go forward, we will be looking across the public sector to see where reserves can be utilised to try to optimise spend in the next year?

Tom Arthur: What you are seeing is a reflection of the very challenging fiscal environment that we are in. You referred to Creative Scotland. We have committed to reinstate that funding in future years, and the First Minister has made a broader commitment to increase spending in culture and the creative sector by £100 million over the next five years. Of course, we do not want to find ourselves again in a situation that is as challenging as this one is. We have to ensure that we are able to fully fund our priorities, to meet demands that emerge in-year, such as public sector pay settlements and, of course, to ensure that we are in a position to balance the budget.

The Convener: I find it intriguing that so many areas appear to have reserves in the first place. Has there been any assessment of the quantity of those reserves across the portfolios that the Scottish Government manages?

Tom Arthur: I am not able to speak about that in any detail. My officials might want to come in on that.

The Convener: I did not know that Forestry and Land Scotland and Creative Scotland, for example, were sitting on reserves before that was announced by the cabinet secretary in the chamber. It seems a bit odd, to me.

Niall Caldwell (Scottish Government): That varies by organisation. Whether it can hold reserves or not depends on the classification of the organisation. I do not have a figure, off the top of my head, for a quantum of reserves.

The Convener: We have spoken about local government reserves ad infinitum over the years, but we have never really covered reserves that are held in other areas. It would be quite interesting to have a response on the level of reserves across the portfolios that the Scottish Government manages.

The "Guide to the ABR 2023-24—Finance Update for FPAC" says that

"Marine Scotland have been able to surrender"—

that is a disappointing word—

"£2 million of budget following savings exercises involving enhanced recruitment controls, maximising income and continuing focus on delivering operational efficiencies."

I have to say, as someone with two islands in their constituency and large sea borders, that there are concerns that Marine Scotland does not have enough resources to ensure that fisheries are

effectively and efficiently managed and that conservation is also taken into account. When there are breaches, Marine Scotland has to be called on. I could give an example from my constituency. Over the years, there have been concerns that there is not enough resource in Marine Scotland. Why is it felt that £2 million should be removed?

Tom Arthur: I want to highlight how that £2 million has been generated. There has been delivery of greater income streams through higher marine licensing fees. There are also more shared service arrangements and collaborative working, as part of a range of efficiency measures. That saving has been generated in a number of ways.

More generally, the decisions that we have to take as part of the budget revision process reflect changes that are taking place in-year. Indeed, the context in which all budget decisions will have to be taken is incredibly challenging—not just for the Scottish Government, but for the other devolved Administrations, too. It is among the most challenging since the reconvening of this Parliament nearly a quarter of a century ago. That means that we have to take difficult decisions to ensure that we can deliver our key priorities and meet the demands that emerge in-year, as I touched on, and to ensure that we can again deliver a balanced budget, as we have done consistently, previously.

The Convener: I touched on internal transfers and baselines. Paragraph 40 in the guide, under the heading "A.5 Internal Transfers", says:

"The majority of internal transfers are moving budgets from the policy lead area, based on policy accountability at official level, to the appropriate delivery body."

That was what I asked about earlier. How do we know which ones are being transferred because of policy accountability and which are not? The guide does not seem to say. It gives a list of significant budget internal transfers between portfolios, but it does not say which ones have been moved because of policy or delivery. It just says that they have been moved because of one or the other. Would it not be more helpful if that was clarified?

Tom Arthur: It is a combination of policy and delivery, as you highlight. Sometimes in those areas, the distinction is perhaps not as clear. I do not know whether there is any detail that you want to add, Niall.

Niall Caldwell: On the quantum of value, a lot of the delivery of the internal transfers or the budget that is moving from one area to another is because local government is the delivery body. In almost all those examples, you can pretty much say that local government is the delivery body, but the policy ownership, if you like, from a Scottish

Government perspective, sits in another portfolio. In those cases, it is usually health or education.

Tom Arthur: That is why I referred to our consideration of the presentation of the budget and why we have to take cognisance of the Verity house agreement as well.

The Convener: Yes. As I mentioned, if those transfers are to be regular occurrences, they should probably be baselined into those portfolios in the first place.

On the technical adjustments, I know that there will not be any issue with the actual amount that we are able to spend in each portfolio, but the guide states:

“it is likely that the IFRS16 figures will be baselined into the 2024-25 budget, meaning that a direct comparison to starting budgets is not possible.”

One of the issues that the committee is concerned about is that, when we have our Punch and Judy show at stage 1 and stage 3 of the budget, people talk about different figures. Obviously, we on the SNP benches will denounce the evil Conservative Government for slashing our budgets, and the Conservatives will stand up to talk about how incredibly generous that same Government is and say that it has been lavishing us with ever greater record sums. Would it not be easier if figures were put together for the outturns, as we have asked for, to enable us all to sing from the same hymn sheet, at least on the figures that we are arguing over?

Tom Arthur: I very much welcome that. This is a shared endeavour to ensure that we have as much transparency as possible, consistency of messaging and understanding of what the numbers actually say, so that a substantive debate can take place on whether the allocations are aligned with people's priorities.

Transparency is a priority for us. The IFRS 16 issue throws up a particular example of the challenges that can be posed in that context. I am conscious that, with transparency, there is a need to ensure that we get the balance right. An overprovision of information, although well intentioned, can add to the complexity and make it more challenging for the budget to be understood and comprehended more widely. Similarly, insufficient information being provided presents a challenge on transparency. We are trying to ensure that we present the figures in a way that they can be intuitively and innately grasped and in a way that is fair and representative. I recognise that there is complexity.

Niall, I do not know whether you want to say something about some of the challenges posed by the IFRS 16 technical adjustments and the issues around presentation and transparency.

Niall Caldwell: There is a three-year transition period for IFRS 16, and next year is the last year of that. The 2024-25 budget will have the IFRS 16 figures embedded into the baselines, which means that prior-year figures will be restated. That means that comparatives will show reductions year on year, purely because a lot of the leases that were capitalised in the balance sheet in 2022-23 will be reflected in that year. We have put some figures in section C of the guide to demonstrate that. You will see that the impact in 2022-23 is £879 million, whereas the impact in 2023-24 is £479 million. That is just from capitalising leases that were not capitalised before IFRS 16 was implemented. The transitional period means that IFRS 16 changes are covered in budgetary terms by Treasury during the transition, but that will come to an end after 2024-25.

The Convener: We will want to ask further questions specifically on that in the weeks and months ahead, so that we can have it clarified in our heads and, indeed, so that the wider Parliament can get a grip on what it means. That will be an important process for us.

This is my last question before I open up the discussion to colleagues—I said that I would try not to hog the session, as I sometimes do inadvertently. Resource borrowing costs and capital borrowing costs are down. Given that interest rates have gone up, why do we have reduced capital borrowing costs? One of the things that came out of our sustainability report was that the UK Government will cut our capital allocation over the next five years by 16 per cent in real terms. One would have thought that the Scottish Government would seek to maximise its capital spend wherever possible, given the need to invest in physical infrastructure, digital infrastructure et cetera. Why has that happened, and what is the reasoning behind the Government's move on capital?

11:45

Tom Arthur: First, I want to make it clear that we seek to maximise our capital spend; we realise that it is fundamental to economic growth and supporting innovation and development. Our capital borrowing powers afford us one of the limited flexibilities that we have under the devolved fiscal arrangements, and decisions around capital borrowing are taken very late in the day. That means that we can have the most up-to-date position, reflecting the most recent in-year budget position. We recognise that, with capital projects, there can be slippage and delay for a range of reasons that are outwith the control of any individual organisation or, indeed, the Government.

Niall, do you want to provide a bit more detail on some of that decision-making process?

Niall Caldwell: I will make one point to give an example of what the minister said. A lot of the profiling tends to be done late in the year, which explains why you can get some late material underspends late in the year. Capital borrowing is the only flexible area, really, of the capital budget, and the borrowing policy allows for that to be reflected. This is the old capital borrowing policy, as per the May medium-term financial strategy.

The Convener: Excuse me, but everyone seems to be whispering all of a sudden. I do not know whether I am the only one who notices it, but it is difficult for everyone to hear. Minister and Niall, will you speak up a wee bit?

Niall Caldwell: I was talking about the capital borrowing policy under the previous MTFs. About £250 million was the fiscally sustainable level under the old fiscal framework limits, and it is designed to allow for a level of attrition and the late underspends that materialise. The point that the minister makes is that, if late underspends materialise and borrowing is reduced, no spending power is lost, on the assumption that borrowing can be reprofiled into future years. The policy is designed to be flexible. It is one of the few flexibilities in the capital budget.

The Convener: It is to ensure that Scotland does not lose any money in its expenditure overall: is that correct?

Niall Caldwell: Yes.

The Convener: Thank you for that clarification.

I will open up the session to colleagues. The first to ask a question will be the returning stalwart, Daniel Johnson, and he will be followed by John Mason.

Daniel Johnson: I am not used to all this lavish praise, convener.

I want to follow up on a couple of points that were discussed, particularly around transparency. I am always struck by the fact that, essentially, the discussion and debate around budget time is always at level 3 and level 4, yet the actual budget bill is, essentially, at level 1, and, critically, when you look at the outturn, you see that it is, by and large, specified at level 1.

I want to ask about transparency. I fully take on board your point that overprovision of information can be a problem, and I do not want to cause officials panic about lots more work, but is there a case to explore on whether outturn could be specified in a greater level of detail? I ask that because, ultimately, my basic point of principle is that, when you are setting a budget, you need to look at how you performed against last year's

budget, and the importance and the level of scrutiny is at level 3 and level 4. Do you think that there is a case to be made for looking at the degree to which we can report back at that level on outturn?

Tom Arthur: That was a very well-crafted question, because you probably anticipated many of my answers in your preamble.

Daniel Johnson: I have been here before. *[Laughter.]*

Tom Arthur: Certainly, we wish to be able to provide as much information as possible. We have to recognise that there is a need for proportionality. I appreciate your recognising the points on the potential unintended consequences of overprovision. We are looking at other provisions around transparency such as COFOG, the classification of the functions of Government. I am keen to ensure that we provide information that is as useful as possible for Parliament and the wider public.

Niall, can you touch on where we are on the level of detail that we can go into on our current provision on outturn?

Niall Caldwell: I will need to double-check. The provisional outturn has a high level of information. We go into more detail in the accounts, but that happens on a different basis. There can be trouble comparing the Scottish budgetary basis with Treasury budgetary basis—that is an important factor, especially because the Scottish Government's accounts are prepared against the spring budget revision totality. Our outturn versus budget on a Treasury basis is very different, which is, ultimately, what matters for what is left in the Scotland reserve at the end of the year. I will need to double-check the precise level of detail that we go into in the accounts, but it is at a lower level.

Tom Arthur: It would be helpful if the committee were of one mind on the level of detail that it wants to be provided to it, with reference to what we already provide. I would be very happy to have that discussion and engagement.

Daniel Johnson: Frankly, the classic exchange is that Opposition parties, as the convener alluded to, say, "You must do X, Y, and Z," and the Government, with some justification, says, "Where does that come from?" Until you have a complete level of clarity about how things, especially those that are below level 1, are flowing through and pan out, it is difficult to have that conversation. That information would improve the level of debate. The level that you get to is for further discussion, but I will make that observation.

You mentioned that I prefigured some of your response; you prefigured my next question, which is about COFOG. I am glad that it continues to be

there. I will ask one last clarification question. We had a brief exchange about capital borrowing regimes and, in recent weeks, there has been some discussion about the issuing of bonds. That is interesting, but people's minds have been racing ahead of themselves in some quarters. My understanding is that the process will fall within the limits of the fiscal framework. It is probably worth all of us being very clear that extra money is not being raised; this is happening within the fiscal framework and would be an alternative to the other sources of capital borrowing that are available to the Scottish Government. Is that a useful clarification?

Tom Arthur: Yes.

John Mason: Our paper sets out that the Delegated Powers and Law Reform Committee raised three points, one of which was that

"Regulation 2(b) of the instrument amends the amount specified for the Scottish Parliamentary Corporate Body, but it replaces the existing figure ... with the same figure."

The Delegated Powers and Law Reform Committee also stated:

"The Scottish Government advised that the insertion of an unchanged figure was unintentional, but that the figure remains correct."

Will you explain what that means?

Craig Maidment: That was highlighted to the Scottish Government legal directorate—SGLD—as a figure that was changing when it had not changed. There should have been no inclusion of that figure. It was just an error.

John Mason: So it was the commentary that was the problem, more than the actual figure.

Craig Maidment: Yes.

John Mason: Okay—that has clarified that.

Just to follow up on the convener's point about reserves, I fully agree that we should use reserves and not leave money sitting. Will doing that put more pressure on future budgets, because it will be something that we cannot do again?

Tom Arthur: That is an important point. It is about recognising that reserves are there for a purpose. They give bodies that have that facility a degree of flexibility that is commensurate with their roles and responsibilities. We recognise that, in the financial situation in which we find ourselves, that facility is available, which allows and assists us to manage the overall budget position. Of course, implicit in your argument is the idea that the continual use and depletion of reserves would clearly be a cause for concern. They are there for a purpose; there will have been a logic and rationale behind that facility being available. What we have set out in some of the specific items that we have discussed with an agency that has

reserves reflects the circumstances in which we find ourselves.

John Mason: If we take Creative Scotland and Forestry and Land Scotland as examples, they are able to top up their budget from reserves at the moment. In future, however, you would either have to trim their budget or find more money from elsewhere to put back in.

Tom Arthur: Yes, and, as I said in reference to Creative Scotland, we have committed to the reinstatement of funding in future budgets that we have not been able to provide in the autumn budget revision.

John Mason: The Scotland reserve, at the start of 2022-23, was approximately £699 million. All of that was then put into the budget but, at the end of the year, there was still £244 million put back into the reserve. Does it make any difference if we take everything out of the reserve and put some back in or if we instead take out just the net amount at the end of the year? Are those simply just different ways of doing things?

Tom Arthur: The way in which the reserve operates means that it is a facility to allow us to carry forward underspends from one financial year into the next. The nature of underspends is that they can emerge very late in the day. We saw particular examples of that during the pandemic, when late funding announcements were made and there was simply not the means to deliver on that expenditure prior to 1 April, so the reserve provides that facility.

The sources of funding for the reserve were set out in some detail. Niall, do you want to give more detail?

Niall Caldwell: After the fact, there is no difference. For fiscal management over a year, however, there is a bit of a difference because, by drawing down from the reserve in totality, maximum space is left in the reserve for the end of the year. As the minister said, especially during Covid, when there were really significant volumes of funding changes late in the financial year, it was important to ensure that that full capacity was there. If you do not draw down from the reserve, you are limiting your own capacity to absorb that.

John Mason: Okay, that is fair enough. The point has been made that the Ukraine resettlement costs have been higher in the current year than we had perhaps anticipated. Are those costs completely open-ended? In other words, is there still uncertainty?

Tom Arthur: Owing to its being demand-led, we have seen the significant popularity of the supersponsor scheme in Scotland. As of early October, some 25,000 people displaced from Ukraine have arrived in the UK with sponsorship

from an individual in Scotland or from the Scottish Government, with 20,000 of those arriving under the supersponsor scheme. The additional funding takes the total funding for this year up to in excess of £100 million. Combined with the funding provided last year, it totals over £300 million to date.

However, as a recent position paper published in partnership with the Convention of Scottish Local Authorities and the Scottish Refugee Council sets out, we are now in the new position of pivoting from that emergency response to taking a longer-term holistic approach.

John Mason: What would a longer-term holistic approach mean for the finances?

Tom Arthur: We are also working with partners, and we continue to engage with COSLA. We will continue to monitor the situation in-year and, based on our understanding to date, decisions will be taken in the budget on allocations for the next financial year. We of course remain absolutely committed to ensuring that we support those who have come from Ukraine to Scotland.

John Mason: Does that mean that, instead of there being a specific Ukraine cost in future, a bit more will be spent, for example, on housing, schools and the NHS?

Tom Arthur: There is a recognition of the need for dedicated provision of support for people who are rebuilding their lives—for example, that could be support for people to gain employment, access public services, including benefits, and, indeed, access long-term housing. Working in partnership with local government and the third sector, we have a continued commitment to provide that support.

John Mason: I think that £46 million was taken from the colleges and universities budget because of the teachers' pay settlement. Is that a one-off, or will it have repercussions for the future?

Tom Arthur: We are not in a position to commit to reinstating that funding. We will consider the needs of the Scottish Funding Council as part of the budget process, and the funding allocation will be set out as part of the budget announcement.

John Mason: Okay. Finally, on Barnett consequentials, the paper states:

"The Guide also reports an additional £20.2 million arising from a 'Home Office comparability factor error'".

Can you tell us what that was?

12:00

Tom Arthur: Yes. It goes back to the spending review in 2021-22, and it meant that we had been receiving less than we were due. That error has now been rectified.

Is there anything that you want to add, Craig?

Craig Maidment: It is just about the mechanics of these things. When the spending review is set, any increase in the Home Office department budget for the UK will feed into our block grant. That is quite straightforward with, say, education or justice where the figures that are used are the entirety and the comparability factor is 100 per cent. We consider the entirety of the increase of their budgets, and we get a population share of those. Conversely, with defence, we have a 0 per cent comparability factor, so we get nothing. That is quite straightforward, too.

However, with the Home Office, there is a degree to which certain matters are devolved, and the comparability factor used to be 74.1 per cent. What transpired, though, was that that percentage was slightly outdated; it should have been around 82 or 83 per cent. As a result, an additional amount was due, which has been funded partly through an amount in the previous spring budget revision and an amount in this autumn's budget revision. It will be reflected in next year's budget as well as the final component of the spending review period. There was just an error in the calculation used.

John Mason: It is reassuring that the error has been picked up, but it raises the wider question whether the UK Government is making more errors that we do not know about.

Craig Maidment: The checks go back and forth to make sure that the figures are correct. They get highlighted and discussed at official level to ensure that everything is consistent and correct.

The Convener: At least it was in our favour. *[Laughter.]*

Liz Smith: Minister, you rightly mentioned in your opening statement how the uplift in the teachers' pay settlement is a very important and understandable commitment in the financial landscape that you have to deal with. For clarification, do the figures in the table in section A.2.1 in the guide to the autumn budget revision—the section entitled "Gross Funding Changes"—relate to the 2022-23 budget commitments?

Tom Arthur: Yes.

Liz Smith: If teachers and non-teaching staff have had that uplift, what are the implications for the next budget with regard to those pay settlements?

Tom Arthur: Those settlements have been agreed and we have committed to them going forward, and future rounds of negotiation will take place in the usual way through the joint committee. We have worked constructively to ensure that we can support those pay settlements. As the committee will appreciate, they have necessitated

our taking some quite challenging decisions, but that demonstrates the Government's commitment to the teaching profession.

Liz Smith: Yes, indeed. Overall, we welcome that commitment, but you are right that it has led to some very difficult decisions, with the potential for more difficult decisions coming down the line on commitments in future budgets. Obviously, this is a very large part of the budgetary negotiations. Do you feel that that pressure will be there for the foreseeable future?

Tom Arthur: We have sought to support public sector pay in a way that is commensurate with the scale of the challenge that we face with the inflationary pressures. Thankfully, we have seen some signs of inflation beginning to fall, which clearly will create a different economic and fiscal context for future rounds of negotiations. However, I entirely agree with the implicit point in your question, Ms Smith: this has created exceptional in-year pressures, and those pressures will have to be carried forward. We are giving very careful consideration to that in our spending plans for the next financial year.

Liz Smith: As you will know, we are doing some work on public sector reform and, in previous committee meetings, we have discussed a previous Scottish Government commitment to ensuring that the size of the public sector was roughly what it was before Covid. Is it still the Government's policy intention for that to be the case?

Tom Arthur: Our approach is not to set exact numbers or particular targets; the clear focus is on recognising the need to deliver services more efficiently, which means more shared services, more collaboration, and working across administrative and organisational boundaries. It also means looking at the disposition of our estate. All of those factors are in play, but key to this is a real focus on delivery and on ensuring that our public services do not just deliver services to meet the needs of people but are very much focused on a preventative agenda.

I recognise the committee's interest in medium to longer-term fiscal sustainability, and opportunities to increase revenue—whether through tax or, in the medium term, economic growth—are going to be key. However, we know that we cannot meet that demand simply from increased revenue alone; we have to look at how we prevent that demand and avoid the risk of further demand emerging. It is about looking at how we reform our public services not just to meet the fiscal challenges that we face in the here and now but to deliver a more efficient and effective service that is focused on the preventative agenda. Embracing that approach is not about setting ourselves definite numbers for headcounts;

instead, it is focused on those particular priorities and ensuring that we have a workforce that can meet that particular requirement.

Liz Smith: I have two other points for clarification, if I may. First of all, money is being taken away from the Scottish Funding Council. Why was that decision made, and where is that money being reallocated to?

Tom Arthur: Can you refer me to the specific line?

Liz Smith: I am sorry—I do not have it in front of me. I cannot remember what the actual number was, but it was for the Scottish Funding Council. There was a reduction in the money being paid over to it.

Tom Arthur: Was it the money for colleges and education?

Liz Smith: Yes.

Tom Arthur: I touched on that in my answer to Mr Mason. We are not in a position to commit to reinstating that money. We will assess the SFC's needs as part of our budget-setting process.

Liz Smith: I heard your answer to Mr Mason—I was just asking why you had made that decision.

Tom Arthur: It was to support the teachers' pay settlement.

Liz Smith: All of it?

Niall Caldwell: The position is fully allocated in the budget revision; by definition, everything that has been returned to the centre is supporting everything else in the autumn budget revision. You will see in the funding tables that we provided in the document that there is no unallocated funding.

Tom Arthur: With regard to returns to the centre, there is no unallocated funding, as Niall Caldwell has said. That overall position supports everything that is set out in allocations. Clearly, though, the majority of funding allocated in the ABR is to support local government pay, including the teachers' pay settlement.

Liz Smith: Right.

Sticking with the education and skills portfolio, am I correct in thinking that some pupil equity money has been returned to the centre?

Tom Arthur: There has been a reprofiling, but there has been no loss of spend on the front line. It is just a reprofiling across years.

Liz Smith: Are you in a position to tell us about that reprofiling?

Tom Arthur: Yes. I am just trying to pull the exact details together.

The Convener: If you do not have them at your fingertips, you can get back to us.

Tom Arthur: I would be happy to get back to you on the matter and provide some more detail. I stress that part of that reprofiling is a flexibility that is given to local government. There is no loss of spend on the front line—I just want to be clear on that point.

Liz Smith: My final question is on the First Minister's statement about the £300 million extra that is being allocated to the national health service. As I understand it, we are talking about £100 million in each successive budget over three years. Are you able to say where that money is coming from?

Tom Arthur: It will be set out as part of the budget process for future years' budgets. Of course, we are still to see the autumn statement and forecasts ahead of setting our own budget, but it will be taken as part of that process.

Jamie Halcro Johnston: Good afternoon. First, I draw members' attention to my entry in the register of interests as a partner in a farming business and a member of National Farmers Union Scotland.

The convener mentioned earlier the £31 million that has been taken out of the rural affairs budget. Can you confirm that that money was ring fenced for agricultural and rural affairs use?

Tom Arthur: In the savings that have been set out to support the overall fiscal position, we have identified particular items. We have, for example, already had a conversation with the convener about the Marine Scotland line and have looked at some of the detail there. There are areas where the overall budget has been maintained through, for example, the use of reserves; there are areas where the associated forecasts have been reduced; and there are areas where funding will be deferred but will be used in full in future years.

Craig, can you provide some more of the specific detail on the point about ring fencing?

Craig Maidment: The amounts surrendered are not ring fenced. There is ring-fenced funding in the rural portfolio; we provide additional funding on top of that, and it is some of those amounts that have been returned to the centre as budget revisions. I think that £14 million of the £31 million that we are talking about relates to what is sometimes grouped as ring-fenced funding, but it is supplemented by additional funding from outwith what has been ring fenced.

Jamie Halcro Johnston: The £31 million is being reprioritised. Can you say where it is being reprioritised to?

Tom Arthur: As I have said, the money goes to the centre, and where it has been reallocated to is set out in the ABR document. For example, we have already touched on the resource for local government and the £30 million of support for Ukraine; the resource savings go to the centre and are reallocated. Is there anything that you want to add, Craig?

Craig Maidment: No, except to say that, as has been pointed out, just about all the funding is allocated as part of the revision. It has all come in to the centre and then been utilised for the pay offers and the amounts for Ukraine that the minister touched on.

Jamie Halcro Johnston: I do not know whether you are able to talk about this, but what kinds of internal discussions or consultations happen with your Government colleagues about these matters? Obviously, when it comes to the £31 million that is coming out of the rural affairs budget, that money is intended to be used for agriculture, rural communities and so on. As somebody who lives in, represents and is part of a rural community, I know that that significant sum would be very welcome in a lot of sectors in those areas. How do discussions on these matters happen?

Tom Arthur: First, there is, of course, a dedicated rural affairs, land reform and islands portfolio, but we also recognise that rural affairs interests are supported across a range of portfolios. In certain areas, we have sought to be more effective in getting money out the door earlier through, for example, the basic payment schemes and greening advances.

As for the decision-making process, with a set of circumstances such as those that we have faced this financial year—and, indeed, the previous financial year—we have to look for opportunities to generate efficiencies that can then be returned to the centre to support the in-year fiscal position, particularly to meet emerging pressures such as public sector pay. The particular example that we are considering here relates to the rural affairs, land reform and islands portfolio, but opportunities to generate savings will be looked at across Government. Sometimes that can mean rephasing or reprofiling particular budget lines, but the aim is to generate revenue internally in order to support the in-year budget position to meet challenges.

For example, if you have a demand-led scheme but demand is not what was forecast, that provides a source of revenue that can be redeployed. If there is slippage, perhaps in a capital project, that, too, provides an opportunity for redeployment. It is a continuous, on-going process that is part of the in-year budget management process.

Is there anything that you want to add, Niall?

Niall Caldwell: No.

12:15

Jamie Halcro Johnston: How closely is that money itself—the original source of funding, I suppose—linked to the uplift from the Bew review?

Tom Arthur: Pardon? I am sorry—I missed the last part of your sentence.

Jamie Halcro Johnston: This is money associated with the uplift from or linked to the Bew review. Is that right?

Niall Caldwell: I do not think that those things are directly related. The Bew review funding is part of the broader, ring-fenced agricultural funding. As we have discussed, the budget cover provided for schemes that are associated with ring fencing have historically been higher than the ring-fencing threshold. That has been the case throughout the years. Despite the reprofiling, the terms of that ring fencing have been met.

Jamie Halcro Johnston: When do you hope that the money will be returned to the portfolio?

Tom Arthur: Those decisions will be taken as part of the budget process.

Jamie Halcro Johnston: But there is a guarantee that that money will be returned.

Tom Arthur: We have made that commitment.

Jamie Halcro Johnston: Okay.

I have a quick last question. With regard to rail services, I note that £5 million of technical adjustments have been made in respect of the sleeper service. Can you give us more details on that? Does it relate to the move into public ownership?

Tom Arthur: As that is a technical matter, I will ask Craig if he wants to explain.

Craig Maidment: It is a recurring adjustment that has happened in, I think, three of the previous financial years, where a prepayment relating to the sleeper has been unwound. It is more to do with the accounting perspective than with anything else.

Jamie Halcro Johnston: Right. Okay. Thank you.

Michelle Thomson: I have a couple of brief questions off the back of what has been asked.

Going back to the issue of police pensions, minister, you said correctly that this was demand led and that there had been more volatility. That has piqued my interest. To what extent is that an overhang from Covid, when we saw more people choosing to retire as they realised that there was a life out there to be lived? In other words, have you

any sense of the extent to which that will continue, or was it a one-off? You might not know the answer to that.

Tom Arthur: I am not in a position to give a detailed answer, but I will ask my officials at the Scottish Public Pensions Agency to contribute to a response to the committee and see whether they can shed any light on the matter.

Michelle Thomson: I am asking the question, because if it looks like something that will continue—and you are right that there is more flexibility in the way in which people take their pensions—it would be useful to know that. Indeed, it applies not just to the police scheme—I am thinking across the board.

I have a second wee question. I know that you have already agreed to write to us with what reserves are actually in place, but it would also be useful for me to understand the rules around agencies that are able to gather reserves or not, as you have pointed out, and whether there is any policy thinking in that respect. I think that most of us on the committee are pretty comfortable with agencies being required to use existing reserves where we have this fiscal tightness, but I am interested in, for example, the situation with the Scottish National Investment Bank. When it eventually moves into profit, I think that we will want it to be able to keep its reserves, because that is how we will get to scale. It would be useful to put a bit of meat on the bones of that.

My third wee point is to thank you for your contribution today. I recognise the extra effort that has gone into this, and as a member of the finance committee, I find that heartening. It does not happen often, so thank you very much for that. I also wonder whether you can speak internally to your colleagues about this. The kind of rigour and discipline that we are seeing in this session contrasts with what we saw in our previous session, when we examined a financial memorandum. It made us run over time, and the committee felt that there had not been a sufficient level of rigour, as what we were dealing with were estimates. I do appreciate that, but it would be nice if we could square that circle a bit with the actuals represented in this document. I know that things can only be accurate when we have the actuals, but we are increasingly finding ourselves in quite a fluid position with FMs that are coming to the committee with estimates.

Tom Arthur: Thank you. I will ensure that the points that you have highlighted are reflected in the correspondence.

I very much want to thank the committee for its constructive engagement and to thank officials for the work that has been undertaken to get us to a position where we have been able to take the

financial update forward. This is a process, rather than an event, and we are always keen to get feedback to ensure that we are presenting information as transparently as possible. It is all part of an on-going discussion and a process of refinements. I am grateful for the committee's input, and I will certainly ensure that the points that you have highlighted on financial memoranda are relayed to relevant officials and ministerial colleagues.

Michelle Thomson: Thank you.

The Convener: I have just one more question, which goes back to the issue of reserves. As we know, Scottish Government reserves represent about 1.1 per cent of the budget. At local government level, it is recommended that about 3 per cent of annual expenditure be held in reserve, although many councils have less than that and some, such as Shetland Islands Council, have more, for historical reasons. I was intrigued when it was revealed in recent weeks that Creative Scotland appeared to have a reserve of £17 million against a £66 million Government award that had been reduced by £6.6 million. That means that about a quarter of its annual award is kept in reserve. I am not sure what the £6 million would represent for Forestry and Land Scotland, say, but does the Scottish Government have any guidelines on what the level of reserves should be?

What we are talking about is those reserves being dipped into, as appears to have happened with Creative Scotland and Forestry and Land Scotland. If that has been going on, surely there has to be a set of guidelines—I am sure that there is. It would be interesting to hear your view on what level of reserves should be held. If the Scottish Government reserves represent 1.1 per cent of the budget, why does Creative Scotland hold reserves of 25 per cent of its award? What are we looking at here? There has to be consistency across the public sector.

Tom Arthur: With your permission, convener—and this also applies to some of the questions that Mr Mason asked—I would be happy to respond in detail in writing when I have had the chance to have further discussions with officials and to look at the matter in some detail myself. The committee has raised an important point that warrants a more substantive response than something extemporised by me at this stage in the session.

The Convener: Okay. I absolutely agree with that, and I am sure that colleagues will feel that that would be helpful. Thank you for the evidence that you have given.

We move to agenda item 3, which is formal consideration of the motion on the instrument. I

invite the minister to speak to and move motion S6M-10683.

Motion moved,

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

Motion agreed to.

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

That concludes the public part of today's meeting. The next item on our agenda, which we will discuss in private, is consideration of our work programme. We now move into private session.

12:23

Meeting continued in private until 12:32.

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