

Written submission from the Scottish Government Public Bodies Support Unit

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Contents

Introduction	1
Application of the Ministerial Control Framework	2
Scottish Government ‘Commission/Commissioners’	3
The establishment of Parliamentary Commissioners by Scottish Government.....	4
Ethical Standards Commissioner	5
Scottish Biometrics Commissioner	5
Victims and Witnesses Commissioner	6
Wider reform of the public sector landscape	7
Data Commission on Public Bodies 2024.....	8
Consultation: Public Services Reform (Scotland) Act 2010: Extension of Part 2 Order Making Powers.....	9
Clusters	10
Reform In Action.....	11

Introduction

The following information has been provided in response to the Committee’s questions on:

- the Ministerial Control Framework and how it’s being used;
- the independence of Scottish Government Commissioners and how they are scrutinised and held to account;
- why the Scottish Government has in recent years preferred to create Commissioners under the SPCB supported bodies model; and
- wider reform of the public body landscape.

The Ministerial Control Framework (MCF) applies to all Government proposals to establish new public bodies. It ensures there is a rigorous process where a public body is being established, and that all other delivery options have been explored and dismissed. Where this concerns the potential creation of a new commissioner, MCF guidance stresses that the merits of that decision must be discussed with the Chief Executive’s office of the SPCB at the earliest opportunity.

Since the MCF came into force in May 2023, only one proposal has been approved and is planned to be established as a public body – the National Social Work Agency (NSWA).

There are currently 13 public bodies with the title of Commission or Commissioner that are not classified as Parliamentary Commissioners. The majority of these are Non-Departmental Public Bodies (NDPBs). NDPBs are directly accountable to Ministers, and through Ministers to Parliament. The Chief Executive, or Commissioner as they may be referred to in this case, is designated as the Accountable Officer responsible for the use of resources. However, Ministers remain accountable to the Parliament for the allocation of public funds.

A Board holds the Chief Executive to account and the relationship between Ministers, SG and the NDPB is set out in the relevant legislation and the Framework Document. For NDPBs this relationship is managed through sponsorship arrangements.

Since 2007, three new Parliamentary Commissioners have been established. These were via Bills introduced by government. Any preference of the Scottish Government (SG) to establish a new Parliamentary Commissioner would be determined by necessity after all other alternative service delivery options had been explored and discounted. The MCF requires this for all newly proposed public bodies.

Regarding public bodies more widely, the Scottish Government doesn't believe setting arbitrary targets for the number of public bodies adds value. Instead, the public service reform programme (PSR) is focused on driving a culture of continuous improvement to support efficiency and effectiveness across the delivery of public services. Various PSR workstreams are underway with more detail on this and the other topics considered here in this written submission.

Application of the Ministerial Control Framework

- The Ministerial Control Framework (MCF) is a rigorous process requiring a detailed business case exploring all appropriate alternative service delivery options and ruling them out before making a public commitment to create a new public body or a Bill is laid before Parliament.
- Work on proposals is undertaken by Project Teams within the relevant Portfolio. The Public Bodies Support Unit (PBSU) and other relevant policy colleagues offer guidance and support.
- Once all alternative service delivery options have been explored and ruled out, Project Teams prepare an outline business case recommending the establishment of a new public body. This is reviewed by PBSU and Finance Business Partners ahead of a further review by the SG Senior Executive Team. The business case is then submitted to Cabinet to make a final decision.
- Once approved by Cabinet, the MCF process is complete. The Project Team then goes about establishing the new public body following the Guidance on the Establishment of New Public Bodies. PBSU and other relevant policy

colleagues offer guidance and support throughout the process. There is also a network of Project Teams that share their experience with each other.

- The MCF process was trialled with a proposal to establish a Scottish Veterinary Service as a public body. While the recommendation in this case was not to establish a new public body, the trial proved successful and supported the MCF as a process.
- Since its introduction in May 2023, one public body has been approved under the MCF – the National Social Work Agency (NSWA) and five proposals have been reconsidered prior to Cabinet consideration.

Scottish Government ‘Commission/Commissioners’

- There are currently 13 public bodies with the title of Commission or Commissioner that are not classified as Parliamentary Commissioners and Ombudsmen. The majority of these are Non-Departmental Public Bodies (NDPBs). These bodies are listed below:
 - Accounts Commission for Scotland (Executive NDPB)*
 - Crofting Commission (Executive NDPB)
 - Police Investigations & Review Commissioner (Executive NDPB)
 - Scottish Criminal Cases Review Commission (Executive NDPB)
 - Scottish Land Commission (Executive NDPB)
 - Scottish Legal Complaints Commission (Executive NDPB)
 - Water Industry Commission for Scotland (Executive NDPB)
 - Poverty and Inequality Commission (Advisory NDPB)
 - Scottish Commission on Social Security (Advisory NDPB)
 - Scottish Law Commission (Advisory NDPB)
 - Mental Welfare Commission for Scotland (Health Body)
 - Scottish Fiscal Commission (Non-Ministerial Office)**
 - Scottish Road Works Commissioner (Other Significant National Body)

*Although classified as an Executive NDPB, Accounts Commission for Scotland is supported by Audit Scotland. Audit Scotland is directly accountable to Parliament.

**** Non-Ministerial Offices (NMOs) are accountable to the Parliament and are not subject to direction of Ministers in the discharge of their statutory functions.**

- The Scottish Public Finance Manual (SPFM) sets out the lines of accountability for public bodies.
- Executive NDPBs are directly accountable to Ministers, and through Ministers to Parliament. The Chief Executive, or Commissioner as they may be referred to in this case, is designated as the Accountable Officer (AO) responsible for the use of resources. However, Ministers remain accountable to the Parliament for the allocation of public funds. A Board holds the Chief Executive to account and the relationship between Ministers, SG and the NDPB is set out in the relevant legislation and the Framework Document. Examples of these documents are provided separately.
- Advisory NDPBs do not have AOs because they are accounted for within SG and usually staffed by SG civil servants.
- PBSU does not meet regularly with public bodies, that is the role of SG sponsorship teams. The frequency of meetings between sponsors and their sponsored bodies should be formally agreed in the Framework Document.
- Sponsorship plays a crucial role in ensuring that public bodies are contributing as fully as possible to delivering the Government's targets and National Performance Framework national outcomes.

The establishment of Parliamentary Commissioners by Scottish Government

- It is the Scottish Government's policy not to set up new public bodies except as a last resort. As such, it should not be assumed that approval will be given for such an entity in any but the most exceptional circumstances.
- When SG is considering proposals to create a new SPCB-supported officeholder, internal guidance for staff makes clear that early engagement with officials supporting the SPCB is essential to ensure they are aware of potential proposals.
- Any preference to establish a Parliamentary Commissioner would be determined by necessity after all other alternative service delivery options had been explored and discounted. The MCF requires this for all newly proposed public bodies.
- There may be certain instances where Parliamentary Commissioners are deemed necessary. The status and role of certain office holders (e.g. regulatory or quasi- judicial) make it inappropriate for Scottish Ministers to have any involvement in their appointment or any arrangements for holding their offices to account.

- That position, coupled with a need to ensure independence (in core function) of the office-holders and the constitutional nature of the functions concerned, make it essential for certain offices to be established as Parliamentary Commissioners appointed by the Parliament and overseen (as regards pay and rations / day to day operation) by the SPCB as opposed to, for example, a Non-Departmental Public Body.
- Since 2007, three Parliamentary Commissioners have been established via government proposals with further work underway to establish a Victims and Witnesses Commissioner. Background for each of these has been given below.

Ethical Standards Commissioner

- In line with the Government's commitment to streamline the public sector landscape, the Ethical Standards Commissioner was created out of the merger of the existing Public Standards Commissioner and Public Appointments Commissioner.
- Both Commissioners' posts operated within the statutory framework for the promotion of ethical standards in public life in Scotland, and their functions in relation to the regulation of the Codes of Conduct and Code of Practice for Public Appointments had an obvious synergy. Their responsibilities in relation to scrutiny and compliance were also very similar as were their operational structures and methods of working.
- The then model was effectively that of an organisation with two Chief Executives, albeit with their own statutory functions and responsibilities. Staff in both offices were already working closely but the change to a single Commissioner was seen to increase the opportunity for greater flexibility with the prospect of increasing efficiencies. This synergy would be enhanced by bringing the offices together and providing a wholly cohesive public service, effectively a single access point for the public and other stakeholders.
- John Swinney, then Cabinet Secretary for Finance, Employment and Sustainable Growth discussed proposed changes at a meeting on 14 June with Derek Mackay, then Minister for Local Government and Planning, Stuart Allan (Public Standards Commissioner and acting Public Appointments Commissioner) and officials. They agreed to pursue a section 14 order to give effect to the necessary changes. The request to bring forward a proposed draft order to make these changes was set out in a letter of 19 January 2012 from Tricia Marwick MSP (on behalf of the SPCB).

Scottish Biometrics Commissioner

- In June 2017 Michael Matheson, then Cabinet Secretary for Justice established an independent advisory group (IAG) to provide recommendations on a policy and legislative framework for police use of biometric data and technologies. The group was chaired by John Scott QC and drew its membership from Police Scotland, the Scottish Police Authority,

HM Inspectorate of Constabulary in Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Human Rights Commission and the Information Commissioner's Office, with relevant academic and research expertise also in place.

- The Group's report made a total of 9 recommendations which sought to improve public awareness and strengthen the governance arrangements for the use of biometric data. Mr Matheson accepted 8 of those recommendations and signalled principled support for the final recommendation which called for the establishment of an independent Biometrics Commissioner.
- The Report of the IAG was the third to make the recommendation for independent oversight arrangements for biometric data in a justice setting. In 2007, Professor Jim Fraser was asked to review and report on the operation and effectiveness of the statutory regime governing fingerprint and DNA data. In January 2016, HM Inspectorate of Constabulary in Scotland (HMICS) published its 'Audit and Assurance Review of the Use of the Facial Search functionality within the UK Police National Database (PND) by Police Scotland' which again recommended enhanced oversight.
- The Scottish Biometrics Commissioner Bill was introduced by the SG in 2019 and passed in March 2020. Ahead of the Bill being introduced, the SG had consulted on the functions of the Scottish Biometrics Commissioner, including whether an existing body could perform the role. However, it was established that His Majesty's Inspectorate of Constabulary Scotland (HMICS) was not suitable as this additional role would have diluted its core function. As for the Police Investigations and Review Commissioner, there would have been a conflict of interests as it is one of the bodies under the SBC's remit. The Patient Safety Commissioner for Scotland
- The Patient Safety Commissioner for Scotland was established in response to a recommendation made in the report of the Independent Medicines and Medical Devices Safety Review, known as the Cumberlege Report.
- While it mainly focused on England, patients and families from Scotland gave evidence to the review, and the issues it discussed apply to all four nations of the UK. The report recommended the establishment of an independent public leader with a statutory responsibility to champion the value of listening to patients in advocating for improvements in patient safety.
- A Government Bill was introduced to the Scottish Parliament in October 2022 and passed stage 3 unanimously in September 2023. The Patient Safety Commissioner for Scotland Act commenced on 1 May 2024.
- The Act establishes a Parliamentary Commissioner who is independent of government and the NHS, something patients said was very important to them.

Victims and Witnesses Commissioner

- The Victims, Witnesses, and Justice Reform (Scotland) Bill (VWJR Bill) establishes an independent Victims and Witnesses Commissioner (VWC) for Scotland, accountable to the Scottish Parliament. This is not a new model – such roles are already in place – and valued – in other jurisdictions.
- The proposal for a VWC arose from discussions at the Victims Taskforce and has broad support from victims. Victims often feel unheard and cannot access information, despite the existing landscape of organisations who advocate for their rights and interests.
- The VWC will provide an independent voice for victims and witnesses, champion their views and encourage policy makers and criminal justice agencies to put victims' rights and interests at the heart of the justice system.
- By monitoring how victims' rights are being upheld, the VWC will have an important role in holding justice agencies to account. This includes how justice partners are fulfilling the new duties in the VWJR Bill on trauma-informed practice.
- No existing public body or organisation has the statutory power of holding criminal justice agencies to account in relation to how the rights of victims and witnesses are met or upheld, nor is this a role that can be given to a third sector organisation. The VWC will fill this gap and provide the mechanism of accountability that is lacking from the criminal justice system.
- Although the VWC was committed to prior to the introduction of the MCF, Scottish Government officials undertook a Value for Money Accountable Officer Assessment, which was approved and signed off by the Permanent Secretary in February 2023.

Wider reform of the public sector landscape

- Reforming Scotland's public services is vital to ensure people experience high quality services, focussed on those who need it most.
- As a responsible Government, especially in a challenging financial climate, we must ensure that the resources we have work as hard as they can to improve outcomes and reduce inequality, now and in future.
- We should not follow existing operational practices if public services can work more efficiently by adopting new arrangements. And we should not maintain the current public bodies landscape if we can secure savings and improved service delivery by rationalising public bodies. That is why we have introduced the Ministerial Control Framework and are working to review the current landscape as part of our PSR programme to make sure it is fit for purpose.

- The Scottish Government cannot do this alone and we are working to build a consensus with local government, public bodies, third sector organisations, and the private sector. The review and reform of public bodies is a core component of the public service reform programme and we are engaging closely with public bodies.
- However, Government involvement in reviewing the Parliamentary Commissioner landscape will be constrained, and at times inappropriate, due to the nature of the services these bodies deliver and their independence from Government.
- Regarding public bodies more widely, the Scottish Government doesn't believe setting arbitrary targets for the number of public bodies adds value. Instead, PSR is focused on driving a culture of continuous improvement to support efficiency and effectiveness across the delivery of public services.
- The Minister for Public Finance intends to publish a PSR Strategy this year. PSR will explore how public bodies can deliver services more efficiently and effectively, incorporating the principles set out in the Christie Commission on the future delivery of public services. A key element of this is improving public service delivery through a person-centred approach.
- As part of the PSR programme, the Scottish Government and COSLA's joint Local Governance Review was set up to ensure Scotland's diverse communities and different places have greater control and influence over decisions that affect them most.

Data Commission on Public Bodies 2024

- On 15 November 2024, Scottish Government published aggregate data and an accompanying [summary report](#) with headline information about expenditure by public bodies on corporate functions. More detailed microdata, including from individual public bodies, and an accompanying [supplementary report](#), were published shortly afterwards. Both aggregate data and microdata can be found here: <https://www.gov.scot/publications/public-bodies-corporate-function-data-data-as-at-financial-year-2022-23/>
- This report reinforces the value of Scottish Government and public bodies in pursuing further savings in “back-office” spending, wherever this can release resource to the front-line and support strong and sustainable service delivery.
- The reports collate information public bodies provided following a commission by Minister for Public Finance Ivan McKee in July 2024.
- Figures show that public bodies spent nearly £1.3bn in 2022-23 on running their corporate functions. Those corporate functions managed a further £2.3bn in payments to third parties.

- Total resource expenditure reported by Scotland's public bodies in 2022-23 was
- £23.0bn. This figure excludes some operational expenditure, including spend on major activities such as social security payments; funding for colleges and higher education institutions.
- The reports provide a proactive call to pursue whatever further opportunities exist to release resource from "back office" to "frontline", wherever this supports strong and sustainable services.
- Scottish Government and public bodies are already acting on this. For instance:
 - moving location to more cost-effective premises, including shared office space
 - exploring shared service opportunities, including use of the Scottish Government's Oracle based HR and Finance systems.
 - The Scottish Government has a range of programmes that are saving money from corporate expenditure that we can use to improve services.
- The data provide a valuable starting point for further enquiry. However, the data report makes clear that microdata should not be used in themselves to reach judgments about how efficiently a specific body is operating. For example:
 - Each body operates in a distinct environment, which its operating costs reflect. They carry out a wide array of roles and functions. Sizes range from very small to very large. Their scope may be national or regional.
 - For some bodies, especially many of those which raise revenue directly, total activity supported by their corporate functions may be substantially greater than the data reveal.
- The primary value in the data is to identify starting points for further exploration, including specific factors relating to particular bodies, what further measures may be appropriate and most valuable, and what sharable practice may lie behind particularly strong performance.

Consultation: Public Services Reform (Scotland) Act 2010: Extension of Part 2 Order Making Powers

- Scottish Ministers currently hold powers to propose changes to the law, in ways that are more streamlined and flexible than a new Act of the Scottish Parliament would require in two specific situations. These situations are to improve the effectiveness, efficiency and economy of public service functions (section 14); and to reduce or remove burdens resulting from legislation

(section 17). These powers require to be renewed every five years in order to continue, and the Act requires Ministers to consult on proposals to extend these powers.

- Public service reform is a huge challenge, but proper and appropriate use of these Order-making powers can directly support the Government's priority of delivering effective and sustainable public services.
- We recognise the importance of using these order-making powers proportionately and with care as an alternative to primary legislation.
- Strong public services are in turn better placed to deliver our key priorities of growing the economy, eradicating child poverty, and tackling the climate crisis.
- A consultation ran from 16 December 2024 to 10 February 2025 seeking views on whether Scottish Ministers should continue to hold these powers.
- A total of 21 responses were received, 15 from organisations and six from individuals; 16 agreed to extending these powers, four opposed the extension and one was neutral.
- We published the consultation analysis report on 17 April 2025: <https://www.gov.scot/publications/public-services-reform-scotland-act-2010-part-2-further-extension-order-2025-consultation-analysis-report/>
- The Minister for Public Finance gave evidence at FPAC on 11 March 2025, the committee approved the motion to extend these powers, and Parliament approved them on 26 March. The Minister for Public Finance signed the SSI on 27 March and this will take effect from June 2025.

Clusters

- In August 2023 PBSU began work to establish facilitated clusters on three themes (Cultural bodies, Environmental bodies, Digital Licensing) focusing on opportunities for reform which can't be met by a single organisation or sector.
- Depending on theme and focus, we might expect clusters to focus on purpose, functions, roles, structures, funding, relationships and accountability.
- Clusters are not intended to interrupt existing reform activities (e.g. estates and workforce). Rather, we want to complement the work already underway, creating a safe and supportive space for collaboration between public service organisations
- We are providing independent facilitation to support this process, and to support clusters more generally, to provide space for public bodies to have the kind of open and honest conversations that are required to drive reform.

- Looking ahead, Scottish Government is also working to set up additional clusters, working with those public bodies who are ready to take forward collaborative activity.

Reform In Action

- The 'Reform in Action' online repository showcases films and case studies which tell the story of Public Service Reform in Scotland. It can be accessed here: [Reform in Action – Videos](#)
- The stories aim to provide Public Sector leaders with inspiration and new ideas whilst helping to coach and support organisations on their own transformation journeys.
- The repository showcases a wide range of transformation themes including, but not limited to:
 - Digital transformation
 - Increased efficiencies
 - Partnership working
 - Reskilling the workforce
 - Process improvements
 - Invest To Save Fund
- The Scottish Government has created a fund of £29.9M to support public service reform, by funding investment in projects to create future savings.
- The fund is designed to generate future savings which will inform and be managed through the annual budget setting process.
- The fund is initially on a one-year basis; however the intention is the "principal", i.e. the original amount allocated, will be returned to Scottish Government to allow further investment in future years..
- The fund should explicitly focus on delivering savings within national and local government and public bodies. This fund is primarily about realising savings against projected future expenditure in the near term, although there are options to reinvest savings to deliver additional front-line services.