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Scrutiny procedures for the Scottish Parliamentary Corporate Body and National Assembly for Wales Commission budget proposals

This briefing note is to support consideration by the Committee for Finance and Personnel of the practices and procedures used for agreeing the budget of the legislatures in Scotland and Wales. Practices in other Organisation for Economic Cooperation and Development (OECD) member countries are also reported.

Key issues

- The practices and procedures for agreeing the budgets of the devolved legislatures in Scotland and Wales are codified in written agreements and/or Standing Orders;
- In both cases there is a specific role for the finance committees of the respective legislatures to undertake a scrutiny/challenge function in relation to the budget proposals and to formally report to the house;
- The practices and procedures for agreeing the budget of the devolved legislature in Northern Ireland are not formally codified; and,
- The arrangements in Northern Ireland seem to fall into a different category of process (as identified by the OECD) from the other UK devolved legislatures.

1. Introduction

The purpose of this Briefing Note is to explain the process through which budgetary allocations for funding the corporate bodies of the Scottish parliament and the National Assembly for Wales are scrutinised by elected representatives and determined for inclusion in national budgets. Approaches to agreeing the legislature's budget in OECD countries are also briefly presented.

At present there is no formal mechanism that requires the Northern Ireland Assembly Commission's budget proposals to be scrutinised by an Assembly committee. Neither is there a formal established mechanism for Members to debate those proposals outside of the budgetary process for the agreement of estimates through an appropriation act – although it should be noted that there was some debate of the Commission's budget proposals during the debate on the 'take note' motion tabled by the Committee for Finance and Personnel on 31 January 2011.¹

1.1 The Northern Ireland Assembly Commission

The Northern Ireland Assembly Commission (NIA Commission) was established by section 40 of the Northern Ireland 1998 (c.47).² Section 40(4) of that Act requires the NIA Commission to:

... provide the Assembly, or ensure that the Assembly is provided, with the property, staff and services required for the Assembly's purposes.

1.2 Procedures for presenting NIA Commission budget proposals

Assembly Research paper 45/10 *Considerations for Reform of the Budget Process in Northern Ireland* noted the gap in process from a transparency perspective and recommended:

...The Assembly's own budget allocation should be more transparent. Good practice suggests that the Assembly rather than the Executive should be responsible for setting the Assembly's budget.

- *The Assembly's request for resources should be debated as a separate issue not only as part of the Executive's budget proposals.*
- *The Assembly should be required (perhaps through statute) to ensure that its requests for resources are benchmarked against and broadly in line with other constitutional entities.³*

¹ Official report available online at: <http://www.niassembly.gov.uk/record/reports2010/110131.pdf> (accessed 10 February 2011)

² Available online at: <http://www.legislation.gov.uk/ukpga/1998/47/section/40> (accessed 27 January 2011)

³ Available online at: <http://www.niassembly.gov.uk/researchandlibrary/2010/4510.pdf> (accessed 27 January 2011) (see page 62)

This recommendation was underpinned by reference to an International Monetary Fund document *Role of the Legislature in Budget Processes* which states:

Parliament can perform its role effectively when it is adequately funded and when it has autonomy for preparing its own budget. Many OECD countries' legislatures prepare their own budgets, which typically are not altered by the executive.⁴

Two good practice points are also suggested:

- *While parliaments' budget should be prepared independently from that of the executive, parliaments should nonetheless be subject to the same general procedures for executing and reporting on spending of their own budgets.*
- *In particular, parliaments should not abuse their powers by increasing parliament's operating and investment expenses so that they become out of line with other national constitutional entities (e.g., expenses of the judiciary, the external auditor).⁵*

Speaking in November 2010 on a motion regarding the Assembly's running costs, Mark Durkan MLA referred to consideration of the issue that had taken place during his time as Minister of Finance:

...early in the life of devolution, the Assembly Commission wanted its vote to be separate from the vote for the devolved block. It wanted separate votes in Westminster for the NIO, the Executive and the Assembly Commission. There were discussions between us and the Commission. We agreed on the existing protocols under which the Executive receive the Assembly Commission's bids through the Minister of Finance and Personnel, but the Assembly Commission tries to have its own controls.⁶

There appear to be no formal procedures either in the Northern Ireland Assembly's Standing Orders and related legislation, or in written agreements for the NIA Commission's draft budget to be presented either to the Assembly or an Assembly committee. Nor has it been possible to find a written protocol that sets out how the NIA Commission's budget proposals are to be incorporated into the Executive's processes. The protocols referred to by Mr Durkan appear therefore to be in the form of an unwritten agreement or convention.

Department of Finance and Personnel guidance to NICS departments for the Budget 2010 process stated:

⁴ IMF (2010) 'Role of the Legislature in Budget Processes' available online at: <http://www.imf.org/external/pubs/ft/tnm/2010/tnm1004.pdf> (accessed 10 February 2011) (see page 16)

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⁶ Official Report (8 November 2010) available online at: <http://www.niassembly.gov.uk/record/reports2010/101108.pdf> (accessed 3 February 2011) (see page 192)

In line with previous arrangements, the NI Assembly and the NI Audit Office will be provided with the level of funding required by each organisation (both current expenditure and capital investment) in order to carry out their respective functions.⁷

Again, this seems to imply that there are settled arrangements for the NIA Commission budget proposals. In the course of the research presented in this paper it has not been possible to identify a codification of such arrangements.

Sections 2 and 3 of this paper present the arrangements in Scotland and Wales – which are codified - for consideration.

1.3 Direction of the NIA Commission

Section 40(5) of the Northern Ireland Act 1998 (c.47) provides that:

The Assembly may give special or general directions to the Commission for the purpose of or in connection with the exercise of the Commission's functions.⁸

As can be seen from sections 2.2 and 3.2 of this paper, very similar provisions are contained within the Government of Wales Act 2006 and the Scotland Act 1998.

On 8 November 2010, the Assembly passed the following motion:

That this Assembly notes with concern the likely reduction in the block grant that will be brought about by the comprehensive spending review; and calls on the Assembly Commission to reduce its running costs in line with the level of reduction faced by Executive Departments.⁹

On the face of it, this is a clear instance of the Assembly expressing its will that the NIA Commission should benchmark its spending proposals against the reductions of other public bodies.

⁷ DFP (2010) 'NI Executive Budget 2010 Guidance for Departments' (paragraph 1.18)

⁸ <http://www.legislation.gov.uk/ukpga/1998/47/section/40> (accessed 3 February 2011)

⁹ Official Report (8 November 2010) available online at: <http://www.niassembly.gov.uk/record/reports2010/101108.pdf> (accessed 3 February 2011) (see page 197)

2. The National Assembly for Wales Commission

The National Assembly for Wales Commission (NAW Commission) was established by section 27 of the Government of Wales Act 2006 (c.32).¹⁰ It has equivalent functions to the NIA Commission. Under section 27(5) of that Act It must:

(a) provide to the Assembly, or

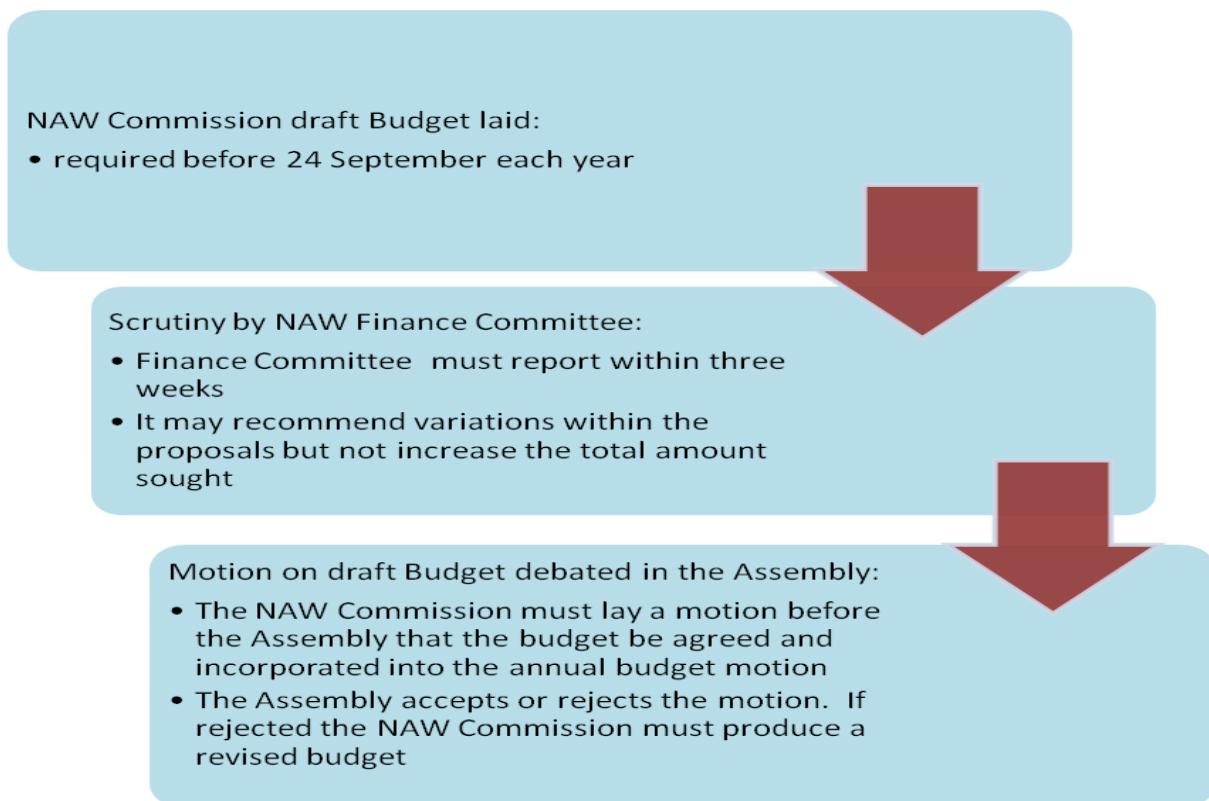
(b) ensure that the Assembly is provided with,

the property, staff and services required for the Assembly's purposes.

2.1 Procedures for presenting NAW Commission budget proposals

The process for agreement of, or amendment to, the NAW Commission budget proposals is set out in the Standing Orders of the National Assembly for Wales (see Appendix 1).

These procedures provide for the following stages:



¹⁰ Available online at: <http://www.legislation.gov.uk/ukpga/2006/32/section/27> (accessed 27 January 2011)

The third stage may be repeated. If the NAW Commission does not present a draft Budget which is acceptable to the Assembly by 20 November, then a default budget is incorporated into the annual budget motion. The default budget is 95% of the amount authorised for the previous financial year.

2.2 Direction of the NAW Commission

Section 27(6) of the Government of Wales Act 2006 provides that:

The Assembly may give special or general directions to the Assembly Commission for the purpose of, or in connection with, the exercise of the Assembly Commission's functions.¹¹

It seems feasible (and this should not be taken as legal advice) that such a direction could include a suggestion of the level of resources that the NAW Commission should incorporate into its draft budget – akin to the motion that was passed by the Northern Ireland Assembly on 8 November 2010. (see section 1.3 above)

The Assembly itself cannot amend the draft budget – it may simply accept or reject it. The process involves the Commission and the Assembly; there is not a separate role for the Welsh Ministers (the equivalent of the Northern Ireland Executive) beyond agreeing the period which the draft Budget is to cover (under Standing Order 27(7)).

2.3 Effectiveness of the arrangements

During 2010 the National Assembly for Wales' Business Committee undertook a review of the Assembly's Standing Orders.¹² This review is ongoing but it is not anticipated to result in amendments to the way in which the NAW Commission's budget is considered.¹³

The following input to the review from the Finance Committee is nevertheless relevant:

[Standing Order] 27 sets out the procedures for the scrutiny of the Government's and other budgets drawn from the consolidated fund. The Finance Committee is broadly content with the scrutiny mechanisms they embrace but notes that in 3 of the last 4 years it has been necessary to suspend Standing Orders to deal with issues arising due to timing issues. The Finance Committee considers that a better approach would be for Standing Orders to set out the principles that apply to the various budget scrutinies and the time that should be allowed for each part of the scrutiny process. However, in order to take account of specific events, such as a

¹¹ Available online at: <http://www.legislation.gov.uk/ukpga/2006/32/section/27> (accessed 27 January 2011)

¹² For further information on the Business Committee's review see http://www.assemblywales.org/bus-home/bus-committees/bus-committees-other-committees/bus-committees-third-bc-home/business_committee_-_review_of_standing_orders_page.htm (accessed 3 February 2011)

¹³ Source: communication with NAW officials

*Comprehensive Spending Review, the specific dates that would apply each year could be set, perhaps by Business Committee, in the light of circumstances that apply at the time.*¹⁴

It is evident that, whilst the Finance Committee is broadly content with the procedural framework for scrutinising the NAW Commission (and other) budgets, there have been difficulties associated with the specification in Standing Orders of particular dates by which certain reports must be completed.

The most recent example of timetabling problems occurred in autumn 2010. The UK Government's Spending Review wasn't announced until 20 October. But Standing Order 27 requires the NAW Commission to lay its draft budget not later than 24 September. Consequently, a temporary standing order had to be introduced to allow the timetable to be put back.¹⁵

¹⁴ Response of the Finance Committee to the Review of Standing Orders, available online at: http://www.assemblywales.org/bus-home/bus-committees/bus-committees-other-committees/bus-committees-third-bc-home/bc-review_of_standing_order_consultation_responses/sor_20_-_finance.htm (accessed 3 February 2011)(see paragraph 3)

¹⁵ Source: communication with NAW officials

3. The Scottish Parliamentary Corporate Body

The Scottish Parliamentary Corporate Body (SPCB) was established by section 21 of the Scotland Act 1998 (c.46).¹⁶ It has equivalent functions to both the NIA Commission and the NAW Commission. Under section 21(3) of that Act it must:

... provide the Parliament, or ensure that the Parliament is provided, with the property, staff and services required for the Parliament's purposes.

3.1 Procedures for presenting SPCB budget proposals

The process for agreeing the SPCB budget is referred to in a written agreement between the Scottish Executive and the Parliament's Finance Committee on the budgeting process:

*A mechanism has been established to enable the Parliament to vote on its own budget. The Scottish Ministers are agreed that at stages 1 and 2 of the Budget process, the expenditure proposals should include working assumptions on the Parliamentary budget prepared by the Scottish Parliamentary Corporate Body. Provision for the Parliament to scrutinise its own budget is made in a separate understanding with the Scottish Parliament Corporate Body. Should the Scottish Ministers wish to challenge the budget proposed by the SPCB, they will do so by means of an amendment to the Budget Bill to allow debate on the specific issue.*¹⁷

The process is described in a Finance Committee report:

The expenditure of the Scottish Parliamentary Corporate Body (SPCB) is top-sliced from the Scottish Consolidated Fund and is, therefore, allocated before the Scottish Government is able to make other allocations. The SPCB's budget also includes the budgets for the various parliamentary commissioners and the Scottish Public Services Ombudsman.

*As the SPCB's budget is not subject to control by the Scottish Government, the Committee considers the SPCB's proposed budget separately as part of the budget process.*¹⁸

This process is underpinned by a formal written agreement between the SPCB and the Finance Committee (see Appendix 2). Essentially this process is very similar to that followed in the National Assembly for Wales.

¹⁶ Available online at: <http://www.legislation.gov.uk/ukpga/1998/46/section/21> (accessed 27 January 2011)

¹⁷ Available online at: <http://www.scottish.parliament.uk/business/committees/finance/Written%20Agreement%20between%20FC%20and%20Exec%20at%2022.6.05.pdf> (accessed 27 January 2011)

¹⁸ Available online at: <http://www.scottish.parliament.uk/s3/committees/finance/reports-11/fir11-02-vol1.htm#38> (accessed 27 January 2011) (see paragraphs 166-7)

When the Finance Committee produces a report on a stage of the Budget Process it includes a commentary on the SPCB expenditure plans and may recommend whether or not the SPCB's budget should be approved. The Finance Committee's report is then subject to debate by the Parliament.

3.2 Direction of the SPCB

Like the legislation for the NAW Commission, section 21(4) of the Scotland Act 1998 provides that:

*The Parliament may give special or general directions to the corporation for the purpose of or in connection with the exercise of the corporation's functions.*¹⁹

Again, it seems possible that such a direction could include a suggestion of the level of resources that the SPCB should incorporate into its draft budget.

In the agreement between the Scottish Executive and the Parliament's Finance Committee quoted above in section 3.1 it is noted that should the Scottish Ministers seek to challenge the SPCB budget they will do so by seeking amendments to the Budget Bill.

3.3 Effectiveness of the arrangements

The Scottish Parliament's Finance Committee undertook a review of the budget process and reported in June 2009.²⁰ The Finance Committee's review covered a wide range of aspects of the process and made a number of recommendations for improvements. In the context of this paper it is sufficient to note that none of the recommendations suggested changes to the procedures in relation to setting and agreeing the SPCB's resources. It seems reasonable to infer from this that the arrangements are considered to be sufficiently effective.

¹⁹ Available online at: <http://www.legislation.gov.uk/ukpga/1998/46/section/21> (accessed 27 January 2011)

²⁰ Finance Committee (2009) 'Report on the Review of the Budget Process' available online at: <http://www.scottish.parliament.uk/s3/committees/finance/reports-09/fir09-05.htm> (accessed 3 February 2011)

4. Practices in OECD countries

In 2007, the Organisation for Economic Cooperation and Development (OECD) conducted a survey of its member countries' budget practices and procedures.²¹ The survey included the following question:²²

31. In practice, which option most accurately describes the way in which the budget for the Legislature is prepared?

- The Legislature prepares its budget and the Central Budget Authority includes it in the Government's budget proposal without any changes
- The Legislature is subject to the same procedures and policies as any other governmental organisation included in the Government's budget proposal
- The Legislature prepares its budget independently
- Other, please specify below _____

The results for this question were as follows:

Table 1: Preparation of the Legislature's budget in OECD countries

Response	Number	Percentage (of the whole sample)	Countries
The Legislature prepares its budget and the Central Budget Authority includes it in the Government's budget proposal without any changes	16	53.3%	Czech Republic, Denmark, Finland, Greece, Hungary, Ireland, Italy, Luxembourg, Mexico, Norway, Poland, Spain, Switzerland, Turkey, UK, US
The Legislature is subject to the same procedures and policies as any other governmental organisation included in the Government's budget proposal	8	26.7%	Australia, Austria, France, Iceland, Japan, Netherlands, Slovak Republic, Korea
The Legislature prepares its budget independently	2	6.7%	Belgium, Canada
Other	4	13.3%	Germany, New Zealand, Portugal, Sweden
Missing answer	0	0	N/A

Source: OECD Budget Practices and Procedures Survey 2007

²¹ The full results of this survey can be found online at: <http://webnet4.oecd.org/budgeting/Budgeting.aspx> (accessed 31 January 2011)

²² OECD (2007) 'OECD Budget Practices and Procedures Survey' available online at: <http://www.oecd.org/dataoecd/30/45/39466141.pdf> (accessed 31 January 2011) (see page 19)

It can be seen that the UK response – and this applies to the Parliament at Westminster – places the approach within the first category. From the information presented above in relation to the SPCB budget and the NAW Commission budget it would appear that these would also fit within the first category. It is noticeable that the approach taken to the NIA Commission budget during the Budget 2010 process seems to be consistent with the second category – i.e. there has been a process of negotiating or bidding for resources.

5. Concluding remarks

The procedures adopted in both Wales and Scotland provide separate mechanisms for agreeing the parliamentary institutions' budgetary proposals from that followed in relation to government departments. Both processes recognise that the expenditure of these bodies – and this also applies to that of the NIA Commission – reduce the total amount available to the executives of the respective administrations for inclusion in their spending plans. They therefore provide a route for scrutiny and debate of those plans which is independent of the executive – i.e. within the legislature itself – and instead allows elected representatives to question officials on their plans.

The process for settling the NIA Commission budget during the Budget 2010 Process appears to fall within the second category outlined in the OECD survey of budget practices and procedures. The processes for Westminster, Scotland and Wales fall within the first category.

Appendix 1: National Assembly for Wales Standing Order 27:

27.7 Not later than 24 September in each financial year, a member of the Commission must lay before the Assembly a draft budget for the Commission setting out the amounts of resources and cash which the Commission proposes to use for the following financial year and provisional amounts for the subsequent two years or for such other period as the Commission has agreed with the Welsh Ministers.

27.8 The Finance Committee must consider and report to the Assembly on the draft budget for the Commission no later than three weeks after it has been laid before the Assembly. The Finance Committee's report may recommend variations in the amounts proposed in the draft budget provided that the net effect of those variations would not increase the aggregate amounts of resources or cash proposed in the draft budget for the Commission.

27.9 No later than 30 October, a member of the Commission must lay before the Assembly a budget for the Commission, together with a motion that the budget be agreed and incorporated in the annual budget motion under Standing Order 27.17(ii). No amendment to the motion may be tabled and the motion must be debated within seven days of it being tabled.

27.10 If the final budget for the Commission is not agreed, then a member of the Commission must lay before the Assembly a revised budget for the Commission, together with a motion that it be agreed and incorporated in the annual budget motion under Standing Order 27.17(ii). No amendment to the motion may be tabled and the motion must be debated within seven days of it being tabled.

27.11 Further motions under Standing Order 27.10 may be tabled until such time as agreement has been reached but no such motion may be considered by the Assembly after 20 November.

27.12 If the budget for the Commission has not been agreed by 20 November, then the budget for the Commission to be incorporated in the annual budget motion under Standing Order 27.17(ii) is to comprise, for each service or purpose for which resources or cash were authorised to be used by the Commission in the previous financial year, 95% of the amount so authorised.²³

²³ http://www.assemblywales.org/standing_orders_combined_version_-_nov_2010.pdf (accessed 27 January 2011)

Appendix 2: THE BUDGETING PROCESS: AGREEMENT BETWEEN THE SPCB AND THE FINANCE COMMITTEE

Foreword

1. *This document sets out a revised understanding between the Scottish Parliament Corporate Body (SPCB) and the Finance Committee of the Scottish Parliament, in relation to arrangements to be observed in connection with the annual budgeting process. It is not intended to create any legal rights or obligations on either the Scottish Parliament Corporate Body or on the Finance Committee of the Scottish Parliament.*

2. *Under the terms of a separate revised agreement concluded with the Scottish Ministers the Finance Committee has agreed to participate in a biennial budget cycle, with a full three-stage process in Spending Review years and a more limited process in non-Spending Review and election years.*

Background

3. *Scottish Ministers have undertaken to submit each year in which a Spending Review takes place to the Parliament (by 31 March or the first day thereafter on which the Parliament sits), a provisional expenditure plan. This document will set out the Executive's views on priorities for the coming Spending Review period; an initial assessment of progress against the key performance targets for each portfolio set in the previous Spending Review and general expenditure proposals for those forward years for which aggregate figures at programme level are available. The Finance Committee will then seek views from a variety of sources including members of the public and other Committees of the Parliament.*

4. *Normally the Scottish Ministers will present detailed expenditure proposals for the next financial year by 20 September or the first day thereafter on which the Parliament sits. The Finance Committee will then produce a report in consultation with other committees of the Parliament. This will comment on the Scottish Ministers' proposals and may include an alternative set of proposals. If it does, the total spend proposed by the Finance Committee will not exceed the total proposed by the Scottish Ministers. A plenary debate will follow in which Committees and individual members will debate the Finance Committee's report and may seek to propose amendments to the Executive's expenditure proposals through the mechanism of tabling amendments to the Finance Committee's motion, within the total proposed. It should be noted that even if such amendments are agreed to, this does not automatically guarantee that expenditure proposals will be amended in the subsequent Budget Bill.*

5. *The Scottish Ministers will produce a Budget Bill by 20 January each year or the first day thereafter on which the Parliament sits. The format of Budget Bills are contained in a separate agreement which has been made with the Scottish Ministers and the Finance Committee.*

The Parliament's Budget

6. *The expenditure plans of any body which has a prior call on the Scottish Consolidated Fund will reduce the total amount available to the Scottish Ministers for inclusion in their plans. The Parliament's own budget falls into that category. This budget is significant in monetary terms albeit that it forms a very small proportion of the total available resources. It is therefore important that, wherever possible, accurate information about the spending plans of the SPCB is made available to the Finance Committee and the Scottish Ministers at an early stage.*

7. *To this end, the SPCB has agreed that it will provide to the Committee and to the Scottish Executive, no later than 1 March each year or the first day thereafter on which the Parliament sits, a provisional expenditure plan. The SPCB will also provide to the Committee and to the Scottish Executive, no later than the end of the first week in November each year, a further expenditure plan reflecting any changes which have occurred since 1 March.*

8. *If by 1 March when a provisional expenditure is due, the SPCB identifies that there are no changes to the expenditure plan submitted the previous year, then the SPCB will write to the Finance Committee to confirm that there are no planned changes and the SPCB will not be required to provide a provisional expenditure plan.*

9. *However, the SPCB undertakes to keep both the Committee and the Scottish Ministers informed throughout the period between March and January of any substantive changes to the Scottish Parliament's Budget in recognition of the fact that these would affect the Scottish Executive's expenditure plans and the Parliament's consideration of them.*

10. *The SPCB also agrees that, in order to assist the Committee's understanding of the expenditure plans, Members of the SPCB, the Clerk and Parliamentary staff will provide information and give evidence to the Committee when requested. The SPCB will, in submitting expenditure plans, adopt the same approach as the Scottish Executive. The SPCB will seek to answer any questions from the Committee and make information available to the Committee.*

11. *The Finance Committee will consider the SPCB's provisional expenditure plans. Where the Committee produces a report for the*

Parliament on a particular stage of the Budget Process, then such a report will include commentary and, if appropriate, recommendations, on the SPCB's provisional expenditure plans. This report can be debated by the Parliament.

12. The SPCB's final expenditure proposals will appear in the annual Budget Bill which will be voted upon by the Parliament.