

Document 1 - Briefing pack

What	Scottish Conservative and Unionist Party Debate: Transparency of Scotland's Governing Party
Where	Scottish Parliament
When	2 May 2023 14:50-16:00
Key message(s)	We are open and transparent with the Scottish public around the administration of government.
Supporting official	Penny Curtis is available to attend if Ministers would like a supporting official to be present in Parliament.
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Annex A – Freedom of Information

Top Lines

- The Scottish Government recognises the central importance of freedom of information rights in Scotland for democratic engagement and scrutiny
- We are committed to discharging all our obligations under FOI legislation
- We believe the FOI regime in Scotland is fundamentally sound, but we are open to considering ways that its operation might be improved
- The Scottish Government continues to handle a historically high FOI caseload
- Progression of our FOI Improvement plan continues to be a priority

FOI handling in Scottish Government

- In March, FOI/EIR performance of the Scottish Government for responding on time to requests was 85%, and 60% for reviews (*note: On 2 May, these stats were still to be approved by the Minister*)
- In 2022 performance on responding to requests on time averaged at 86%, comparable to the performance of other public authorities in Scotland.
- Request volumes have been consistently increasing: **2019 – 3049; 2020 - 3365 ; 2021 – 4196; 2022 - 4688**
- Volumes of requests have increased by over 50% in 3 years.
- Unlike most other Scottish public authorities, the Scottish Government has seen a sustained increase in FOI request volumes since the pandemic.
- This was recognised by the Commissioner at the Standards, Procedures and Public Appointments Committee on 23 March

Scottish Government FOI Performance and Improvement

- The Scottish Government's performance against statutory deadlines is comparable to that of the wider public sector in Scotland and to that of the UK Government.
- We continue to be engaged with the Scottish Information Commissioner's intervention to improve our FOI performance and practice
- We are progressing our FOI improvement plan, agreed with the Commissioner:
- Revised guidance for case handlers is now live and this is complimented by increased case handler training
- Officials are undertaking internal audits on cases ensuring that responses comply with our internal control and assurance procedures as agreed with the Commissioner.
- Lessons learned are being shared widely and several directorates are undertaking local improvement activity with advice and assistance from trained Quality Improvement practitioners.
- My officials will be engaging with the Commissioner and his staff over the coming months to support his next assessment of our progress over the summer.

Access to Information Rights in Scotland

- The Scottish Government has recently consulted on Access to Information rights in Scotland
- Our consultation sought views on the operation of the FOI regime in Scotland and how it might be improved
- The recommendations of the parliamentary report on post-legislative scrutiny of FOISA produced in the last session formed the basis of the consultation.
- The consultation considered the agility of the legislation, developments in information technology, improving proactive publication and a range of other issues.
- Responses to the consultation are currently being analysed. We will publish the analysis and set out our proposed approach in due course.
- We acknowledge the contribution to the discussion being made by Katy Clark MSP through her own recent consultation on a proposed Members' Bill. We await outcomes from that process also.

Agility of legislation, outsourcing and 'arms-length' bodies

- The agility of the FOI regime in Scotland to deliver access to information rights across varied models of public service delivery was a key theme of the recent consultation.
- The Scottish Government has previously used its power under section 5 of FOISA to extend coverage of FOISA in significant ways
- In 2013 we made an order extending FOISA to arms-length organisations delivering culture and leisure services on behalf of local authorities.
- In 2016 we extended to private prisons, independent special schools, grant aided schools, providers of secure accommodation and Scottish Health Innovations Ltd.
- Most recently, in 2019 a section 5 order extended coverage of FOISA to all registered social landlords and their subsidiaries.
- Every organisation designated as a Scottish public authority under FOISA is responsible for its own compliance with the legislation – including in regard to proactive publication of information.
- The Scottish Government remains committed to actively considering the future use of Scottish Ministers' power to extend the legislation.

Circularity Scotland

- Circularity Scotland is not part of the public sector and is not under contract to the Scottish Government. As such, it is not subject to the Freedom of Information (Scotland) Act 2022.
- In line with the 'polluter pays' principle, and just like similar schemes around the world, Scotland's deposit return scheme is being delivered and funded by industry, led by the scheme administrator, Circularity Scotland.

Court of Session Appeal re James Hamilton Inquiry request

- As this matter is now subject to live court proceedings, I cannot comment on it.

Annex B – Open Government

Top Lines

The Scottish Government strongly supports the work of the Open Government Partnership (OGP), and is proud to be an active member of an organisation that promotes openness, empowers the public and fights corruption.

- A key purpose of OGP is to support governments and civil society to work together to deliver multi-year action plans that make commitments on transparency, participation, inclusivity and accountability.
- Scotland has been a member of the Open Government Partnership since 2016.
- During that time we have collaborated with civil society to develop and deliver two Action Plans.
- We are currently delivering a third Action Plan that focuses on health and social care, climate change, fiscal transparency, improving participation, and data and digital
- These are all areas in which civil society and members of the public have told us the ongoing promotion of transparency, participation, inclusivity and accountability is important to them.
- We work collaboratively with civil society to support Scotland's active membership of OGP internationally.

An independent evaluation concluded that the UK Government had not met Open Government Partnership's minimum standards of collaboration, transparency and accountability when producing their most recent Action Plan

- The UK Government is a separate member of OGP
- OGP members' work is independently assessed
- This assessment found that the UK Government did not provide satisfactory reasoning as to why priorities, ideas or activities proposed by non-government stakeholders were, or were not, included in their Action Plan.
- It was found the UK was unable to sufficiently account for how feedback from the public was used to shape the plan before it was finalised in late 2021.
- In February 2021, the UK was placed under Procedural Review for not meeting the minimum standards during the co-creation of their 2019-21 Action Plan
- Last year Kevin Keith, Chair of the UK Open Government Network, said: "In 2011 the UK government was a founding member of the Open Government Partnership. It provided global leadership on how and why governments should be transparent, held to account, and involve the public in decision-making. Now, that very same Partnership may declare the UK government 'inactive.' It is a shameful fall from grace."

Annex C - Regulation of Political Parties

Political Party Finance

Political parties are subject to a number of statutory reporting requirements in relation to their finances. Financial accounts of political parties are published by the Electoral Commission and the Commission maintains registers of Political Parties, Non-party campaigners & Referendum Participants, and a database of donations, loans, election/referendum spending & party accounts.

Any donations from unincorporated associations have to be included in political party quarterly returns. Unincorporated associations are also supposed to report any gifts received to the Electoral Commission.

Scottish Government consultation on electoral reform

The consultation closed on 15 March and sought views on the following proposals (all but the final measure reflect changes made for reserved elections in the UK Elections Act 2022):

- To clarify the legal test for what constitutes notional campaign expenditure
- To restrict spending by ineligible foreign third-party campaigners, unless spending less than £700.
- To explore whether groups must register with the Electoral Commission if spending more than £10,000 across the constituent parts of the UK, but less than the limits in each individual country
- To create an order-making power to allow Scottish Ministers to add or remove categories of eligible third-party campaigners
- To ensure that the Electoral Commission's code of practice for third-party campaigning is extended to include devolved Scottish elections.
- To increase the maximum amount the Electoral Commission can fine people for breaking electoral law.

Digital imprints

- The UK Elections Act introduces a new UK-wide regime for regulating digital imprints (which identify who has produced, promoted and, in certain circumstances, paid for online campaign material). In doing so the UKG has unilaterally sought to supplant the existing Scottish regime for digital imprints. The pre-existing Scottish provisions have worked well and there are some material differences between the two regimes.
- The consultation acknowledged that the Scottish Parliament can't overturn the regime introduced by the Elections Act 2022 and explored the relative benefits of the different regimes and whether it is feasible or desirable to retain any aspect of the Scottish approach on top of the new regime imposed by the UK Elections Act.

Electoral Commission

- The Scottish Elections (Reform) Act 2020 made the Electoral Commission more accountable to the Scottish Parliament for its work on devolved elections but

retained the overall supervisory role of the UK Parliament Speaker's Committee. Recent changes made by Senedd Cymru in relation to the Commission's devolved activities in Wales went further than in Scotland, including requiring the Llywydd's Committee to report annually on the exercise by the Llywydd's Committee of its functions in relation to oversight of the Commission.

- The consultation explored whether any amendment needs to be made to the oversight role of the Scottish Parliament and the interaction with the Speaker's Committee. One possible option is for a subject Committee of the Scottish Parliament to oversee the Commission's devolved activities.
- The consultation also explored whether there is scope for the Commission to obtain other enforcement powers in relation to devolved elections.

Annex D – Pre-release access of statistics

Top Lines

- Pre-Release Access (PRA) is the practice of making official statistics available in advance of publication to specific individuals not involved in their production. This allows Ministers (and others) to make informed comments at the time the figures are published.
- The Pre-release Access to Official Statistics (Scotland) Order 2008 (the “2008 Order”) sets out the rules and principles relating to the granting of PRA to official statistics in their final form prior to publication. It is made under powers in the Statistics and Registration Service Act 2007 which allow the Scottish Ministers to set rules on PRA for Scottish devolved statistics.
- PRA is a longstanding practice, and it has been around since before the 2008 Order. The non-statutory National Statistics Code of Practice Protocol on Release Practices, which was superseded by the 2008 Order, set a maximum of 40.5 hours for market sensitive statistics and 5 working days for non-market sensitive statistics.
- Scottish Ministers have publicly undertaken to follow the advice from the Chief Statistician for PRA arrangements. The Scottish Government position is that PRA is in practice a matter for the Chief Statistician. Scottish Ministers are content that he has made his views clear in support of retaining the current arrangements in line with that advice.
- The Chief Statistician is therefore responsible for ensuring the orderly release of statistics and building trust with the public in the fair and equitable sharing and publishing of information around official statistics and management information.

Giving arm’s-length bodies control over information publication

- It is for individual public sector organisations to make decisions on the orderly release of information. However similar to the pre-release access and orderly release of statistics, information must be released in accordance with the guidance such as the Official Statistics Code of Practice and other guidance from the Office for Statistics Regulation.

Annex E – Budget process and historic underspends

Top Lines

The Scottish Government finances have checks and balances embedded in legislation and The Budget is scrutinised and approved by the Scottish Parliament each year.

- In-year Budget Revisions are scrutinised by the Finance and Public Administration Committee. The Committee has commended the additional information that has been provided in recent budget revisions to aid scrutiny.
- Spending plans are audited against international accounting standards by Audit Scotland. The Auditor General's report on the 2021-22 Accounts confirmed an unqualified audit opinion on the Scottish government's accounts for the seventeenth consecutive year
- Since 2007 the Scottish Government has ensured that any and all underspends have been re-invested in public services
- During this timeframe we have ensured that our Reserve limits have never been breached and therefore not a single penny has been handed back to the UK Government.
- This is despite the fact that our Scotland Reserve limit now allows for a tolerance of less than 1.5% of our total discretionary budget.
- Indeed the cumulative underspend on the Scottish Budget since 2007 is just 0.7% whereas the like for like figure between 1999 and 2007 is 2.3%

2021-22 Financial Year specific lines

- 2021-22 Scottish Government Consolidated Accounts were laid before Parliament on 1 December. The Auditor General's report on the Accounts confirms an unqualified/clean audit opinion for 17th consecutive year.
- The Scottish Parliament is not allowed to overspend its budget. As a consequence, the Scottish Government has consistently adopted a position of managing income and expenditure to ensure it remains within the budget limits that apply, but is able to carry forward some resources for use in a future years to match demand. No spending power is lost to the Scottish Budget as a result of the underspends set out here.
- The Scottish Government published its Final Outturn report for 2021-22 on 28 April 2023. As part of our commitment to increase transparency the report includes more detail than has ever previously been provided.
- The majority of the £2,087 million Scottish Budget underspend in the Final Outturn Report related to funding adjustments and non-cash. There is no loss of spending power as a result of this underspend.
- There was a £699 million fiscal underspend against the Treasury controls. Every penny has been allocated in 2022-23, which allows us to implement measures at the most optimal time, rather than being constrained to a single financial year.
- Final outturn figures published in December show total fiscal underspend of £699 million. This consists of £604 million Resource, £81 million Capital and £14 million Financial Transactions. This equates to 1.5 per cent of the £47.5 billion total and has been carried forward in full through the Scotland Reserve.

Background

Underspends for each year since devolution:

Financial year	Net fiscal underspend (£m)	Cumulative underspend by party in power	Total SG funding	Underspend as % of total funding	Cumulative underspend by party in power %
	(£m)	(£m)	(£bln)	%	%
2021-22	699	3,536	47.8	1.5%	0.7%
2020-21	426	2,837	48.5	0.9%	0.6%
2019-20	256	2,411	34.5	0.7%	0.6%
2018-19	339	2,155	32.2	1.1%	0.6%
2017-18	453	1,816	31.3	1.4%	0.5%
2016-17	191	1,363	29.6	0.6%	0.4%
2015-16	137	1,172	29.7	0.5%	0.4%
2014-15	204	1,035	28.1	0.7%	0.4%
2013-14	176	831	27.9	0.6%	0.4%
2012-13	179	655	27.9	0.6%	0.3%
2011-12	179	476	27.7	0.6%	0.3%
2010-11	12	297	35.7	0.0%	0.2%
2009-10	119	285	34.5	0.3%	0.3%
2008-09	124	166	33.2	0.4%	0.3%
2007-08	42	42	31.9	0.1%	0.1%
2006-07	256	3,679	25.9	1.0%	2.3%
2005-06	296	3,423	23.8	1.2%	2.5%
2004-05	382	3,127	22.2	1.7%	2.8%
2003-04	623	2,745	21.0	3.0%	3.0%
2002-03	394	2,122	20.5	1.9%	3.1%
2001-02	643	1,728	17.6	3.7%	3.5%
2000-01	669	1,085	16.3	4.1%	3.5%
1999-00	416	416	15.0	2.8%	2.8%

2021-22 Consolidated Accounts and the Final Outturn Report for the Scottish Budget

The booklet which supports the 2021-22 Budget Act provides details of the full Scottish Budget. Below is a high level reconciliation between the two bases of reporting.

Reconciliation from Scottish Government Consolidated Accounts to HMT Final Outturn	Final Outturn £million	Budget £million	Over / (Under) £million
Total Scottish Government Consolidated Accounts*	49,237	51,225	-1,988
Remove Non-Cash elements	-3,000	-3,805	805
Adjust Grant In Aid spend with HMT budgetary spend	260	315	-55
Add Other Bodies funded by the Scottish Government	358	378	-20
Funding adjustments	-13	-572	559
Scottish Government - HMT Basis	46,842	47,541	-699

2021-22 Public Expenditure Statistical Analyses (PESA) published by HM Treasury in July 2022

2021-22	Cash Underspend £million	Cash Underspend %
Scotland	1,154	2.7%
Wales	395	2.0%
Northern Ireland	339	2.1%
England	16,865	3.5%

The published 2021-22 PESA figures for Scotland above illustrate the cash underspend position against HM Treasury block grant funding only.

The published figures also exclude funding raised through Scotland Act powers, i.e. Scottish Income Tax, Devolved Taxes and Capital Borrowing. The underspend figures reported by HM Treasury are therefore compared against a lower funding baseline and this has the effect of increasing the headline underspend percentage for Scotland.

The correct totals for Scotland when compared against total funding including Scottish Income Tax, Devolved Taxes and Capital Borrowing are summarised below:-

Scotland	Cash Underspend £million	Cash Underspend %

FINANCIAL TRANSPARENCY

- We have taken a number of steps to improve the transparency around the Scottish Government's finances.
- Since the publication of the Scottish Government Consolidated Accounts 2021-22 and the related audit reporting, the Scottish Government has:
 - updated the reporting on the financial position in the recent Finance Update and Spring Budget Revision;
 - laid the Final Outturn report for 2021-22, which will update the outturn reporting from the Provisional Outturn statement and in the suite of annual accounts; As part of our commitment to increase transparency the report includes more detail than has ever previously been provided.
 - and will continue to engage with Audit Scotland on how transparency can be further improved in the next round of financial reporting.
- We have significantly enhanced the material provided to the Finance and Public Administration Committee as part of budget revision scrutiny and indeed this commended by all members of that committee, including Liz Smith.
- We have also recently published analysis of the Scottish Budget 2023-24 by COFOG including 2021-22 and 2022-23 comparative data. The document was published on the Scottish Government website alongside the Budget's supporting documents on 10 February 2023. The Finance and Public Administration Committee was informed.

Background

The Scottish Government first expanded this material in the 2021-22 Spring Budget Revision. During the scrutiny session on Tuesday 8th March 2022 the following comments were made in respect of this:

The Convener: *Thank you for that opening statement, minister. Before we go any further (redacted – free and frank provision of advice)*

Daniel Johnson: *I have two things to say about that. First, I understand the how. Secondly, it is not about the information that you have provided, but is about how the situation presenting that information is being managed. That is the critical difference. I hope that minister accepts that it is a good illustration of the point that Audit Scotland and others have made that it is incredibly difficult to track and manage from the budget through to announcements through to outturn through to consolidated accounts.*

Liz Smith: *(redacted – free and frank provision of advice) I also thank you, minister, for the letter that you sent me on 16 November 2021, when I asked various questions regarding the autumn budget revisions, particularly on the education front.*

Annex F – Public Sector Pay

Top lines

- The Scottish Government publishes the salaries (in £5k bands) of those Senior Civil Servants at Director level and above.
- Data as at 31 March 2022 is available on the Scottish Government website ([Senior Civil Service pay: March 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/senior-civil-service-pay-march-2022/pages/1-2-introduction.aspx)) and will shortly be updated as at 31 March 2023.
- The Scottish Government does not hold data in relation to the wider public sector.

SCS pay

- Pay for Senior Civil Service is reserved to UKG and operates under a Cabinet Office framework.
- For operational reasons the SG may find it necessary to pay higher salaries in response to the specific requirements of roles which require relevant skills, qualification, experience etc., and which are subject to external market pressures.
- The pay of the Permanent Secretary is set by Cabinet Office.

Ministerial and MSP salaries

- Ministerial and MSP salaries (including that of the FM) are set and paid by the Scottish Parliament and the Scottish Government has no role in this.
- Salaries are agreed by the whole Parliament in line with proposals put forward by the Scottish Parliament Corporate Body.
- The rules of the Scottish Parliament Salaries Scheme do not give the power to withhold an annual increase from the gross salary entitlement.
- Since 1 April 2009, Scottish Ministers have declined to accept their full salary entitlement, and their take-home pay remains at 2008-09 levels.

Annex G – Publication of Ministerial Expenses

Lines to take

- Ministerial engagements (including official visits), overseas travel, car journeys, domestic travel and gifts received are published on the Scottish Government website in line with the terms of the Scottish Ministerial Code.
- The Scottish Government takes forward the proactive release of Ministerial engagements, overseas and domestic travel (including travel and subsistence expenses), car journeys and gifts 3 months in arrears, as set out in the Scottish Ministerial Code.
- The publication of Ministerial expenses and transport dates is up-to-date with January and February 2023 being published on 2 May 2023.

Background

The proactive release of Ministerial engagements (including travel and subsistence expenses) are published 3 months in arrears, as set out in the Scottish Ministerial Code. [redacted – free and frank provision of advice].

Annex H – Scottish Ministerial Code

Lines to take

- The Scottish Ministerial Code sets clear guidelines for Ministers on how they should act and arrange their affairs to uphold the Seven Principles of Public Life – namely: selflessness, integrity, objectivity, accountability, openness, honesty, leadership.
- All Scottish Ministers are bound by the Scottish Ministerial Code’s terms.
- Ministers are personally responsible for deciding how to act and conduct themselves in light of the code and for justifying their actions to Parliament and the public. The First Minister is the ultimate judge of the standards of ministerial behaviour and of the appropriate consequences of a breach of those standards.
- Where he deems it appropriate, the First Minister may refer matters to independent advisers who advise on the application of the code. This is so he can receive advice to help him make a judgement about any action required in respect of ministerial conduct.
- The independent advisers are currently:
 - Rt Hon Dame Elish Angiolini QC DBE (since August 2011)
 - James Hamilton, former Director of Public Prosecutions at the Irish Office of the Director of Public Prosecutions (since January 2013)
- A new edition of the Scottish Ministerial Code will be published by the First Minister in due course.

Background

1. Since devolution, eight editions of the Code have been published, the latest in February 2018. [redacted – free and frank provision of advice].

Annex I – Policy prospectus/Scottish Government priorities

On 18th April, the First Minister set out a new policy prospectus which is clear on the outcomes we will deliver over the next three years.

- It sets out the key aims and deliverables we intend to achieve in each Cabinet Secretary's portfolio – working constructively with our Green party colleagues.
- The First Minister was also clear on the three missions which will define our success.
- These are centred on the principles of equality, opportunity and community – require us to tackle poverty; to build a fair, green and indeed a growing economy; and to improve our public services.
- Throughout the next three years we will report routinely, regularly and transparently on our performance against these aims and outcomes – so the people of Scotland can see we are delivering on their priorities.
- The prospectus focuses on the priority outcomes to be achieved by 2026.
- It is not an exhaustive list of all Scottish Government policy commitments.
- The prospectus does not replace the Programme for Government 2023-24, which will be set out to Parliament with planned legislation after the summer recess.

We are having to make tough decisions about our priorities.

- We are facing the most difficult public spending environment that this devolved parliament has clearly ever seen.
- But for all the significant challenges we face, we also know that we can build on the important successes.
- We know already that Scotland currently outperforms the UK on unemployment rate with the unemployment rate for men over 16 at the lowest on record.
- Our NHS waiting times and court backlogs are improving following the pandemic.
- Despite the public spending climate, we have expanded free childcare provision, and introduced the game-changing Scottish Child Payment.
- And of course Scotland continues to have a highly skilled workforce, world-class universities and colleges, and huge potential in some of the key economic sectors of the future.
- It is on these foundations that this new government can deliver the ambitious outcomes we have committed to.

The prospectus highlights the pressure which remains on our finances because of a decade of austerity from the UK Government and high inflation eroding the value of public spending.

- Difficult choices are having to be made in relation to focussing our available budget, and ensuring value for money is achieved with every pound we spend.
- This Government is transparent on the challenges facing public finances.
- Balancing the Scottish Budget requires difficult decisions on priorities.
- More detail on our public finances and our approach to managing them will be set out in the Medium Term Financial Strategy later this year.
- What we have set out is lawful, affordable, deliverable and fair.

The priorities have been set using evidence collected from stakeholders over time, including directly since the First Minister took office.

- Collaborative working will be key to achieving these outcomes – the government is committed to continuing work with stakeholders
- The First Minister and Cabinet have worked in partnership and collaboration with Green Party Ministers in agreeing the prospectus and setting of priorities.

Our focus on outcomes has been welcomed by business, by the third sector and by the public.

- **QUOTE** – Anna Fowlie, Chief Executive, SCVO: *“I welcome the Scottish Government’s latest commitment to progress Fairer Funding across its support for the voluntary sector, including the commitment to multi-year funding. Despite similar statements made by previous governments, progress to date has fallen far short of what is required, so I hope this marks a fresh start as promised.”*

A ‘New Deal for Scottish Business’ will be sought, with urgent discussion to agree how government can better support business and communities

- **QUOTE** – Dr Liz Cameron, CBE, Chief Executive, Scottish Chambers of Commerce: *“This is a positive first step from the government towards addressing the resetting of the relationship with the business community. We are ready and willing to work constructively with the Scottish Government to develop a world-leading economy that attracts investment, creates jobs, and is globally competitive.”*

An extension of the Deposit Return Scheme launch date to March 2024, from August this year

- **QUOTE** – Friends of the Earth Scotland: *“We are living in a climate emergency, & this simple scheme should be an exciting step towards progress. It’s a concerning start to Humza Yousaf’s leadership.”*
- **QUOTE** – Catherine Gemmel, Scotland Conservation Officer, Marine Conservation Society: *“Today @ScotGovFM announced another delay to Scotland’s deposit return scheme to March 2024. Our @mcsuk vols found drinks related litter on 95% of beaches surveyed last year. Scotland’s beaches continue to pay the price. We need everyone to come together to make this work.”*
- **QUOTE** – Scottish Hospitality Group: *“Today’s announcement by @ScotGovFM on a delay of the Deposit Return Scheme is welcomed, and the next 10 months need to be spent working closer with the sector. Lots more to do, and joining a UK wide scheme is the best option.”*
- **QUOTE** – Andrew McRae, Scotland Policy Chair, Federation of Small Businesses (FSB): *“It is essential the Scottish Government now capitalises on this pause and engages in meaningful conversation with businesses to understand and address their concerns. Only then can DRS be delivered in a way that will work”*

Officials to work with the industry and public health stakeholders to agree a new set of proposals on the potential restrictions to alcohol advertising

- **QUOTE** – Mark Kent, Chief Executive, Scottish Whisky Association: *“This is a very welcome announcement by the First Minister, who has listened to the concerns voiced by industry on the alcohol marketing consultation and the*

Deposit Return Scheme. More widely, he has signalled a reset with the Scottish business community so the Scotch Whisky industry and other sectors can help the Scottish government drive economic growth, creating prosperity and opportunity across the nation.”

- **QUOTE** – Alison Douglas, Chief Executive, Alcohol Focus Scotland: *“While it is right for the Government to consider the potential impact of marketing restrictions on business, previous experience suggests that industry views on the likely impacts of public health policies should be subject to careful scrutiny. In the case of minimum unit pricing, a policy that has been shown to save lives, exaggerated claims were made about the potential negative impacts on the industry yet the evaluation has found ‘minimal impact’ on it. It has been proven that seeing alcohol advertising makes it more likely that our children and young people will start to drink alcohol and that they will go on to develop an alcohol problem. We cannot afford to delay action.”*

Confirmation of a further £1.3 billion investment for the Scottish Child Payment over the next three years

- **QUOTE** – John Dickie, Director in Scotland, Child Poverty Action Group: *““Humza Yousaf’s commitment to tackling child poverty as part of wider action to promote equality, opportunity and community is welcome, but it is disappointing that he has not taken this opportunity to announce any new support for hard up families. His leadership campaign pledge to increase the Scottish child payment to £30 in his first Budget was widely welcomed, as was his commitment to see what he can do before then. With the Scottish child payment losing real terms value by the day there is no time to waste. The one in four of Scotland’s children still living in poverty really can’t wait.”*

Commitment to a timetable that sets out how this Government will get to £12 an hour for adult social care workers

- **QUOTE** – Rachel Cackett, CEO Coalition of Care & Support Providers in Scotland *“It should be a national scandal that decisions on investing in social care and support are kicked down the road, over and over again. Today was no exception. £12 per hour aspired to, but only for those working with adults. A delivery timetable on pay promised, with no clear dates. The Scottish Government must value social care’s contribution to the people and economy of Scotland by paying ALL staff properly and fairly for the work they do.”*

Investment of up to £25 million to convert suitable properties into affordable homes for key workers and others

- **QUOTE** – Callum Chomczuk, National Director at Chartered Institute for Housing (CIH) Scotland: *“CIH Scotland welcomes the commitment, from the First Minister, about the role housing will play over the next three years, as part of his first major policy statement...We can’t address poverty unless everyone has a safe affordable home, we can’t build the green economy without investment and leadership from the housing sector and we can’t improve public services without making high quality housing a key tenant.”*

A six month pilot removing peak-times fares from ScotRail services from October

- **QUOTE** – Transform Scotland: *“Pleased to see continued commitment from @HumzaYousaf in new @scotgov programme to: Public transport affordability; Traffic reduction; Active travel investment; Decarbonising bus & rail.”*

Reinstating Scotland’s participation in the Trends in International Mathematics and Science (TIMSS) and Progress in International Reading Literacy (PIRLS) studies to increase the availability of internationally comparable data on education performance

- **QUOTE** – Andrea Bradley, General Secretary at Educational Institute of Scotland: *“In re-joining Timss and Pirls, the challenge for the cabinet secretary will be to avoid the mistakes of the past, where a competitive, data-driven culture has been counter-productive...The EIS acknowledges the value of data in supporting progress in learning - whether it is gathered locally, nationally or internationally - used in its proper context to inform learning and to assist educators in improving teaching and learning for all children and young people.”*

Document 2 – Supplementary briefing

Limit on the number of MSPs who can take up cabinet secretary or ministerial roles in government

- There is currently no such restriction in place (*although there is a limit in the UKG context*). However, in the Scottish devolved context the Scotland Act provides that any proposals by the FM to make ministerial appointments must be agreed in advance by the Parliament.

[redacted – free and frank provision of advice]

Introduction of parliamentary privilege for MSPs

- A matter for the Scottish Parliament.

For awareness: The Scotland Act provides for privilege only for the purposes of defamation. Privilege in the UK context (undefined) has been seen as open to abuse.

Election of committee conveners by the whole Parliament

- A matter for the Scottish Parliament.

Stronger powers for parliamentary committees to compel the provision of evidence and the appearance of witnesses

- A matter for the Scottish Parliament.

A right of recall for MSPs who have been convicted of a crime or face serious sanction by the Scottish Parliament.

- A matter for the Scottish Parliament.

[redacted – free and frank provision of advice]

Document 3 – Opening speech

5 mins speaking time, 4 mins to allow for interventions = 560 words

Presiding officer, you almost have to admire the brass neck that you need to complain about a lack of party transparency when you lead the Scottish Conservative party.

His is a party that illegally prorogued the UK Parliament to avoid debate and scrutiny.

The party of a prime minister that would only agree to speak to the Scottish Press if he could hand pick the papers, and hand pick the questions.

The party that packs the House of Lords with donors, like Scotland Office Minister Lord Offord who before being appointed for Life to the House of Lords and given a place on the Government payroll had given £150,000 to the Tories.

The party that has received hundreds of thousands from unincorporated associations that do not reveal the origin of their funding.

A party that refuses to say how many members it has, while criticising those that do.

There is a word for a leader who acts like this, presiding officer.

And that word is hypocrite.

I'm not going to stand here and claim that there are not issues that need to be addressed within the SNP.

But I can stand here and say that these issues are being addressed within the SNP – not a claim that Douglas Ross could make about his own party.

Within days of his election as leader of the SNP, the First Minister announced a urgent review of internal party governance.

As our amendment makes clear, this is a government that places a great importance on openness and transparency.

We are fully committed to meeting the standards the public rightly expects of us on being an open government.

Let me give you just a few examples of that. Ministerial engagements and travel are published monthly, and we also aim to proactively publish minutes of Government meetings on our website, so that people can see who their Government is meeting with, what we are discussing and understand how decisions are taken.

We are focussed on making the necessary improvements on handling Freedom of Information requests, as set out in our published improvement plan agreed with the Information Commissioner. Our performance on responding to requests on time is comparable to the wider public sector in Scotland, at around 86%. We are

responding to significantly more requests for information, rising by over 50% over the last 3 years.

We have also recently enhanced transparency on Scottish Government finances to Parliament and the public, including through providing more detailed outturn reporting and providing more detailed material to the Finance and Public Administration Committee, which I know all members of that committee have welcomed.

Presiding officer, let me come back to the issue of party membership.

Because of the five parties represented in this chamber the only two to have published up to date figures of party members.

The SNP and the Scottish Green Party.

Douglas Ross has steadfastly refused to publish the number of members that the Scottish Conservatives currently have.

He says he has nothing to hide, yet hide them he does.

His defence in an interview with ITV Border is that his party only publishes membership figures during a leadership election.

Presiding officer, given Douglas Ross' performance today and in recent weeks, I don't think we'll have to wait too long before they will have to publish those figures.

Document 4 – Closing speech content

Summary content for closing speech

Speaking notes:

- The Scottish Government recognises the fundamental importance that access to official information and effective scrutiny has in ensuring good government and democratic accountability.
- That's why I am absolutely determined that the Scottish Government should be performing to the highest possible standards across all the relevant areas discussed today.
- We are taking a range of actions across government to ensure openness and transparency, from providing additional information to the Finance and Public Administration Committee on the Budget process and working with the Scottish Information Commissioner to improve FOI performance, to consulting with the public on electoral reform and ensuring the Ministerial Code is upheld at all times.
- As we always do, in formulating the 2023-24 Budget we have listened to the views of other political parties, of business, trades unions, the third sector and many other stakeholders. Our pre-Budget engagement activities have expanded year-on-year, with views sought and heard from a range of different organisations and individuals via public consultation and Ministerial roundtables. Our engagement activity is reviewed each year to ensure that it feeds into the Budget process adequately and hears from as broad a range of individuals and organisations as possible to inform policy development.
- Ministers are also required by statute to review the National Outcomes within five years of their previous publication, with the next review due no later than June 2023. We are currently preparing to begin our public engagement on this issue in the coming months and, more widely, are continuing to support the work of the Open Government Partnership and to deliver Scotland's third Open Government National Action Plan in partnership with civil society.
- I refer to Jackie Baillie's amendment. It is for Parliament to decide how it goes about its work and scrutiny of the government – including appointment of conveners, recall of members, and parliamentary privilege – and proposals by the FM to make ministerial appointments must be agreed in advance by the Parliament.
- **Reference points made in debate**

Background notes on key issues:

Engagement on the Budget (redacted – personal information)

- Scottish Government finances have checks and balances embedded in legislation and The Budget is scrutinised and approved by the Scottish Parliament.
- The in-year Budget Revisions are scrutinised by the Finance and Public Administration Committee – which has commended the additional information that has been provided in recent budget revisions to aid scrutiny.
- Spending plans are audited against international accounting standards by Audit Scotland, with the Auditor General's report on the 2021-22 Accounts confirming an unqualified audit opinion on the Scottish government's accounts for the seventeenth consecutive year.
- Under the current devolution settlement, the Scottish Parliament is not allowed to overspend its budget. As a consequence, the Scottish Government has consistently adopted a position of managing income and expenditure to ensure it remains within the budget limits that apply, but is able to carry forward some resources for use in a future years to match demand.
- No spending power is lost to the Scottish Budget as a result of the underspends set out here.

Freedom of Information (redacted – personal information)

- It is right that the FOI performance and practice of the Scottish Government should be subject to scrutiny. The people of Scotland would expect nothing less.
- I recognise the fundamental importance that access to official information has for enabling effective democratic scrutiny and dialogue in Scotland, and I am determined that this is an area where the Scottish Government should be performing to a high standard.
- We continue to be engaged constructively with the Scottish Information Commissioner's ongoing intervention into our FOI performance, and we are prioritising the delivery of our FOI Improvement Plan.
- Our performance on responding to requests on time is comparable to the wider public sector in Scotland, at around 86%. We are responding to significantly more requests for information, rising by over 50% over the last 3 years.
- We have also recently consulted to seek views on the operation of access to information rights in Scotland, following the post-legislative scrutiny of FOI legislation undertaken in the last session.
- We are determined that access to information rights in Scotland should be an effective tool to enable people to better understand the decisions taken by government and public services in Scotland, and to enable informed participation in those decisions.

Pre-Release Access of Statistics

- Pre-Release Access (PRA) is the practice of making official statistics available in advance of publication to specific individuals not involved in their production. This allows Ministers (and others) to make informed comments at the time the figures are published.

- The Pre-release Access to Official Statistics (Scotland) Order 2008 (the “2008 Order”) sets out the rules and principles relating to the granting of PRA to official statistics in their final form prior to publication. It is made under powers in the Statistics and Registration Service Act 2007 which allow the Scottish Ministers to set rules on PRA for Scottish devolved statistics.
- PRA is a longstanding practice, and it has been around since before the 2008 Order. The non-statutory National Statistics Code of Practice Protocol on Release Practices, which was superseded by the 2008 Order, set a maximum of 40.5 hours for market sensitive statistics and 5 working days for non-market sensitive statistics.
- Scottish Ministers have publicly undertaken to follow the advice from the Chief Statistician for PRA arrangements. The Scottish Government position is that PRA is in practice a matter for the Chief Statistician. Scottish Ministers are content that he has made his views clear in support of retaining the current arrangements in line with that advice.
- The Chief Statistician is therefore responsible for ensuring the orderly release of statistics and building trust with the public in the fair and equitable sharing and publishing of information around official statistics and management information.

On arm’s length bodies

- It is for individual public sector organisations to make decisions on the orderly release of information. However similar to the pre-release access and orderly release of statistics, information must be released in accordance with the guidance such as the Official Statistics Code of Practice and other guidance from the Office for Statistics Regulation.

Electoral Reform (redacted – personal information)

- The Scottish Government is constantly working to improve the electoral system and its governance, and conducted a public consultation on electoral reform which closed on 15 March.
- The consultation considered proposals on several issues in relation to campaign finance and the oversight role of the Electoral Commission, and the responses are currently being carefully considered.
- Scottish Ministers have made clear their opposition to the UK Government’s planned statement providing direction to the Electoral Commission in relation to reserved elections as an unnecessary interference with the Commission’s work.

Open Government (redacted – personal information)

- The Scottish Government strongly supports the work of the Open Government Partnership (OGP), and is proud to be an active member of an organisation that promotes openness, empowers the public, fights corruption, and harnesses new technologies to strengthen governance

- The Open Government Partnership (OGP)¹ is a global partnership that brings together government reformers and civil society leaders to create Action Plans that make governments more inclusive, responsive, and accountable.
- Scotland is an active member of the Open Government Partnership in its own right, and also participates in the UK's activity

Public Sector Pay (redacted – personal information)

- The salaries of MSPs and Ministers are set and paid by the Scottish Parliament. The Scottish Government has no role in this, and the salaries are published on the Scottish Parliament website
- Since 2009 Scottish Ministers have declined to take their full salary entitlement, and take home pay remains at 2008-09 levels.
- The Scottish Government publishes the earnings of Senior Civil Servants at Director level and above on its website, and this information is free for all to access.

Party finances (redacted – personal information)

- The registration and funding of political parties is a reserved matter.
- All political parties in Scotland and across the UK must fully adhere to the laws and rules set out in the relevant legislation.
- This includes the controls on donations and loans which political parties accept, and the relevant reporting to the Electoral Commission.
- All political parties in Scotland are subject to a number of statutory reporting requirements in relation to their finances, with financial accounts of political parties published by the Electoral Commission.

Ministerial Code (redacted – personal information)

- The Scottish Ministerial Code sets clear guidelines for Ministers on how they should act and arrange their affairs to uphold the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, leadership.
- All Scottish Ministers are bound by the Scottish Ministerial Code's terms, and Ministers are personally responsible for deciding how to act and conduct themselves in light of the code and for justifying their actions to Parliament and the public. The First Minister is the ultimate judge of the standards of ministerial behaviour and of the appropriate consequences of a breach of those standards.
- Where he deems it appropriate, the First Minister may refer matters to independent advisers who advise on the application of the code. This is so he can receive advice to help him make a judgement about any action required in respect of ministerial conduct.

Annex B

Section 38(1)(b) – personal data of a third party

An exemption under section 38(1)(b) of FOISA (Personal Information) applies to some of the information requested because it is personal data of a third party and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exemption is not subject to the ‘public interest test’, so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

Section 30(b)(i) – free and frank provision of advice

An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice.

This exemption recognises the need to have a private space within which to provide free and frank advice to Ministers before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice will substantially inhibit the provision of such advice in the future.

This exemption is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing a private space within which Scottish Government staff can provide full and frank advice to Ministers until the Government as a whole can adopt a policy that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers and officials, which in turn will undermine the quality of the policy making process, which would not be in the public interest.