

SCOTTISH COMMISSION FOR PUBLIC AUDIT

LEGACY PAPER

Introduction

The purpose of this paper is to provide information to new members of the SCPA on its role under the Public Finance and Accountability (Scotland) Act 2000. This paper also outline issues in relation to the SCPA's working practices, procedure and possible future work the new Commission may wish to undertake in monitoring Audit Scotland's expenditure.

Role

A useful outline of the legislative basis for the procedure and membership of the SCPA, the role of its external auditor and how the SCPA operates in practice is provided within the submission made by the SCPA to the Finance Committee's inquiry into Accountability and Governance. This is attached at Annexe A.

Working practices

Frequency of meetings

In the first two parliamentary sessions the Commission has sometimes found it difficult to find a regular slot for meetings given commitments of members to sit on parliamentary committees, and latterly private bills committees. This has often led to the Commission meeting in the evenings. In order to ensure that the Commission can meet as regularly as required members have agreed to request a regular slot in the timetabling for committee meetings in the new session.

Detailed below are measures to ensure that Audit Scotland inform the SCPA 'upstream' of any additional pieces of expenditure such as an increase in its staffing complement, any restructuring or one-off capital expenditure such as refurbishing premises. The aim of this is to ensure the Commission can scrutinise constituent parts of Audit Scotland's planned expenditure in advance of considering a bid for its whole budget within the tight timescales of the budget process.

Whilst it is not envisaged that the SCPA would require to meet on a regular basis throughout the year, it is proposed that, to allow the Commission to give full scrutiny to Audit Scotland's budget proposal, at a minimum it should meet monthly from April to October each year.

Procedural issues

Status of the Commission

During the last two years of the second parliamentary session the SCPA has sought to mirror the procedures of committees wherever possible. For example, the

Commission began holding meetings in public in 2005 and publishing reports and minutes on its website.

The Commission then made a formal request to the Procedures Committee in September 2006 that its agenda be published in the Business Bulletin and also a word-for-word record of Commission meetings be published to the same timescales as committee *Official Reports*. The Procedures Committee, at its meeting on 14 November, agreed to recommend Rule-changes to Standing Orders to affect these changes. The Procedures Committee published the resulting report to Parliament on these changes on 15 December and the agreed changes will come into affect at the start of the third parliamentary session.

During the course of this consideration the Procedures Committee sought legal advice as to whether the SCPA was covered under Section 41 of the Scotland Act. This section provides that statements made in the proceedings of Parliament and any publications under the authority of the Parliament is absolutely privileged for the purposes of the law of defamation. The Committee has since been advised that the SCPA is not included within the definition of parliamentary proceedings and therefore is not covered by the act. Any attempt to change this would require primary legislation, presumably via a committee bill.

Members of the new Commission may wish to give consideration as to whether they wish to seek to have a privileged status for the proceedings and publications of the SCPA. If so, they may wish to enter into discussions with the new Audit Committee on the possibility of bringing forward amending legislation.

Audit Scotland written responses

The Commission has a Written Agreement with Audit Scotland which details, amongst other things, the deadlines for the submission of information by Audit Scotland to the Commission (attached at Annexe B). For example it is required to submit its detailed budget proposal by the end of September each year. The Commission would wish to suggest that the new Commission engages in discussions with Audit Scotland to amend this Agreement to include details of the timescales for providing written responses to the Commission. For example, in line with the protocol between the Executive and the Parliament, Audit Scotland could be required to provide:

- a response to any report of the SCPA or effectiveness, efficiency and economy (3E's) review by the external auditor within 2 months;
- supplementary written evidence following an oral evidence session within one month; and
- supplementary evidence to inform the Commission's consideration of Audit Scotland's budget proposal as soon as is practicable (given the tight reporting timescales for the Commission during the budget process).

Economy, Efficiency and Effectiveness reviews

Possible issues for future reviews

During its discussion on possible 3E's reviews in April 2006, where the Commission agreed a review on fees and charges, another possible topic was discussed which could form the basis of a review in the third parliamentary session. Clearly it is entirely within the new Commission's gift to select its next topic for a 3E's review but details of this possible topic are attached at Annexe C for information.

Monitoring implementation of fees and charges review recommendations

At its meeting on 22 November the Commission took evidence from Haines Watts and Audit Scotland on the findings of the 3E's review into fees and charges. The review makes recommendations for Audit Scotland in improving its working practices and during the evidence session Audit Scotland gave the Commission assurances that it intended to act upon a number of these recommendations. Members of the new Commission may wish to consider holding a follow up evidence session, for example a year after the laying of the review, to monitor the extent to which Audit Scotland has followed up on the recommendations made by the external auditor.

Proposals for additional expenditure

The Commission has considered how it can more effectively monitor Audit Scotland's expenditure within the provisions of its establishing legislation. For example, in relation to staffing levels, the Commission's report on Audit Scotland's 2007-08 budget proposal recommended that:

...in the interest of good governance, the Auditor General should write to the Commission with notification of any proposed increase in Audit Scotland's overall staffing complement and include details of the cost and justification for such an increase. The Commission would also appreciate similar information for any proposed staffing restructuring.

This recommendation reflects Members' desire to ensure that the SCPA is informed of developments within Audit Scotland which may lead to an increase in expenditure in advance of its scrutiny of the budget proposal which includes provision for funding these developments. It is intended that such notifications will provide the Commission with the opportunity to scrutinise constituent parts of Audit Scotland's planned expenditure in advance of considering its overall budget bid.

To aid scrutiny, Members of the new Commission may wish to seek agreement from Audit Scotland that it will also notify the Commission as standard of any large piece of one-off capital expenditure which Audit Scotland proposes to undertake, such as refurbishment of premises.

Ongoing issues

Pensions liabilities

The report on Audit Scotland's 2007-08 budget proposal made recommendations in relation to a £300,000 pensions liability held by Audit Scotland. Annexe D reproduces the relevant extract of this report. The report raises strong concerns that Audit Scotland have not budgeted for this liability within its 2007-08 budget proposal. The Commission raised these concerns again with Audit Scotland at its meeting on 22 November 2006 in order to follow up on the recommendations within its report. As can be seen from the substantially verbatim report of this meeting the Commission was extremely concerned that this issue remained unresolved and agreed to write to the Scottish Executive following the evidence session to seek such a resolution.

In January 2007 the SCPA received written confirmation that Audit Scotland would seek funds for 2006-07 through the Spring Budget Revision. Discussions between the Executive, Audit Scotland and the Scottish Public Services Ombudsman to decide which organisation should assume responsibility for the liability in the longer term may continue beyond dissolution. The new SCPA may therefore wish to seek an update on progress with this issue during the first year of the third parliamentary session.

Conclusion

New Members of the Commission may wish to hold an awayday soon after establishment to provide them with an opportunity to:

- consider the specific role of SCPA as a public body;
- consider the proposals above on working practices;
- consider future 3E's reviews topics and evidence sessions with Audit Scotland;
and
- establish relations with the external auditors, Haines Watts.

Submission from the Scottish Commission for Public Audit to the Finance Committee

This submission sets out the specifics of the legislative basis for the SCPA and also details how the Commission has operated in practice since 1999. Representatives of the SCPA will of course be happy to discuss further the issues raised in this submission when they appear before the Finance Committee on 16 May.

Legislative basis for the SCPA

The Scottish Commission for Public Audit is a statutory body established under the Public Finance and Accountability (Scotland) Act 2000 [the PFA Act].

Audit Scotland expenditure proposals

The role of the SCPA in relation to Audit Scotland's expenditure proposals, is set out in Section 11 (9) of the PFA Act which states:

“Audit Scotland must, for each financial year, prepare proposals for its use of resources and expenditure and send the proposals to the Scottish Commission for Public Audit...which is to examine the proposals and report to the Parliament on them.”

It is worth noting, in relation to this provision, that the Commission is not responsible for determining the salary of the Auditor General, as the Act goes on to state that:

“The Auditor General is entitled to a salary of such amount and such allowances as the SPCB may determine.”

The Act also requires the SCPA to report ‘from time to time’ on the exercise of these functions.

Audit Scotland accounts and 3E's

The Act also gives the SCPA responsibility for securing the audit of Audit Scotland's accounts and initiating any examination into the economy, efficiency and effectiveness with which Audit Scotland uses its available resources.

Membership

The Act states that the Commission should consist of 5 MSPs and that one of these members should be the Convener of the Audit Committee who should be an ex-officio member of the Commission.

The remaining 4 members are appointed in accordance with the Standing Orders of the Parliament (Rule 3.13) which states, amongst other things, that the membership will have regard to the balance of political parties in the Parliament.

Operation in practice

Audit Scotland expenditure proposals

In practice the SCPA meets at least twice a year to consider Audit Scotland's corporate plan, draft budget bids, their accounts and 3E's examinations. The meeting to consider Audit Scotland's detailed draft budget bid takes place in November, the SCPA then lays a report before Parliament on this budget bid.

It should be noted that the PFA Act does not state that the Parliament should vote on the SCPA's report i.e. the Act is silent on whether the SCPA's report can recommend that Audit Scotland's proposals be rejected or amended in any way. Consequently, it does not say how – if the SCPA were to suggest rejection or amendment – the Parliament would deal with this proposal and how it would impact on the subsequent budget bill. Standing Orders are silent on whether the SCPA, in publishing its report, could lodge a motion to ask the Parliament to debate and vote on the report.

It may be helpful to note in relation to this issue, in contrast to the SCPA's statutory obligation to 'examine proposals and report', the legislative basis for the Public Accounts Commission¹, provides that the Commission has the power to:

"examine any Estimates prepared by the C&AG to cover the expenses of the NAO, and to lay such Estimates before the House of Commons with such modifications, if any, as the Commission thinks fit."

- Role of the Finance Committee

The PFA Act only stipulates that the Commission should report to the Parliament on Audit Scotland's budgets, there is no detail as to the form that this reporting should take or indeed how this reporting sits alongside the Finance Committee's role in considering budgets for organisations which receive top-sliced funding from the Scottish consolidated fund.

To address this situation the SCPA has agreed a protocol with the Finance Committee which stipulates that the SCPA provides the Finance Committee with a copy of its report on Audit Scotland's budget bid to inform the Committee's consideration of each budget bill. It also states that 'the SCPA will seek to answer any questions from the Committee and, provided it is not commercially confidential or otherwise sensitive, make information available to the Committee'.

Whilst the agreed protocol clarifies the information that the SCPA will provide to the Finance Committee, it should be noted that there is still an element of uncertainty as to whether, should the Finance Committee wish to do so, it could over-turn a recommendation of the SCPA in relation to Audit Scotland's budget, particularly given that the SCPA is established by legislation and the Finance Committee is not.

Auditors to Audit Scotland

- appointment

¹ National Audit Act 1983

The SCPA has recently appointed new auditors to Audit Scotland (Haines Watts), following the end of the previous auditors' (Mazars) contract. The competitive tendering process for external auditors is managed by the Parliament's procurement office in conjunction with the adviser and the secretary to the SCPA. In terms of funding for the external auditors, although the SCPA selects and appoints the auditors to Audit Scotland, Audit Scotland provides the funding for the auditors.

- 3E's examinations

The SCPA has initiated one economy, efficiency and effectiveness review by the previous auditors (Mazars) into Audit Scotland's graduate training programme. Mazars conducted the examination before reporting to the Commission in May 2005. The auditors' findings did not include any specific recommendations on Audit Scotland's practices.

The Commission has recently agreed to instruct Haines Watts to undertake a further economy, efficiency and effectiveness examination, the subject matter of which is an issued of continued interest to the Commission which will enable Haines' Watts to draw on their expertise as external auditors to the National Audit Office. The subject matter of this examination will remain confidential until the proposed remit has been discussed with Audit Scotland.

Membership

At present, 4 of the 5 members of the SCPA are also members of the Audit Committee. Apart from the requirement for the Convener of the Audit Committee to be an *ex-officio* member of the SCPA, the link between the Audit Committee membership and the SCPA membership has been as a result of business managers continually selecting members of the Audit Committee to become members of the SCPA. Clearly, members of the SCPA have a keen awareness of the distinction between their role in scrutinising Audit Scotland on the SCPA and their role on the Audit Committee.

Procedure

The PFA Act also does not provide specific details of the procedure for meetings of the SCPA, the make-up of support services for members of the SCPA or any process for the approval of funding for the SCPA beyond stating that "the Parliamentary corporation is to provide the Commission with the property, staff and services required for its purposes" and that "the Commission may determine its own procedure".

- meeting procedures

The SCPA has sought to mirror the procedures of other Parliamentary committees, where appropriate, with the aim of ensuring that the Commission is as open and accessible as these committees. Therefore, meetings are conducted in public wherever possible and operate in accordance with the rules defined in Standing Orders. In addition, meeting papers are published on the web alongside meeting minutes and reports from the SCPA and Audit Scotland's internal auditors.

- staff

In practice the Commission's support staff consist of a secretary (who is also the Senior Assistant Clerk to the Finance Committee), an assistant secretary (also

Assistant Clerk to the Audit Committee) and the adviser (also audit adviser to the SPCB).

- funding

The funds required for the SCPA have been minimal since 1999, the only expenditure having been a visit to the Danish Parliament's Public Accounts Committee by the Convener. Although there is no requirement to do so, the Convener has requested that such bids should be considered by the Convener's Group, in order to ensure that the Parliament is formally in favour of funding any future fact-finding visits.

- Status

At present the SCPA does not currently have the same status as parliamentary committees in a number of respects. For example, the Convener is not part of the Conveners Group. In addition, having insisted on public meetings, the SCPA is not entitled to an *Official Report*.

The SCPA notes that the submission from the Parliamentary Standards Commissioner suggests that the Parliament delegates taking an interest in the work programme of commissioners and ombudsman alongside the examination of their budgets to a body of MSPs and cites the SCPA as an example.

Members of the SCPA appreciate the logic of having a body which can consider proposed budgets in the context of work programme. However, members are of the view that, should any proposals for additional functions for the SCPA be approved, careful consideration would need to be given as to how the status of the SCPA may need to change and how it should be resourced to ensure the SCPA can carry out any new functions effectively.

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Scottish Commission for Public Audit

**PROTOCOL BETWEEN THE SCOTTISH
COMMISSION FOR PUBLIC AUDIT AND AUDIT SCOTLAND**

Introduction

1. This protocol sets out the agreed administrative arrangements and procedures between the Scottish Commission for Public Audit (“the Commission”) and Audit Scotland, in order to help the Commission discharge its statutory duties as set out in the Public Finance and Accountability (Scotland) Act 2000. This protocol is established for the benefit of both the Commission and Audit Scotland and does not impose a binding duty on either body.

Methods of communication

2. The primary route for formal communication between the Commission and Audit Scotland shall be between the Convener (on behalf of the Commission) and the Auditor General (as the accountable officer for Audit Scotland).
3. Audit Scotland shall ensure that all communications with the Convener which relate to the functions or work of the Commission as set out in the Public Finance and Accountability (Scotland) Act 2000, shall be copied to the Secretary to the Commission.
4. For more general administrative communication, the primary route between the two bodies shall be between the Secretary to the Commission and the Director of Corporate Services of Audit Scotland.
5. An agreed minute of any decisions taken or actions required as a result of meetings between the staff of the Commission and Audit Scotland shall be prepared and circulated as appropriate.
6. The Assistant Secretary to the Commission shall act in place of the Secretary when the Secretary so decides or is for any reason unavailable.
7. The Director of Audit Strategy shall act in place of the Director of Corporate Services when the Director of Corporate Services so decides or is for any reason unavailable.
8. In order for the Commission’s business to function most effectively, electronic communication is the preferred choice for sending correspondence and other official documents. However, there shall be occasions when it is more appropriate to provide hard copies of documents by post.

Communication during a parliamentary dissolution

9. On any occasion when the Scottish Parliament is dissolved pursuant to a Scottish general election, all formal communications between the bodies shall be between the Auditor General and the Secretary to the Commission.

Scrutiny of the annual budget for Audit Scotland

10. The Commission expects to receive relevant information from Audit Scotland in accordance with its annual work cycle (set out in Annexe A) and its agreement with the Finance Committee on the budgeting process². This includes receiving:

- Outline annual expenditure plans no later than 1 March each year, or the first day thereafter on which the Parliament sits;
- A detailed annual budget submission no later than 30 September each year, or the first day thereafter on which the Parliament sits.
- Details of any substantive changes to Audit Scotland's budget throughout the period between March and January.
- Details of any in-year budget revisions.

11. As outlined in the work cycle, the Commission normally expects to consider and, when it considers necessary, take oral evidence from Audit Scotland on the outline annual budget proposals in mid-March and the final annual budget proposals in October/November.

12. The Secretary will give the Auditor General as much notice as possible regarding dates for evidence taking sessions.

13. Audit Scotland shall notify the Commission as soon as possible if, due to any unforeseen circumstances, it is unable to meet the requirements of the Commission's work cycle.

Audit Scotland's annual accounts

14. The Commission is required to arrange for Audit Scotland's annual accounts to be audited and laid before the Parliament each year. To facilitate this, Audit Scotland shall arrange for a meeting to be held between Audit Scotland, the appointed external auditor for Audit Scotland and the Secretary to the Commission. The purpose of this meeting shall be to sign off formally the annual accounts. This meeting shall take place annually, normally in mid-September. Once formally signed, the Secretary of the Commission shall arrange for the accounts and the auditor's report on these accounts to be laid before the Parliament and to be published.

Other statutory functions of the Commission

15. The Commission shall notify Audit Scotland should it be necessary, or should it so decide, to exercise any of its functions as set out in the Finance and Public Accountability (Scotland) Act 2000 which are not covered by the work cycle, or regarding any other matters which might arise requiring action by Audit Scotland.

Review of the protocol and annual work cycle

16. The Commission shall keep this protocol and work cycle under review and shall amend it as appropriate. In particular, it shall monitor any changes to the

² Currently SP Paper 157 but in revision with the Finance Committee

established annual budgeting process and the implications this may have for the arrangements set out in the work cycle.

17. The Commission shall, in timely fashion, seek and consider the opinion of Audit Scotland on any proposed amendments. The Auditor General may propose amendments to the protocol or work cycle whenever he considers necessary. However, any amendments must first be discussed and then authorised by the Commission.

Date	Commission Business
February	<p>Audit Scotland to provide by 1 March each year provisional expenditure plan for the financial year after next. For example, in February 2004, submit expenditure plans for financial year 2005/06.</p> <p>The Commission to write to the Finance Committee and the Scottish Executive with details of Audit Scotland's provisional expenditure plans as soon as they are received (no requirement for report at Stage 1).</p>
April/May	<p>SCPA meeting</p> <p>a) To discuss Audit Scotland's provisional expenditure plans [in the context of the Corporate Plan].</p> <p>b) To take evidence from Audit Scotland (if the Commission so decides) on the provisional expenditure plans.</p> <p>c) To discuss any other business eg 3Es.</p>
End September	<p>Audit Scotland to submit to the Commission by end September its draft budget for the following financial year e.g. in September 2005, submit budget for 2006/07.</p> <p>The Commission to write to the Finance Committee and the Scottish Executive with details of Audit Scotland's expenditure plans.</p> <p>Meeting of officials to sign off accounts and auditor's report no later than end September.</p> <p>Accounts and auditor's report to be laid and published.</p>

Late October/November	<p>SCPA meeting(s)</p> <ul style="list-style-type: none"> a) To consider Audit Scotland’s laid accounts (if the Commission so decides). b) To take evidence from auditors to Audit Scotland (if the Commission so decides) on Audit Scotland’s accounts. c) To take evidence from Audit Scotland (if the Commission so decides) on the accounts. d) To consider Audit Scotland’s draft budget proposals and any autumn budget revisions, and (if the Commission so decides) take evidence on the draft budget and budget revisions from Audit Scotland. <p>The Commission to report formally to the Parliament on Audit Scotland’s expenditure proposals by the second week of November, to fit with Stage 2 budget timescales.</p>

Possible topic for 3E's review - Audit Scotland's use of external consultants

Background

1. Audit Scotland uses external consultants to varying degrees where they consider there is a need to access specialist expertise, advice and assistance that is not available from in-house resources. Such specialist input is of particular relevance in Audit Scotland's range of value for money studies. In 2006-7 700k of Audit Scotland's expenditure was on external consultants.
2. In previous years Audit Scotland's in-house staff numbers has seen significant increases and the justification offered has been primarily its best value work. For example, in 2003-4 the average number of staff employed was 242 which rose to 274 in 2004-5.

Examination into utilisation of consultants

3. In addition to considering the rationale for employing outside expertise from consultants, the examination could look at the growing number of staff employed by Audit Scotland as in-house specialists for value for money work. It could also look at the basis for the existing balance between employing staff in-house on a permanent basis and employing external specialists on a case by case basis, and the relative costs.

Advantages of this option

4. This is a focused topic and is therefore likely to produce specific recommendations on the operation of Audit Scotland.
5. Haines Watts has previously undertaken a similar 3E's examination into the National Audit Office. In addition to the advantage of previous experience, there would be scope within this examination to benchmark Audit Scotland against the National Audit Office to an extent.

Extract of the SCPA's report on Audit Scotland's 2007-08 budget proposal

Pension liabilities

In supplementary written evidence received on 21 September 2006³, the Auditor General advised the Commission of a potential pension liability of £300,000 arising from former Scottish Commissioners (the Commissioner for Local Administration in Scotland, the Health Service Commissioner and the Scottish Parliamentary Commissioner for Administration). Prior to the establishment of the Public Services Ombudsman by statute in 2002, Audit Scotland provided administrative and back office services for the Ombudsman's predecessors. Audit Scotland had assumed that the liability for pensions for former commissioners and a pension enhancement for one of their former staff members had transferred to the Scottish Public Services Ombudsman's office post 2002 via the legislation establishing the new SPSO. However it has emerged that responsibility for former staff, (i.e. those who did not transfer to the Scottish Public Services Ombudsman following the legislative change in 2002) has remained as a liability to be met by Audit Scotland as the Scottish Public Services Ombudsman Act 2002 did not achieve the intended outcome of transferring liability to the SPSO.

Having identified this issue, the SPSO and Audit Scotland have jointly sought the opinion of Senior Counsel. The opinion expressed in the response, that liability falls with Audit Scotland, appears unequivocal. Audit Scotland have since written to the Scottish Executive asking it to consider the options for resolving the difficulty. The Auditor General outlined what he considered to be the options for action to resolve this matter stating⁴:

“The options that seem to us to be open are: first, that the Scottish Executive agrees that we make an additional request for funding through the Scottish Commission for Public Audit; secondly, that the Scottish Executive assumes direct responsibility for the costs; or thirdly, that the Executive amends the legislation to transfer the legal liability to the ombudsman. Until we receive a response from the Scottish Executive on those three options—or on other options that we have not identified—it is difficult for me to advise further.”

The Commission considers that action from the Executive to resolve this issue is unlikely to be immediate and Audit Scotland do not appear to have any indication as to which of the options outlined above the Executive will take. Given the uncertainty as to when this situation will be resolved and what the outcome will be, the Commission is concerned that Audit Scotland has not accounted for this liability within its 2007-08 budget proposal. **The Commission intends to take additional evidence from Audit Scotland in an attempt to resolve this issue, however, the Commission considers that reflecting this liability within the 2007-08 proposal would have constituted prudent financial management.**

³ Letter from the Auditor General for Scotland to the Secretary, 21 September 2006

⁴ Report from the 2nd meeting of the SCPA, 27 September 2006

The Commission understands that the issue of this liability arose after the finalisation of the audit of Audit Scotland's 2005/06 accounts by the external auditor. Indeed, Haines Watts were unaware of this issue until it was raised in evidence with Audit Scotland on 27 September when Haines Watts' representative Richard Gibson was present. It does not constitute good practice for Haines Watts to learn of a £300,000 liability during a public evidence session as a result of a particular line of questioning being pursued. **The Commission considers that it would have been appropriate for the Auditor General to have formally notified the external auditor as soon as he was aware that, according to independent legal advice, the £300,000 liability rested with Audit Scotland.**