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# Finance and Constitution Committee Comataidh Ionmhais is Bun-reachd

## Annual report 2017-18



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# Finance and Constitution Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any report or other document laid before the Parliament by members of the Scottish Government containing proposals for, or budgets of, public revenue or expenditure or proposals for the making of a Scottish rate resolution, taking into account any report or recommendations concerning such documents made to them by any other committee with power to consider such documents or any part of them;

(b) any report made by a committee setting out proposals concerning public revenue or expenditure;

(c) Budget Bills; and

(d) any other matter relating to or affecting the revenue or expenditure of the Scottish Administration or other monies payable into or expenditure payable out of the Scottish Consolidated Fund.

(e) constitutional matters falling within the responsibility of the Cabinet Secretary for Finance and the Constitution



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/Finance-Constitution-Committee.aspx>



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# Committee Membership



**Convener**  
**Bruce Crawford**  
Scottish National Party



**Deputy Convener**  
**Adam Tomkins**  
Scottish Conservative  
and Unionist Party



**Alexander Burnett**  
Scottish Conservative  
and Unionist Party



**Neil Bibby**  
Scottish Labour



**Willie Coffey**  
Scottish National Party



**Ash Denham**  
Scottish National Party



**Murdo Fraser**  
Scottish Conservative  
and Unionist Party



**Emma Harper**  
Scottish National Party



**Patrick Harvie**  
Scottish Green Party



**James Kelly**  
Scottish Labour



**Ivan McKee**  
Scottish National Party

# Introduction

1. This report covers the work of the Finance and Constitution Committee during the parliamentary year from 12 May 2017 to 11 May 2018.
2. This year has been an extremely busy and interesting year for the Committee, with a significant amount of work undertaken on constitutional matters and also a year in which there has been a fundamental review of the budget scrutiny process.

# Membership changes

3. Previous Members of the Committee during the reporting year—
  - Liam Kerr (from 18 January 2017 – 29 June 2017)
  - Maree Todd (29 September 2016 – 7 November 2017)

# Meetings

4. During the parliamentary year, the Committee met 33 times with one meeting held in Aberdeen and all others in Edinburgh. 3 were wholly in private, 15 were partly in private and 15 were wholly in public. Most items which were taken in private were to consider draft reports or work programme papers.

## The Committee year in statistics



**33**

Committee meetings



**89**

Number of people  
who gave evidence



Reports published



SSIs considered

Source: Scottish Parliament

# Constitution

## European Union (Withdrawal) Bill (UK Parliament Legislation)

5. The UK Government introduced the European Union (Withdrawal) Bill on 13 July 2017. <sup>1</sup> The Explanatory Notes to the Bill state that the Bill performs four main functions—
  - Repeals the European Communities Act 1972;
  - Converts EU law as it stands at the moment of exit into domestic law before the UK leaves the EU;
  - Creates power to make secondary legislation, including temporary powers to enable corrections to be made to the laws that would no longer operate appropriately once the UK has left the EU and to implement a withdrawal agreement; and
  - Maintains the current scope of devolved decision making powers in areas currently governed by EU law.
6. The Scottish Government lodged a Legislative Consent Memorandum on 12 September 2017. <sup>2</sup> The Committee issued a call for views on the Bill and took evidence on the LCM from a number of stakeholders and Scottish, Welsh and UK Ministers.
7. It published an interim report on the LCM on 9 January 2018. <sup>3</sup>
8. The Scottish Government lodged a supplementary LCM on 26 April 2018 <sup>4</sup> and the Committee then took evidence on the supplementary LCM and published its final report on 10 May 2018. <sup>5</sup>

## UK Withdrawal from the European Union (legal Continuity) (Scotland) Bill

9. The Scottish Government introduced the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill <sup>6</sup> on 27 February 2018. The Scottish Government stated in the policy memorandum that the purpose of the Bill is to ensure that Scotland's devolved laws can be prepared for the effects of UK withdrawal even if it is not possible to rely on the European Union (Withdrawal) Bill.
10. The Bill seeks to achieve three objectives in order to ensure the legal continuity of devolved legislation following the exit of the UK from the European Union. These are—

- save all domestic devolved law that relates to the EU and separately incorporates devolved EU law that is directly applicable into domestic law;
  - give Scottish Ministers the powers needed to ensure that devolved law that is saved or incorporated into domestic law continues to operate effectively after the UK has left the EU; and
  - give Scottish Ministers the power to, where appropriate, ensure that Scotland's laws keep pace with developments in EU law.
11. The Parliament agreed that the Bill be treated as an Emergency Bill. The Committee issued a call for evidence to help inform the Parliament's consideration of the Bill and took evidence from academics and the Minister for UK negotiations on Scotland's Place in Europe on the 7 March in advance of the Stage 1 plenary debate.
12. The Committee considered the Bill at Stage 2, with 231 amendments lodged, over two days.

## Trade Bill (UK Parliament legislation)

13. The Trade Bill <sup>7</sup> was introduced on 7 November 2017 by the UK Government. The Explanatory Notes to the Bill state that it provides for “key measures that are required to build a future trade policy for the UK once we leave the EU”. The measures include—
- A power, to be held concurrently by the UK Government and devolved authorities, to ensure that the UK can implement any procurement obligations arising from the UK becoming a member of the Agreement on Government Procurement in its own right.
  - The provision of powers to the UK Government and devolved authorities to make regulations to implement into UK domestic law non-tariff obligations in international trade agreements that the UK reaches with partner countries, provided those countries have signed a corresponding agreement with the EU before the UK withdraws from the EU.
14. The Scottish Government lodged a Legislative Consent Memorandum to the Bill on 20 December 2017. <sup>8</sup> The Memorandum set out a range of objections to the approach taken in the Bill and states that the Scottish Government “cannot accept the restrictions on the exercise of its competence in devolved areas”.
15. The Committee issued a call for views and took evidence on the Bill and the LCM from the Scottish Government and a number of stakeholders in February and April 2018.
16. The Committee will continue its scrutiny of the Trade Bill and the LCM in the next parliamentary year.

# Budget Scrutiny

## Draft Budget 2018-19

17. The Scottish Government published its draft budget for 2018-19 on 14 December 2017. The Committee's approach to scrutiny placed its emphasis on the Chartered Institute of Public Finance's four principles of financial scrutiny—
  - Affordability – the wider picture of revenue and expenditure and whether they are appropriately balanced;
  - Prioritisation – a coherent and justifiable division between sectors and programmes;
  - Value for Money – the extent to which public bodies are spending their allocations well and achieving outcomes; and
  - Budget Processes – integration between public service planning and performance and financial management.
18. The Committee's report on the draft budget was published on 26 January 2018<sup>9</sup> and debated in the chamber on 31 January 2018<sup>10</sup> as part of the Stage 1 debate on the Budget (Scotland ) Bill.
19. The Committee then considered the Bill at Stage 2 on 7 February 2018. The Scottish Government responded to the Committee's report on 20 February 2018<sup>11</sup> and the Bill was subsequently debated at Stage 3 and passed by the Parliament on 21 February 2018.<sup>12</sup>

## Budget Process Review Group

20. The Committee previously recognised in its report on Draft Budget 2017-18 that the new powers in the Scotland Act 2012 and the Scotland Act 2016 fundamentally change the budget process.
21. The Committee and the Cabinet Secretary for Finance and the Constitution established a tri-partite working group to review the process and the Budget Process Review Group published its final report on 30 June 2017.<sup>13</sup> The Committee welcomed the recommendations of the Review Group and is committed to implementing these in full as did the Scottish Government.
22. The Committee took evidence from the Auditor General for Scotland and Angela O'Hagan from Glasgow Caledonian University on the Group's final report in September 2017.

## Written Agreement

23. The process for budget scrutiny is governed by the Written Agreement between the Finance and Constitution Committee and the Scottish Government. In February 2018, the Committee agreed a revised Written Agreement with the Scottish Government based on the Budget Process Review Group's report recommendations.
24. The Parliament debated and agreed the revised Written Agreement and associated Standing Order rule changes on 8 May 2018 <sup>14</sup> .

## Bills

### Air Departure Tax (Scotland) Bill

25. The Bill makes provision for a tax to be charged on the carriage of passengers departing from airports in Scotland following the devolution of the existing UK Air Passenger Duty. The Committee was lead committee at Stage 1 in the last parliamentary year and this year considered this Bill at Stage 2. The Parliament debated and passed the Bill at Stage 3 on 20 June 2017<sup>15</sup> and it received Royal Assent on 25 July 2017.

### Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill.

26. The Scottish Government introduced the Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill on 13 November 2017<sup>16</sup>. The Bill allows buyers to reclaim Additional Dwelling Supplement (ADS) payments retrospectively where the buyers replaced their main residence prior to selling their current residence, and their current residence was only owned by one of the couple, civil partner or cohabitant.
27. The Committee issued a call for views on the Bill and took evidence from the Cabinet Secretary for Finance and the Constitution on 7 February 2018. The Committee published its Stage 1 report on 22 February<sup>17</sup> and the Stage 1 debate took place on 6 March 2018.<sup>18</sup> The Committee considered the Bill as Stage 2 on 25 April 2018.

## Scrutiny of Financial Memorandum

28. The Committee scrutinises Financial Memoranda (FM) that set out the estimated financial implications of legislation. Each Bill that is introduced in the Parliament must be accompanied by a FM.
29. In the course of this year, the Committee considered 14 FMs,<sup>19</sup> inviting written submissions from stakeholders and, depending on the issues arising, taking oral evidence from stakeholders and the Scottish Government.

## Subordinate legislation

30. During the parliamentary year, the committee considered 5 Scottish Statutory Instruments of which, 4 were affirmative and 1 was negative. These instruments included the Autumn and Spring Budget Revision Orders, Land and Buildings Transaction Tax relief Order and the Scottish Landfill Tax, standard and lower rates.

## Engagement and innovation

31. The Web and Social Media team in the Parliament organised a live Facebook feed from the Committee's evidence sessions on the European Union (Withdrawal) Bill LCM with David Mundell MP and Mike Russell MSP.
32. Prior to the formal external committee meeting in Aberdeen in January, the Committee held workshops with local organisations to explore the implications of Brexit on the Scottish Budget and the North East. To prepare for these, Outreach Services delivered two public workshop sessions in Aberdeen – held in the evenings of 9<sup>th</sup> and 11<sup>th</sup> January. They contacted a number of equalities organisations across Aberdeen and wider North East Scotland, inviting them to attend the sessions, stressing the opportunity to learn about the budget process.
33. In preparing the public workshop sessions, Outreach Services staff met with colleagues in the Financial Scrutiny Unit, who, in turn, produced a tailored budget briefing for Aberdeen and the NE.
- 34.

# Equalities

35. Equalities issues were a key consideration for the Budget Process Review Group and will be a core element of the new budget process. The Budget Process Review Group recognised the importance of equal opportunities in the founding principles of the Scottish Parliament. The recommendations of the Group were informed by the OECD Gender Budgeting Toolkit and IMF paper on Gender Budgeting in G7 countries.<sup>20</sup>
36. The Group recommended that the Scottish Government should explore the feasibility of providing distributional analysis, by equality characteristic, of the taxation, expenditure and social security proposals contained in the budget and that the Equality and Budget Advisory Group should lead a review of the Equality Budget Statement which is published alongside the Budget.

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