Northern Ireland Assembly

Committee for Finance

OFFICIAL REPORT
(Hansard)

Budget 2017-18: Department of Finance

16 January 2017

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mrs Emma Little Pengelly (Chairperson)
Ms Claire Hanna (Deputy Chairperson)
Mr Jim Allister
Mr Paul Girvan
Mr Gerry Mullan
Mr Philip Smith
Mr Jim Wells

Witnesses:

Ms Joanne McBurney	Department of Finance
Mr David Sterling	Department of Finance

The Chairperson (Mrs Little Pengelly): I welcome Mr David Sterling, permanent secretary of the Department of Finance, and Ms Joanne McBurney, head of the central expenditure division in the Department of Finance. Thank you for making yourselves available at relatively short notice. You are very welcome. I invite you to make a short opening statement if you so wish.

Mr David Sterling (Department of Finance): No, I do not have an opening statement. I realise that members have a number of questions about how things will work in the current circumstances, and I am happy to take those.

The Chairperson (Mrs Little Pengelly): OK. I will start with a few questions and then invite other members to come in. I am not sure if you have taken a look at the Committee proceedings and the Hansard report of last week.

Mr Sterling: I have.

The Chairperson (Mrs Little Pengelly): As you will be able to tell from those, members have serious concerns about the implications of what now looks like no Budget for the commencement of the next financial year. Will you outline for us what the implications of that will be, at a relatively high level initially? We talked briefly about your section 59 procedure, which, of course, does not make provision for a Budget. It seems and looks very much at this stage that we are moving towards an election. Therefore, there will be no Executive to pass the Budget. In the first instance, what in your view are the implications of this for the running of Departments and public services?

Mr Sterling: In normal circumstances, as members will know, the Finance Minister would lay a Budget before the Assembly. That would set out the Executive's agreed spending plans for the next year or, maybe, several years. However, the simple laying of the Budget before the Assembly would not actually provide Departments with the legislative authority to spend. As you know, that would be provided by a Budget Act which authorised the issue of sums out of the Consolidated Fund — cash, if you like. It would also set out the amount of resources authorised for use and the amounts of accruing resources — receipts — that may be used. That detail underpinning the Budget is usually set out in what we call the Estimates document.

Obviously, we do not have an agreed Budget as yet. There is an immediate implication for Departments if there is still not a Budget Act in place by 1 April. Section 59 of the Northern Ireland Act 1998 provides me with a power; indeed, the power can only be applied if there is not a Budget Act within three days of the end of the financial year — 29 March. That provision in section 59 allows me to approve the issue of funds for such services and purposes as I or an officer delegated for the purpose may direct. We have taken legal advice, and it is very clear that the provision is an interim measure. It is purely a stopgap to ensure that business continuity prevails and that Departments have the cash necessary for them to run their services until such times as a Budget Act is put in place. I want to make clear that, even if I was to exercise the power to allow this release of cash for a short period, a Budget will be agreed in due course by whatever means and a Budget Act will be needed. That would obviously override anything that I did under section 59.

The Chairperson (Mrs Little Pengelly): Clearly, the concern in all of that is the management of — I hesitate to say "a Budget", because there is not a Budget. You are permitting expenditure through the section 59 procedure, but in terms of the Departments and what they need to do, what conversations have you had or has the Finance Minister had with his ministerial colleagues about the implications of having no Budget? Have you had conversations with your colleagues in the Civil Service about the difficulties of projecting forward and spending in an initial period without knowing the Budget provisions for those Departments for the entire year?

Mr Sterling: Yes, we have discussed this at the permanent secretaries group on a couple of occasions. There is a recognition that this will be difficult to manage, but nonetheless there is an understanding that any role that I discharge under section 59 is likely to be for a short period only. I maybe did not mention that I would only be authorised to release funds up to 75% of the spend that occurred in the current financial year.

The Chairperson (Mrs Little Pengelly): You have indicated that it would be for a short time only, but that may seem optimistic given the current situation. If an election is called relatively soon, there is then a two-week period to try to get some resolution. The procedure then is to move into an election period again. You could be well into the summer before you are in the position of having an operative Executive to pass this. Presumably, the other option is some form of legislation for direct rule. The direct rule Minister would then set a Budget. Is that what you are thinking?

Mr Sterling: I do not think that it is for me to speculate on how the political situation might develop over the next while. We will have to wait and see. Certainly, Budgets have been agreed quite late in the past. In 2010, the Budget was not agreed until 9 March, and the Budget Act passed later that month. There is still a possibility that an Executive might be formed quickly after an election and we would be able to avoid this, although I accept that the timing looks very tight.

The Chairperson (Mrs Little Pengelly): I am not asking you to speculate about the political situation, but presumably you have to plan on the basis of assumptions. You referenced that it seems likely that it may be for a very short period, but I am not sure that would be the consensus in view of the concerns expressed by the Committee so far.

Mr Sterling: I just do not know how this will all pan out. If it looks as if there will be a longer period without a functioning Executive, obviously we will have to look carefully at how the Civil Service operates in such an environment. These are potentially unique circumstances, and we will have to look carefully at the requirements on Departments and the legal framework that they operate in — a range of factors.

The Chairperson (Mrs Little Pengelly): My concern is that, rather than operating on an assumption that this may be a provision that is used only for a short time, at this stage, you need to plan for the scenario where it may be quite a lengthy period, because of the significant potential impacts on public services and the running of those Departments. That is a bit of a concern. I agree with you: none of us has a crystal ball to get a sense of what will happen, but it is a real possibility that you are looking at a longer period that will take you into the 95% territory. I also think that, once you get beyond that first quarter, presumably Departments are in difficulty with their budget planning because of the decisions that they will need to make in the first quarter to avoid effectively running out of funds later on. We are all very aware — I know that you will be aware — of the difficulties in Departments where, if actions are required early on in a year, perhaps they can be softened or mitigated throughout the 12 months. If actions have to be taken in the middle of the year or towards the latter end, the implications are often much more profound for public services. That is a big concern of mine in relation to not having a Budget and the use of section 59.

Section 59 gives you the ability, it appears to us, to have that flexibility of skewing resources towards particular Departments. Have you had conversations with your colleagues about which Departments are likely to feel pressure and which Departments may have much more of an upfront expenditure profile, and are you actively looking at how you will manage that initial 75% amount to skew towards particular Departments?

Mr Sterling: I will pick up on your earlier points. I accept that this is far from ideal. All Departments really need certainty as early as possible on what their budget for the coming year will be. In particular, Departments that face pressures will need, at the earliest possible opportunity, to know what their spending allocations are, because the pattern of spend at the beginning of the year will heavily influence the service that they are able to provide. When it comes to the questions that you posed, we recognise that we will have to work very carefully with Departments. I may be required to exercise the powers conferred on me under section 59. We have had some preliminary discussions around that, and we are aware of the issues that all Departments face at the moment. Although no Budget has been agreed, there has been a lot of engagement between Departments and the Department of Finance. We are aware of the issues. What we have not done yet is determine how we will address this if we get to the end of March and there is no Budget in place.

The Chairperson (Mrs Little Pengelly): You mentioned that there have been some discussions at the permanent secretaries group. Is there any intention to set up some special arrangement of key people to examine the short-term and possible long-term implications of not having a Budget and perhaps to see, at that very senior level, what way the section 59 power that you have should be utilised to best mitigate potential implications for Departments?

Mr Sterling: Certainly, we will use the existing finance directors grouping and the permanent secretaries group. The finance community can be engaged through that means, and permanent secretaries can be engaged through the permanent secretaries group and the NICS board. We may determine that some additional arrangements need to be put in place, but we have not reached that conclusion yet. You will be aware that this situation has emerged quite quickly, so, whilst we are very alive to the need to respond quickly, there has not been a lot of time to put in place any new arrangements.

The Chairperson (Mrs Little Pengelly): Is it your view that those arrangements should be put in place and can be put in place very quickly if an election is called over the next few days?

Mr Sterling: For the moment, using the finance director network and the permanent secretaries group should be sufficient to deal with any of the contingencies that we foresee, but if, as we move ahead, it is clear that we need some other mechanisms in place, we will certainly put those in place.

The Chairperson (Mrs Little Pengelly): Is there an active identification of risk in either of those groups? Have you, as a finance directors group, looked at project management generally to identify risks at a very early stage and monitor them throughout the next few months? That strikes me as being critical, particularly given one that we have already discussed today. It is possible that this is not short-term; it could perhaps be medium- to longer-term. Have you actively identified risks at this early stage?

Mr Sterling: As I said, there has been significant engagement between Departments and the Department of Finance. We know where the financial pressures are and what the risks associated with those pressures will be. Have we identified them separately from that? I am not sure that we have as yet. However, we are very alive to the real difficulties that the absence of a Budget and an Executive at the end of March would cause. We have not put everything in place that will be needed by that stage, but this is something that we are looking at on a daily basis.

The Chairperson (Mrs Little Pengelly): It strikes me that, although using existing structures may be the most efficient way to do this, a crystallisation of risk at this early stage and the continuous monitoring of that is absolutely critical. We have seen this before in other projects: although everybody knows the risks and they have been talked about, we all know how easy it can be for those risks to drop off the table, only to emerge at a later stage with perhaps profound implications. It would be useful if those risks were crystallised somewhere and for somebody to have the responsibility of ensuring that those are monitored. As we go through the election period, it should, over that two-week period, become very clear whether it is likely that an Executive can be formed, or, if you are looking at it again, whether there could be another two months' impact of having no Budget.

Mr Sterling: I am happy to take that back. As I said, we will discuss these issues again actively this week.

The Chairperson (Mrs Little Pengelly): I will touch on one other point before I open it up. I know that there are a huge range of questions about the process.

It so happened that, on the schedule last week, we were discussing rates, and the issue came up of rates bills not being issued. There was a question discussed in the Committee about the implications of not getting that income in terms of what you distribute from the Consolidated Fund. At this stage, without an Executive or Assembly, there cannot be the necessary legislation in terms of what you need to issue rates bills for next year. What are the implications of that in terms of the resources that you have available to distribute?

Mr Sterling: There are issues in and around the rating point that you raise. First, you are right: without a Budget having been agreed, we are not in a position to get agreement on a rates order. Without that, we will not be able to issue rates bills. As you know, the bill that we as householders get comprises two parts: the regional rate and the district rate. If we do not issue the rates bills, there is a concern about the implications that that will have for collection. Back in 2001, the rates order was not agreed until, I think, 20 March; in 2010, it was not agreed until 21 March. The assessment that Land and Property Services has provided to us is that it will still be able to recover rates through the 10-month direct debit. A lot of customers pay through that mechanism. If there were a rates order in place by, say, late April or the beginning of May, rates bills would be issued, and those who pay by direct debit would pay over 10 months beginning at the end of May and finishing at the end of February 2018. That would be a month's slippage based on the normal arrangements, whereby rates bills go out towards the end of March or the beginning of April and are collected from the end of April until the end of February the following year. If we can have a functioning Executive back in place reasonably quickly after the election, we should be able to recover ground, and there will be no particular issue there.

The £1·2 billion or so that is collected through the regional rate is of great importance to councils and the Executive. We did an initial assessment, and, if I was required to exercise my section 59 powers, we would have sufficient cash through what we would draw down into the Consolidated Fund on a normal basis not to need the rates revenue in the short term.

There have been questions about the impact on councils. Councils are required to set their district rate by 15 February. We have a legal obligation under article 34 of the Rates (Northern Ireland) Order 1977 to pay councils from the Consolidated Fund the level of district rate that they would expect from April. We have looked at this and are satisfied that, certainly in the short term, even if we are not collecting the rates, we will be able to draw down sufficient cash into the Consolidated Fund to meet the 75% payments to Departments, plus the expectations that councils will have for district rate revenue.

Ms Joanne McBurney (Department of Finance): That is predicated, of course, on the rates order being passed during the year, and we sort of catch up later in the year. But in the initial stages of the year there should be enough cash available to pay Departments and district councils their rates.

The Consolidated Fund works in cash, and we are content that there is enough cash to cover those payments. In budget terms, we work on a resource basis, which means we account for the income as we issue the bills. Once they are issued, the full income in budget terms will go into that year, even should there be a slight delay in the collection of it.

The Chairperson (Mrs Little Pengelly): There is, perhaps, an assumption being made that if there is no renomination by 5.00 pm, there will be an early election called. However, we cannot at this stage discount the possibility that there will be some period of time, which could mean that, depending on the date the election is called, the Minister of Finance may still be in place by the end of March. Under the three-day issue, you would then have your powers under section 59. Have you had conversations with the Minister in relation to the exercising of section 59?

Mr Sterling: Yes. He understands the position as I have described it here.

The Chairperson (Mrs Little Pengelly): Over the next six or seven weeks, from your point of view of having that duty set out in section 59, are you intending to have discussions with your Minister on the operation and decisions that you will make in relation to the allocation of up to 75% to Departments?

Mr Sterling: We have not had any substantive discussions about how I would exercise that power. He has had daily meetings with officials across the Department to address issues such as this and issues in and around the position that would apply if we did not have the rates order in place. So, yes, we are in discussion about these, but we have had no substantive discussions about the detail of how I would discharge my responsibilities if I was required to exercise the powers under section 59.

The Chairperson (Mrs Little Pengelly): Your powers under section 59 do not, in legislation, require any consultations with your Minister, but, as a civil servant, you operate under the direction and with the authority of your Minister. Although you say you have not had a huge amount of discussion about this, do you intend to take into consideration the Minister's views about how you should exercise your section 59 power?

Mr Sterling: If I was exercising section 59 powers at a time when the Finance Minister was still in place but there was no functioning Executive, I would be required to operate under his direction and control.

The Chairperson (Mrs Little Pengelly): This is perhaps an issue of concern, because I think that there is an issue about subverting the authority of the Executive on these matters. Section 59 is there almost as an emergency power for you to issue sums without any legislative requirement to consult. At the time of the drafting of that legislation, it was perhaps not envisaged that a Minister would have to be in place for that power to be used. Of concern is where your power as an official is being appropriately exercised and where the Minister is seeking to influence it at that time, if indeed he is still in place.

Mr Sterling: You appreciate that you have described one scenario. There is a range of scenarios that could apply here, and, obviously, we simply have not had sufficient time to address all the implications of the different scenarios that would arise. We are alive to them, however, and we are working on this daily.

Mr Smith: Thank you for coming along this morning at such short notice. I have listened to what you said. If you are going to receive section 59 powers, when, in your opinion, does that become a financial crisis for government in Northern Ireland?

Mr Sterling: Section 59 is very clear. Those powers would only become live three days before the end of the financial year, on 29 March. I remain hopeful that there will be a reconstituted Executive before that stage and that the section will not need to apply. Again, I think that it is quite clear from the reading of this legislation and the advice that I have received so far that those who drafted this perhaps foresaw that it might be needed as a short-term measure to deal with an interruption in government, not something that is designed to address a longer-term absence of government. Most people would still imagine that a long period without government would be very difficult for all of us to manage.

Mr Smith: I appreciate that, as you said, the provision was designed for days, or a couple of weeks at most. As the Chair said, it may not be possible to have something in place. I suggest that it is now unlikely by the end of the financial year. As you move to having 75% of the previous year's Budget, there will be implications. There is no inflation built into that percentage. What about accruing resources? Can you access those or just the flat Budget?

Mr Sterling: We have established this before. We would not be able to use accruing resources, but, as I mentioned before, there would be no 75% limit on the amount that we would be able to draw into the Consolidated Fund from Westminster, so we do not anticipate that we would have any cash pressure in the early months of the year. In a scenario in which at the end of July I had to exercise my section 59 powers again, which at that stage would be limited to 95% of the spend in the previous year, previous legal advice that we got is that we would not be able to take account of accruing resources at that stage. There would be a problem there. I said before that I do not want to speculate on the way in which our politics will develop, but, by that stage, it would be quite unprecedented for there not to have been some form of government in place, given the passage of what would be six or seven months.

Mr Smith: I am conscious that a lot of this is quite technical stuff. If people are coming at this from a layman's perspective out in the real world, I suppose that their big concern is around the impact on the public services that they rely on. It might be useful if you could elaborate on or explain what you think the implications may be for, for example, the health service and schools. What is this going to mean for people in the street? How are they going to experience this? I assume that this is going to be needed for more than a couple of days, and there is a bit of time in which you will have to retain the powers. What are the implications?

Mr Sterling: We discussed that at the permanent secretaries' group meeting on Friday. We are very clear that the Civil Service's objective, if there is a prolonged period of instability, is to make sure that there is minimal disruption to public services. Whatever scenario we face — we cannot be sure what the scenario is going to be at the end of March, running into April — we will be working hard collectively across the Civil Service to ensure that services continue to be delivered and that any disruption is absolutely minimised. I do not want to downplay the difficulties that we will face. As I said, Departments really need certainty as early as possible on what their financial allocations for the forthcoming financial year will be. It will be difficult, but we are seized of the importance of focusing on delivering public services as well as we can in the circumstances.

Mr Smith: For example, we know that the number one action in the Bengoa report is to address hospital waiting lists. There was meant to be action on that this month. It was expected that some ad hoc financing would go along with that. Have you the powers, under section 59, to undertake some form of monitoring-round process to reallocate funds to attack such issues?

Mr Sterling: As officials, our role is really to serve Ministers. That legislation was not designed to do anything other than deal with a short-term issue. The provision states that the allocation:

> *"shall be ... for such services and purposes as the officer may direct."*

However, my assumption is that there will be only a short-term interruption in government. If there is to be any interruption, I am certainly hopeful that it will be as short as possible and that any action that I take will be a stopgap and an interim measure that can be quickly corrected by a new Executive.

It will be difficult to determine what the allocations to various Departments should be. That is not something that we have decided exactly how we will carry out, if the circumstances arise, but we are alive to issues such as the one that you describe and are conscious that the challenges facing the health service, given that it consumes around half of our budget, are going to be particularly difficult when it comes to addressing this.

Mr Smith: I appreciate that we are in uncharted territory, for you as much as for anybody else, and that it is difficult for you to forecast what the implications are. I am trying to make sense of what we know, and it seems to me that, whether it is 75% or 95% of the previous year's Budget — with a lack of inflation to account for rises and pressures elsewhere — if we do not have access to accruing resources, we have no rates income. I appreciate that that may not be a cash issue in the short term, but, at some stage, that chicken will come home to roost. At some point, there has to be a financial crisis, essentially. When do you believe that direct rule Ministers, or somebody, will have to come in and start to make financial decisions? It seems to me that the lack of cash from the lack of a Budget — it will be less than what we would expect in a normal budgetary situation — means that there has to be significant implications for the delivery of services, bearing in mind that so much of public services has a fixed cost. When do you envisage that happening, from a scenario-planning perspective? I am sure that you have to come up with options on what the implications would be. When do you think that we will really hit the wire?

Mr Sterling: All that I can say is that the earlier we can have an Executive in place and decisions taken on a Budget for next year, the better that is for public services. I will not speculate or try to identify a point in time when things will become critically difficult. All that I am saying is that the sooner we have an agreed Budget, the better. If we do not have an agreed Budget, I give the Committee an assurance that this is not just about me but about the Civil Service working collectively to address whatever issues emerge. You are right when you say that we are in uncharted territory. We cannot predict how this will develop. What I am saying is that we will do all that we can to minimise any disruption that may arise as a result of the political circumstances that we find ourselves in. I am sorry if that is a bit glib, but there is not much more that I can say at the moment.

Mr Smith: I appreciate that it is difficult. We are all going into a novel situation.

Mr Allister: Section 59 is of no aid to you in the 2016-17 year.

Mr Sterling: Yes.

Mr Allister: You have no allocation powers whatsoever for 2016-17.

Mr Sterling: That is correct.

Mr Allister: The Minister is effectively hamstrung by the fact that no Executive are meeting and there is no authority.

Mr Sterling: That is correct.

Mr Allister: There has not been a January monitoring round for 2016-17. Are we then heading for a situation in which there will be overspends or underspends and qualified accounts in various Departments? Is that a likely scenario?

Mr Sterling: At the overall Budget level, we are satisfied that there will be no overspend. We are also satisfied that, if there is any underspend at individual departmental level, it will not exceed the tolerance in the Budget exchange scheme. In other words, as of today, we are satisfied that there will be no loss of spending power to the Executive. That is at Budget level. At the authority-to-spend level, you are right: there has been no agreed January monitoring round. That has meant that, as things stand, we are not able to move the spring Supplementary Estimates. In the absence of the spring Supplementary Estimates, our expectation is that many Departments will have Excess Votes in the current year.

Mr Allister: They are likely to have their accounts qualified.

Mr Sterling: The accounts would then be qualified, yes.

Mr Allister: Is there any risk of money being lost back to the Treasury?

Mr Sterling: No, that is the point that I was making.

Mr Allister: You are clear on that.

Mr Sterling: The Budget exchange scheme is the arrangement that we have with the Treasury. Joanne, you may wish to comment.

Ms McBurney: Looking at the overall block position at the moment, we are relatively confident that we have wiped out the overcommitment and that any departmental underspend should be minor and can be carried forward by the scheme.

Mr Allister: Are there any Barnett consequentials? You would have no authority to spend your Barnett consequentials, would you?

Mr Sterling: There were Barnett consequentials as a result of the autumn statement.

Ms McBurney: They were small for 2016-17. We have looked at the overall picture. You may recall that we left the October monitoring round overcommitted. When you take everything into account, the Barnett consequentials coming in and the underspends identified in Departments so far have been subsumed into that overcommitment. We are thus at a relatively balanced position without a January monitoring round.

Mr Allister: There are no outstanding Barnett consequentials.

Ms McBurney: Not for 2016-17.

Mr Sterling: Not in-year. There are obviously Barnett consequentials available for 2017-18, but they would be bound up in the Budget process.

Mr Allister: As we move forward into next year, tell me about the impact on annually managed expenditure (AME). It has not been able to be updated, as it were.

Ms McBurney: Departmental spending on AME will be subsumed into the 75%, because it is 75% of the total spend. Our block grant is calculated on the forecast that we give Treasury. That has been updated. It is a routine exercise. It does not go past the Executive. It is updated twice yearly.

Mr Allister: That is happening.

Ms McBurney: That is happening. That is an ongoing process with Treasury.

Mr Allister: That normally happens about January and again in August or so. That can happen despite this hiatus.

Ms McBurney: That can happen. It is an administrative process, and it will happen.

Mr Allister: I will jump forward into 2017-18. You can never touch the receipts in government under the section 59 arrangement, is that right?

Mr Sterling: That is the advice that we got.

Mr Allister: That tops out at something like £2·5 billion.

Ms McBurney: It does. It is not that we can never touch receipts. Once the Budget Act is in place later in the year, we will have access to them.

Mr Sterling: Under section —

Mr Allister: In the absence of a Budget Act, you cannot, under section 59, touch the accrued resources.

Ms McBurney: That is correct.

Mr Sterling: Yes.

Mr Allister: That is in the order of £2·5 billion.

Ms McBurney: I do not have the exact figure, but that would be —

Mr Allister: It would be £2 billion to £2·5 billion. Therefore, there comes a point in the year when that is critical.

Mr Sterling: That would probably not be until late July, when you would normally expect the initial Vote on Account to run out. At that stage, if there were still no Government in place, we would face difficulties if I were required to discharge my powers under section 59 again.

Mr Allister: Those accrued resources include —

Mr Sterling: Sorry, there is another difficulty at that stage. This is an extreme scenario, but the assumption would be that, if by that stage there were no Government in place, there would have been no Rates Order agreed and, as such, no rates bills issued. As I say, that is an extreme scenario.

Mr Allister: The two big pinch points are the rates and accrued resources.

Mr Sterling: Yes.

Mr Allister: The issue of accrued resources is compounded by the fact that a lot of them are agriculture moneys from Europe.

Ms McBurney: For the Department of Agriculture, yes.

Mr Allister: For example, when you reach single farm payment time, you could not disburse that money.

Mr Sterling: Again, it is cash.

Ms McBurney: It is a cash issue. If we needed to pay money to farmers before we had the right to use the receipts, we could fund that through the cash in the Consolidated Fund until a Budget Bill is passed later in the year. The key thing is that a Budget Bill must be passed at some point.

Mr Allister: You will not be acting in a vacuum. Treasury will be sitting on your shoulder, will it not?

Mr Sterling: We are actively speaking to Treasury. I had a conversation with Treasury officials on Friday afternoon about some of the issues. Treasury is aware of the position, and we will engage. We have good relationships with the Treasury and will be in constant touch.

Mr Allister: There is a growing expectation of balanced Budgets, and all of that.

Mr Sterling: Indeed.

Mr Allister: We are probably going to hit the buffers financially in and around the beginning of the summer.

Mr Sterling: As I say, the absence of a Government for several months would pose a huge range of difficulties for us in a wide range of areas.

Mr Allister: When you come to exercise your powers under section 59, you do not have the Estimates to judge where you need to put the money. You will have to make decisions.

Mr Sterling: We do have them. Work has been done on the Estimates.

Mr Allister: Yes, but they are unapproved Estimates.

Ms McBurney: Work has not been done on the Estimates for next year. We have the Estimates for last year.

Mr Sterling: Sorry, that is right.

Ms McBurney: That provides a starting point, because a lot of the services will be the same. What we do have are Budget scenarios that we have been looking at and seeing how those would relate to the Estimates. We can make decisions around that. We will also work with Departments on who needs access to money, because they are dependent on —

Mr Allister: But those are your decisions, Mr Sterling.

Mr Sterling: Indeed. Section 59 envisages that the 75% will be based on the spend that has been incurred in-year. I would not want to say today exactly how I would exercise those powers if required to at the end of March. It is simply too early to begin to say anything, other than to say that it is clearly envisaged here, as I said, that this would be a short stopgap and that, in such circumstances, I would apply a largely arithmetical approach. As I say, I would not want to be held to exactly how —

Mr Allister: It would not be a viable, tenable position for you to drip-feed throughout the financial year various actions under section 59, because they are meant to be short-term, interim measures.

Mr Sterling: Indeed, my understanding and the advice that I have got is that it would not be a drip feed; it would be a case of deciding three days before the end of March on the allocations to be made and then returning to it in July if necessary.

Mr Allister: Are you saying you would give the whole 75%?

Mr Sterling: You would have to inform Departments of what their allocations were.

Mr Allister: Even in the Vote on Account, it is only 45%, so why would you hand out 75%?

Mr Sterling: You would need to be telling Departments the spend that they could reasonably anticipate making for a period of several months. We have not worked all of this out yet, but —

Mr Allister: Can you be more precise? Are you anticipating exercising your section 59 powers to a scale whereby you give out 75% of the Budget?

Mr Sterling: That is the power that would be conferred on me.

Mr Allister: Is that what you anticipate doing?

Mr Sterling: No, I am not anticipating anything at this stage. The point that I made earlier is that I see my responsibility very clearly as being to minimise disruption to public services. Therefore, I would want to ensure — I say "I", but I would be doing this in consultation with my permanent secretary colleagues — that, as far as possible, Departments got what they needed to ensure that public services were maintained as optimally as possible.

Mr Allister: Yes, I understand that. If your hope — maybe not your expectation — is that, shortly down the road an Executive will re-emerge, you will hardly want to have expended, by commitments to various Departments, 75% of last year's Budget, are you?

Mr Sterling: No, I would be setting out to Departments what they could expect to spend. Obviously, Departments will want to look carefully at the pattern of expenditure that they can start incurring in April. That will have significant implications for the level of service that they can provide.

Mr Allister: But, in a normal situation, they get only 45% on account.

Mr Sterling: Yes. Nonetheless, they get a sufficient amount to allow them to proceed on an understanding of what they are going to get over the full year. That, however, relates to the Budget that has been agreed by the Executive.

Mr Allister: Drawing all that together, it sounds to me, and you may not wish to comment, that, for the sake of financial sanity, direct rule could not be postponed beyond July.

Mr Sterling: I repeat this point: it will get very difficult if we have a prolonged period in which there are no Ministers in place to take key governmental decisions.

Mr Allister: May I ask you one other thing? Today, we are meant to be debating the renewable heat incentive (RHI) proposals. Did the Department of Finance respond to those proposals?

Mr Sterling: It is a matter of public record that the Department has received a business case from the Department for the Economy. That business case is being considered.

Mr Allister: And has not yet been responded to.

Mr Sterling: Not as yet. Obviously, it is a live scenario, so I cannot say any more than that at the moment.

Mr Allister: Do you anticipate a response being made today to it?

Mr Sterling: Let us just say that it is being considered actively at the moment.

Mr Allister: Are you anticipating a response being issued today?

Mr Sterling: I cannot say any more than I have said.

Mr Allister: Will not say or cannot say?

Mr Sterling: I cannot say any more than I have said.

Mr Allister: It sounds as though you will not say any more, Mr Sterling.

Mr Sterling: It is being considered actively at the moment.

Mr Allister: Did the Minister tell you not to talk about that?

Mr Sterling: I have not spoken to the Minister this morning. The business case is being considered actively as we speak.

Mr Allister: Thank you.

Mr Wells: I had to nip out, so if any of the issues that I raise have been covered, let me know. What is the logic of withholding 5%? What is the rationale behind that? When we get up to 95% of the Budget, why is there a mechanism to withhold 5%?

Mr Sterling: I do not know what was in the minds of the draftspeople at the time, but I can only assume that the provision is there to deal with the short-term absence of an Executive of Ministers being in place to take key decisions. I suspect it was simply a way of ensuring that the full allocation was not made during that time. I do not have any more knowledge of it.

Mr Wells: If we were not to reach agreement by July, which, I can say, is extremely likely — if you were a betting man and put a fiver on that, your money would be pretty safe — on that basis, could the 5% be restored under direct rule?

Mr Sterling: The 5% is a limitation on the powers that I could exercise under section 59, but the clear assumption is that, if an Executive return, agree a Budget and put a Budget Act through the Assembly, the Budget will be what is agreed by the Executive within the resources available to them. There will be no 5% limit.

Mr Wells: Yes, but there is no Executive.

Mr Sterling: If there is no Executive, the limitations are as described in section 59.

Mr Wells: The reason why this is a difficult issue is that, for instance, £200 million would come out of the health budget. If that were to happen, it would be devastating to the health budget. What worries me slightly is that you do not seem to be making contingency plans for what most commentators say is likely to happen: there will not be an Executive in July. You have to consider that as a scenario. None of us is happy with that but, being realistic —

Mr Allister: Some of us might be.

Mr Wells: I am the only one in this room who sat through the suspension that lasted from October 2002 until May 2006 — four and a half years of a suspension. We have had numerous suspensions and hiatuses in this place. Are you setting out contingency plans for the fact that there will not be an Executive in July? Are you ready to act if that happens?

Mr Sterling: Not as of today. This issue has really emerged over only the last week or maybe a little longer. As I said, we have had discussions at permanent secretary level. We are identifying all the issues that could occur. As I said, a long period with no Ministers in place and no functioning Executive would be extremely difficult for us to deal with. That has to be on the more unlikely scale of scenarios that might befall us, but we just do not know.

Mr Wells: You might have spotted my deliberate error: the date was actually May 2007. It was longer than I said because we had an Assembly election —

Mr Sterling: I was in the Department of Finance in 2002.

Mr Wells: We had an Assembly in May 2006, but we did not have an Executive until May 2007.

You need to have those plans. Obviously, the Department, like everybody else, would like to see an Executive back, but you are not prejudicing your position by having plans for what most people would see as the most likely situation: come July, we will not be here. If we are not here, you have to be ready to act. Presumably, under direct rule, direct rule Ministers can do anything. That means they could restore the 5%.

Mr Sterling: Whether it is the Executive or any other form of government, the 5% is not really an issue. If the Executive return, they will agree a Budget, and that Budget would supersede anything that I would have done under section 59.

Mr Wells: And if the Executive do not return.

Mr Sterling: There has to be some form of government at some stage.

Mr Wells: I am still trying to tie down the 5%. If there is no Executive, can the 5% be restored?

Mr Sterling: The 5% would apply for as long as there is no Government here. As soon as there is some other form of government, the 5% would no longer be an issue.

Mr Wells: Is that any form of government — Westminster, direct rule?

Mr Sterling: Yes. I am dancing around this a bit, but, if there were to be direct rule, a direct rule Secretary of State would, we have to assume, take upon himself the same powers as the Executive would have.

Mr Wells: When do you start to apply the 5% restriction? At what stage does it start to bite?

Mr Sterling: The 5% is a limit that would be applied if I were required to discharge these powers in July. That is still six months away, so I do not think that any of us foresee that there would be no government here for the six-month period.

Mr Wells: What I am getting is this: is there no possibility of the Health Department having 5% deducted from its monthly grant from 1 April?

Mr Sterling: No. I have acknowledged that the Department of Health faces real difficulties in this scenario, because the quality of service provided will depend on the pattern of spend that the Department is allowed to incur from the beginning of April, so some big decisions need to be taken around that. I cannot say what those decisions are. Obviously, from my perspective, it is better that it is Ministers who are taking those decisions. If I have to take a decision, I will be doing so in conjunction with my permanent secretary colleagues, but it will be in the knowledge that we will be looking forward to Ministers coming in quickly after that and agreeing a Budget that would, as I said, override any decisions that I have taken.

Mr Wells: We have spoken entirely about recurrent expenditure. Do all these principles apply to capital, procurement and major contracts?

Mr Sterling: Yes.

Mr Wells: You have the power, if necessary, to make sure that they continue.

Mr Sterling: Yes.

The Chairperson (Mrs Little Pengelly): Thanks, Jim. Picking up on your point, it is not just the 5%. We have also heard about the rates income and the inability to access accruings. In real terms, it will be significantly more than 5%. At some point, presumably, you cross into a situation of running out of cash. Jim made a valid point about those Departments that will require not just 100% of their expenditure this year but above and beyond that — should that be 105% or 110% — just to meet their pressures. I know that the Education and Health Departments are under pressure. That will be made even more difficult within an allocation situation without a Budget. There will be very serious concerns about what decisions need to be taken in those Departments to ensure that they do not run out of funds after six months.

Mr Girvan: We should have been coming here to discuss our draft Budget. I hope that the Department of Finance has a clear indication of what the draft Budget uplift was to be for 2017-18. Is there an indication of what the difference is between what we had last year and what we will have for the next financial year?

Mr Sterling: We do not have a draft Budget. A draft Budget exists only when a draft Budget is presented by the Finance Minister.

Mr Girvan: I appreciate that, but I am looking for figures.

Mr Sterling: You are talking about the opening position.

Mr Girvan: Yes.

Mr Sterling: Can you remind me? We got Barnett consequentials for 2017-18, so the opening position —

Ms McBurney: I cannot remember the exact percentage, but there was a very small cash uplift, which, I think, was about a 0·4% real terms reduction.

Mr Girvan: What does that equate to?

Ms McBurney: I do not have the figure off the top of my head, but we were very close to flat cash, with a slight cash increase.

Mr Girvan: We mentioned the £2·5 billion potential cost in accruing resource, which is the income that we potentially can achieve and are not allowed to access. Mention has been made of the fact that that could create further pressures later in the year. A lot of that is to do with forward planning — looking at some moneys to ensure that projects do not come up against a buffer later on. A certain amount of work must be required to put that money on the ground, one way or the other. Therefore, there has to be planning for moneys that we are not even sure that we will get until late in the year probably, when the difficulty might be in making the spend before the end of the financial year. You said that we will not be handing back money to the Exchequer this year, which is great — I am glad to hear it — but the difficulty will be that, if that comes and we get that through, we could have to cut our cloth accordingly. Irrespective of what anyone else sees, looking through their rose-tinted glasses, I cannot see an Executive being up and running because of preconditions that some people are putting down, one of which is direct rule being a problem. As a consequence, it will be a major problem for some parties, because they have already put it down that they are interested only in joint authority. That means that there is a difficulty even in Westminster moving forward on our Budget, and that consequence could ultimately impact. If we do not get to that stage, what is the 5% figure?

Mr Sterling: We will still be pursuing all forms of income classed as accruing resources, whether receipts or something else. The only issue with accruing resources —

Mr Girvan: They are being held in a bank on the other side.

Mr Sterling: No, they will still flow to us. The only limit on accruing resources is that I do not have the authority to release cash that results from accruing resources under section 59. However, accruing resources will still be there; they will still be available at such point as Ministers are in place to agree a Budget and pass a Budget Act. I suspect that the draftspeople did not appreciate that the section would not apply to accruing resources. It is an anomaly in that sense. However, we will continue to ensure that Departments pursue all forms of income that are classed as accruing resources, and we will continue to be able to access those accruing resources that flow into the Consolidated Fund from Westminster.

Mr Girvan: You have a fairly powerful position in relation to what happens from here on in. Where is the flexibility for pressures that might appear in Departments? Is there flexibility in your allocations to deal with pressures in Departments?

Mr Sterling: Section 59 gives me the authority to authorise sums that may be used for such services or purposes as I direct. Again, at the risk of repetition, this was only ever envisaged as something that would apply in the short term. I really hope that I do not have to discharge the power — I should have said that earlier — but I would do so in consultation with permanent secretary colleagues so that we find the optimal set of allocations, given all the challenges that we face, very much on the understanding that we would be looking forward to Ministers coming in and taking decisions about allocations retrospectively in a future Budget and Budget Act.

Mr Mullan: Mr Sterling, you have answered some very probing questions. I gather that, in your words, you have limited, mitigating powers under section 59 over the resources that you have at your disposal. I have to say that I do not share your optimism that there will be a functioning Executive any time soon. The implications of that are enormous. It will affect councils and public bodies, obviously. The people whom I speak to in the street may not fully understand all the nuances of that. They are worried about whether they can afford to live in their house because of the bedroom tax. Can you give me any clarity so that I can give confidence to the people to whom I talk that they will be able to keep their house? Obviously, the Finance Minister and the Communities Minister are looking at this from two different legal perspectives. Can you give us any assurances? How do you see this panning out in the future?

Mr Sterling: Regulations on the bedroom tax mitigating measure are before the Assembly today. I would not want to prejudge the outcome. What I would say is that I do not think that there was any essential conflict between the two sets of legal advice that appeared in the media last week. The fact is that the regulations are before the Assembly today, and it will be up to the Assembly to approve them or not.

More generally, I emphasise the point I made earlier, which is that these are exceptional powers to be used in exceptional circumstances. I do not want to have to discharge them. I know, from talking to my colleagues, that we are all very clear that we want local Ministers to be in place to take these important decisions. If local Ministers are not in place on the due date, we wiIl do all we can to make sure that public services are maintained, there is minimal disruption, and we do everything to pave the way for the return of a functioning Executive.

Ms Hanna: I want to pick up briefly on RHI and the cost controls. At what point did the Department of Finance notice the renewable heat costs beginning to spiral out of control?

Mr Sterling: Chair, this is taking me into an area that is beyond what I was asked to come along to discuss.

Ms Hanna: I think that it has implications on this year's Budget and others. I appreciate that you will not be able to give me a particular view on the regulations that we will examine today; I do not think that anybody has had time to scrutinise those. I want to get a sense of when the Department became aware of it, how much it was able to communicate with the Finance Minister — I think that there have been three Finance Ministers since January 2016 — when we may have got a handle on this and what preparatory work has been done or could have been done.

The Chairperson (Mrs Little Pengelly): OK. I allowed the question about the business case, but perhaps you might want to reframe your question. We are looking at Budget implications, and there is clearly a current Budget implication because of RHI. Depending on what happens this morning, there may not be so much of an implication for next year's Budget. To be fair to the witnesses in their preparation for this, presumably they do not have information in front of them about the specific detail of when or what. Certainly, I think that there is an implication for the Budget — we are here to talk about the implications for the Budget — but I am not sure whether you want to reframe your question somewhat.

Ms Hanna: OK.

Mr Sterling: I did two-plus hours at the Public Accounts Committee on 30 November.

Ms Hanna: It probably has all the answers I need.

Mr Sterling: There is a transcript, and it is available on YouTube.

Ms Hanna: OK — brilliant. I will up the hits on that.

Dr David Capper from Queen's school of law expressed extreme scepticism about the potential of a zero-cost recovery. Do you have any view on that? I know that you cannot, as I said, give us chapter and verse on the current business case, but do you have any view on the suggestion that a zero-cost recovery is completely implausible?

Mr Sterling: I saw Dr Capper's comments. All I will say is that the Department has taken legal advice on that issue, but I am not in a position to reveal it at the moment.

Ms Hanna: OK. To finish, can you outline or at least characterise the communication that has taken place? I know, again, that you probably cannot do so for communication on the current iteration and the toing and froing in the last three to four weeks, but can you do so for the communication between the Department for the Economy and the Department of Finance in the last seven months on this issue?

Mr Sterling: I am not sure, Chair, that I want to comment on that at this stage.

Ms Hanna: To quote Mr Allister, "Will not say or cannot say?". I appreciate that that maybe goes beyond the issue, but I think that it is fair to ask how much joint work has been done.

The Chairperson (Mrs Little Pengelly): I think that it goes beyond it. There is no doubt that this is an issue of significant concern for people, given the potential implications of the cost of RHI. However, I think that you may be straying a little bit into the territory of asking specific questions about advice that any inquiry will look at. Obviously, you may well have your own opinion about how you would categorise relations between DETI, now the Economy Department, and Finance. It is really up to the witnesses whether they want to answer that. It is outside what they have been asked to come here about.

Mr Sterling: I genuinely do not mean to be unhelpful, but there is a live Public Accounts Committee investigation into all these issues. I understand that the Public Accounts Committee will be returning to the issue on Wednesday, so I would prefer not to comment at this stage.

Ms Hanna: I hope that the Public Accounts Committee does get to return to it on Wednesday. I suppose the point is that there is a projection of great urgency from some quarters about this and of great outrage from others. I think that the public will be concerned to know how long this problem has been known about, as well as the inaction and inactivity that took place for most of the sad life story of this scandal, but I appreciate that you maybe cannot get into that.

Mr Sterling: Many of those issues, indeed, were addressed in the evidence that I gave to the Public Accounts Committee on 30 November.

Mr Smith: Chair, may I ask one final question on the Budget process?

The Chairperson (Mrs Little Pengelly): Yes.

Mr Smith: Thank you.

The one-year revenue Budget — well, the whole Budget — was meant to come before us before Christmas. It was going to come and then it was not. It was then postponed until after Christmas and there was no date on that. What were the blockages? Why was it so difficult to produce a one-year revenue Budget? You would have thought that it would have been reasonably straightforward, particularly when there were no major significant changes from the Chancellor's autumn statement.

Mr Sterling: I think that it is a matter of record that we did not get to a position where there was an agreed draft Budget. I am not sure that there is much more I can say than that.

Mr Smith: Is that not agreed at Executive level? It was not that the Budget was not produced in terms of, "Here are the figures". It was a political lack of agreement. Was that the issue?

Mr Sterling: Again, it is a matter of record that a draft Budget was not presented to the Executive.

The Chairperson (Mrs Little Pengelly): We are almost out of time, but I want to touch on that point very briefly. Would you have categorised the Budget for next year as a difficult Budget for the Northern Ireland Government? Were there challenges with that Budget? You talked about a more or less flat position. In your discussions with finance officers in other Departments, was that already presenting challenges to Finance and to the Executive in trying to get some resolution to the hard decisions, perhaps, that would need to be made?

Mr Sterling: It is no great secret that many Departments are facing a great deal of pressure. Joanne mentioned that it was repeated in the autumn statement that the financial allocations to the Executive, not just in 2017-18 but for the three forward years — I do not have the numbers off the top of my head — are at best flat over the three-year period.

Ms McBurney: Yes, there are real terms reductions. When you take inflation into account, we are facing reductions.

The Chairperson (Mrs Little Pengelly): Do you have a sense of the percentage, Joanne? In your discussions with finance officers in other Departments, were you talking about the expectation of the impact on Departments in percentage terms in relation to the reduction on average? I know that it is very difficult because there may be additional pressures in Education and Health but, with the overall position and a percentage reduction facing the Executive, had you come to some sense when taking into account assumptions on inflation and other variables?

Ms McBurney: Departments were aware of the overall position that we were facing. There was engagement whereby individual Departments raised pressures, but we had not got to the stage of talking about levels of reductions for specific Departments.

The Chairperson (Mrs Little Pengelly): Reductions, however, were required generally to meet the pressures and because of the relatively flat position?

Ms McBurney: That depended on a number of decisions that had to be taken.

The Chairperson (Mrs Little Pengelly): OK. Thank you very much for coming along. There has been a range of questions, as you have heard. Building on some of the comments that have been made, from my perspective, I am keen that, in the first instance, you are making assumptions and looking at different scenarios. You have heard this morning about the real risk that there may not be a Government in place by July as opposed to an assumption that this is just a short-term issue. I think that that is more of a hope, but I certainly think that, for planning purposes, I would be keen that you and the Department of Finance look at the serious risk that there may be no Government in July. We should identify risks at the earliest possible opportunity, and somebody should be responsible for monitoring those risks throughout this process. In the absence of those who have not turned up, there has been unanimous concern in the Committee about the potential impact on public services, depending on how long this issue rolls forward. Thank you very much for coming along at such short notice.

Mr Sterling: Thank you.