



The Scottish Parliament
Pàrlamaid na h-Alba

REVIEW OF SPCB SUPPORTED BODIES COMMITTEE

AGENDA

5th Meeting, 2009 (Session 3)

Tuesday 24 March 2009

The Committee will meet at 10.30 am in Committee Room 4.

1. **Review of SPCB Supported Bodies (in private):** The Committee will consider the main themes from the evidence.

Not before 12:00 PM

2. **Review of SPCB Supported Bodies:** The Committee will take evidence from—

John Swinney MSP, Cabinet Secretary for Finance and Sustainable Growth, Tom Harvie-Clark, Head of Water Industry Branch, and Gordon Kilpatrick, Head of Sponsorship and Review - Offender Management, Scottish Government.

3. **Review of SPCB Supported Bodies (in private):** The Committee will consider the main themes arising from the evidence.

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Clerk to the Review of SPCB Supported Bodies Committee
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The papers for this meeting are as follows—

Agenda item 1

Note on terms and conditions	RSSB/S3/09/5/1 (P)
Rights Body summary of evidence	RSSB/S3/09/5/2 (P)
SPICe briefing	RSSB/S3/09/5/3
Scottish Public Services Ombudsman summary of evidence	RSSB/S3/09/5/4 (P)
Standards and Complaints summary of evidence	RSSB/S3/09/5/5 (P)
Scottish Public Services Ombudsman legislative changes (to follow)	RSSB/S3/09/5/6 (P)
Legal status of officeholders	RSSB/S3/09/5/7 (P)

Agenda item 2

Scottish Government response to action group reports	RSSB/S3/09/5/8
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Review of SPCB Supported Bodies Committee

Models of Governance for public sector scrutiny bodies

This paper was requested by the Review of SPCB Supported Bodies Committee to provide information on the different governance models for public sector scrutiny bodies. In particular, the Committee sought information on the different arrangements for such bodies as proposed by the SPCB in its evidence to the Committee, i.e. Commissions versus Commissioners versus Ombudsman.

Ombudsman and Commissioner

In the UK, the terms Ombudsman and Commissioner seems to be used interchangeably. For example, in its consultation on Public Sector Ombudsmen In Scotland in 2000 the Scottish Executive said:

Perhaps the first point to consider is whether the name "Commissioner" is still appropriate. "Commissioner" is part of the formal legal title of each of the present public sector Ombudsmen but they are more commonly known as "Ombudsmen". Use of the title "Commissioner" is almost exclusively limited to the UK public sector whereas "Ombudsman" is used throughout the world. The Executive is inclined to drop the use of "Commissioner" as it seems to cause confusion with other types of office and does not clearly indicate what the job is.
Scottish Executive (2000) para 9.6

At a UK level the Parliamentary Ombudsman is actually the Parliamentary Commissioner for Administration as set out in its establishing statute, the Parliamentary Commissioner Act 1967.

The International Ombudsman Institute recognises that there are a number of terms used around the world to identify ombudsmen. So a public institution whether titled Ombudsman, Mediator, Parliamentary Commissioner, People's Defender, Human Rights Commission, Public Complaints Commission, Inspector General of Government, Public Protector or like designation, is eligible to become an Institutional member of the organisation. Whatever its title, the organisation does have to exercise fully the functions, and meet the criteria, set out by the Institute (see Annex A).

The British and Irish Ombudsman Association also recognises that organisations' names may differ, but to be a Voting member of the Association an office must be recognised by the Association as satisfying the Association's Criteria (see Annex B) irrespective of whether or not the term 'Ombudsman' is included in the title or description of such office.

Body Corporate

A body corporate is a collection of persons which, in the eyes of the law, has its own legal existence (and rights and duties) separate from those of the persons who form it from time to time. It has a name or title of its own and may also have a common seal for use on official documents. Also known as corporations, bodies corporate are not necessarily companies, but companies are by definition bodies corporate.

Charity Commission: Glossary of terms used in OGs

The Scottish Human Rights Commission is currently the only officeholder which functions as a body corporate (RSSB(D) p. 7). The Bill establishing the Commission was introduced by the Scottish Executive as the Scottish Commissioner for Human Rights Bill, but following amendments to the Bill by the Scottish Executive at Stage 3, changes were made so that instead of a Commissioner a body corporate, to be known as the Scottish Committee for Human Rights, would be established. As a consequence, the Bill was renamed the Scottish Commission for Human Rights Bill. The Scottish Executive put forward these amendments following recommendations in the Justice 1 Committee's Stage 1 report on the Bill and the Finance Committee's report on its Inquiry into Accountability and Governance.

Corporation Sole

The concept of corporation sole exists within the England, Wales and Northern Ireland. A corporation sole is a corporation that is constituted in a single person. Corporations sole are always holders of a particular office. So for example the Commissioner for Older People in Wales and the Commissioner for Children and Young People for Northern Ireland are corporations sole.

The Commissioner for Children and Young People for Northern Ireland has an Executive Board of staff consisting of the Commissioner, the Chief Executive, the Head of Research, Policy and Service Review, the Head of Communications and Participation, and the Corporate Services Manager. The Board's primary purpose is to provide leadership, vision, continuity of purpose, and accountability in taking forward and delivering the mission of the Office of the Northern Ireland Commissioner for Children and Young People.

The UK Parliamentary Ombudsman has developed an Executive Board which is non-statutory.

The concept of a corporation sole does not exist in the Scottish legal system.

Sources

British and Irish Ombudsman Association website <http://www.bioa.org.uk/>

Charity Commission: Glossary of terms used in OGs <http://www.charity-commission.gov.uk/supportingcharities/oqs/Glossary.asp>

Commissioner for Children and Young People for Northern Ireland. (2008) The Commissioner for Children and Young People for Northern Ireland Annual Report and Accounts for the year ended 31st March 2007

Evidence to the Review of SPCB Supported Bodies Committee from Alan Miller, Chair of the Scottish Human Rights Commission RSSB(D)

Evidence to the Review of SPCB Supported Bodies Committee from Kevin Dunion, Scottish Information Commissioner RSSB(E)

International Ombudsman Institute website <http://www.law.ualberta.ca/centres/ioi/index.php>

Scottish Executive (2000) Modernising the Complaints System: Consultation on Public Sector Ombudsmen In Scotland

Scottish Parliament Finance Committee. (2006) Scottish Parliament Finance Committee 7th report 2006 (Session 2) Inquiry into accountability and governance.

Scottish Parliament Justice 1 Committee. (2006) Scottish Parliament Justice 1 Committee 1st Report, 2006 (Session 2) Scottish Commissioner for Human Rights Bill.

SPICe (2006) Scottish Commission for Human Rights Bill passage of the Bill summary <http://www.scottish.parliament.uk/business/bills/48-scottishCommissioner/documents/48-ScottishCommissionforHumanRightsBillsummary.pdf>

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SPICe
30 January 2009

Annex A

International Ombudsman Institute

Institutional member

A public institution whether titled Ombudsman, Mediator, Parliamentary Commissioner, People's Defender, Human Rights Commission, Public Complaints Commission, Inspector General of Government, Public Protector or like designation, shall be eligible to become an Institutional member provided it exercises fully the following functions and meets the following criteria::

- it is created by enactment of a legislative body whether or not it is also provided for in a Constitution;
- its role is to protect any person or body of persons against maladministration, violation of rights, unfairness, abuse, corruption, or any injustice caused by a public authority;
- it does not receive any direction from any public authority which would compromise its independence and performs its functions independently of any public authority over which jurisdiction is held;
- it has the necessary powers to investigate complaints by any person or body of persons who considers that an act done or omitted, or any decision, advice or recommendation made by any public authority within its jurisdiction has resulted in actions of the kind specified in subparagraph ii) above;
- it has the power to make recommendations in order to remedy or to prevent any of the conduct described in subparagraph ii), and, where appropriate, to propose administrative or legislative reforms for better governance;
- it is held accountable by reporting publicly to the Legislature or other appropriate authority;
- its jurisdiction is national, regional or local;
- its jurisdiction applies to public authorities generally or is limited to one or several public authorities, or to one or several public sectors; and
- its incumbent or incumbents are appointed or elected, according to the relevant legislative enactment, for a defined period and can only be dismissed, for cause, by the legitimate and competent authorities.

Annex B

British and Irish Ombudsman Association

A. Introduction

The term 'Ombudsman' should only be used if four key criteria are met. Those criteria are independence of the Ombudsman from those whom the Ombudsman has the power to investigate; effectiveness; fairness and public accountability.

Detailed criteria which should in the longer term be achieved by all recognised ombudsman schemes are set out in part B.

Given the considerable range of ombudsmen schemes in the public and private sectors and the variations in their constitution, jurisdiction, powers and accountability, the detailed criteria need to be interpreted with sufficient flexibility to encompass those variations.

Independence, for example, may be achieved in several ways. Hence, in the private sector the body which appoints the Ombudsman and to whom the Ombudsman reports, can be regarded as independent, provided that those of its members who are representatives of organisations subject to the Ombudsman's jurisdiction, constitute a minority of the membership.

Initially, recognition of existing schemes will be dependent on whether, broadly speaking, they meet the key criteria; it will not be withheld if, in some respects, the detailed criteria are not met. However, over time it is expected that the constitution of all schemes would be developed to the extent necessary to meet the detailed criteria. For example, in the longer term the power by those subject to investigation to veto the proposed appointment or reappointment of an Ombudsman should, where it exists, be removed.

In due course, it is expected that in the private sector all, or virtually all, firms in an industry with an ombudsman scheme or schemes should participate in the scheme or schemes, even though in the short term, especially when a scheme is first established, a lesser number of firms may participate.

The decision on which schemes are recognised as meeting the key criteria will be made by the Executive Committee or a General Meeting on the recommendation of the Validation Committee. The Validation Committee will also consider according to the rules which schemes meet the detailed criteria in full and which do not. In respect of the latter, the Validation Committee will in due course review its initial recognition, when requested to do so, having regard to the extent to which progress has been achieved towards meeting the detailed criteria in full.

B. Detailed Criteria

Definition of Core Role of an Ombudsman

The core role of an Ombudsman is to investigate and resolve, determine or make recommendations with regard to complaints against those whom the Ombudsman is empowered to investigate by the exercise of powers and in accordance with procedures described in these criteria.

Independence

- (a) The jurisdiction, the powers and the method of appointment of the Ombudsman should be matters of public knowledge.
- (b) The persons who appoint the Ombudsman should be independent of those subject to investigation by the Ombudsman. This does not exclude minority representation of those subject to investigation on the appointing body, provided that the body is entitled to appoint by majority decision.
- (c) The appointment should be either for a minimum of three years or until a specified retirement age. If the former, it may be renewable. The initial term of office and any renewal should normally commence before the age of 65 years and be of sufficient duration not to undermine independence.
- (d) The appointment must not be subject to premature termination other than for incapacity or misconduct or other good cause. The grounds on which dismissal can be made should always be stated, although the nature of the grounds may vary from scheme to scheme. Those subject to investigation by the Ombudsman should not be entitled to exercise the power to terminate the Ombudsman's appointment, but this does not exclude their minority representation on the body which is authorised to terminate.
- (e) The remuneration of the Ombudsman should not be subject to suspension or reduction by those subject to investigation, but this does not exclude their minority representation on the body authorised to determine it.
- (f) The Ombudsman alone (or an appointed deputy) must have the power to decide whether or not a complaint is within the Ombudsman's jurisdiction. If it is, the Ombudsman (or an appointed deputy) must have the power to determine it.
- (g) Unless otherwise determined by statute the Ombudsman should be required to report to a body independent of those subject to investigation, but this does not exclude their minority representation on that body. That body should also be responsible for safeguarding the independence of the Ombudsman.
- (h) The office of the Ombudsman must be adequately staffed and funded, either by those subject to investigation or from public funds, so that complaints can be effectively and expeditiously investigated and resolved.

Accessibility

- (a) The right to complain to the Ombudsman should be adequately publicised by those subject to complaint.
- (b) Those subject to complaint should be required to have proper internal complaints procedures.
- (c) The office of the Ombudsman should be directly accessible to complainants unless otherwise specified by or under statute.
- (d) The Ombudsman's procedures should be straightforward for complainants to understand and use.
- (e) Those complaining to the Ombudsman should be entitled to do so free of charge.

Powers and Procedures

The Ombudsman should:

- (a) Be entitled to investigate any complaint made to the Ombudsman which is within the Ombudsman's jurisdiction without the need for any prior consent of the person or body against whom the complaint is made. This does not preclude a requirement that before the Ombudsman commences an investigation, the complainant should first have exhausted the internal complaints procedures of the person or body being investigated.
- (b) Save as otherwise provided by law, have the right to require all relevant information, documents and other materials from those subject to investigation.
- (c) Be entitled but not obliged, to disclose to the complainant or to the person being investigated such information, documents and other materials as shall have been obtained by the Ombudsman from the other of them unless there shall be some special reason for not making such disclosure, for example, where sensitive information is involved or disclosure would be a breach of the law.
- (d) Proceed fairly and in accordance with the principles of natural justice.
- (e) Be required to make reasoned decisions in accordance with what is fair in all the circumstances, having regard to principles of law, to good practice and to any inequitable conduct or maladministration.
- (f) In all cases which it is decided not to accept for investigation, notify that decision to the complainant and the reasons for it.
- (g) In all cases investigated, notify in writing the decision and the reasons for it to the parties concerned.

Implementation of Decisions

Either

(a) Those investigated should be legally bound by the decisions or recommendations of the Ombudsman;

or

(b) There should be a reasonable expectation that the Ombudsman's decisions or recommendations will be complied with. In all those cases where they are not complied with, the Ombudsman should have the power to publicise, or require the publication of such non-compliance at the expense of those investigated.

Annual Report

The Ombudsman should publish an Annual Report. The Ombudsman should be entitled in that report, or elsewhere, to publish anonymised reports of investigations.



Review of the SPCB Supported Bodies Committee

Commissions and Commissioners

In a previous paper to the Committee, models of governance for public sector bodies were explored. In particular the paper looked at the roles of Ombudsman, Commissions and Commissioners and concluded that these terms are often used interchangeably. However, while commissions and commissioners can describe a variety of functions, including both investigatory and regulatory functions, the designation 'ombudsman' is used almost exclusively to refer to a person who is appointed to investigate and (sometimes) resolve complaints or disputes about the delivery of particular services, most often public services.

Overall this briefing indicates that it is not the title of the organisation which determines its constitution but its parent Act. This briefing explores further some of the issues relating to the roles of commissions and commissioners, and in particular looks in more depth at the examples of the Scottish Commission for Human Rights and the UK wide Equality and Human Rights Commission. In the debate surrounding the establishment of the Scottish Commission for Human Rights there was lively discussion as to the relative merits of establishing a commission or a commissioner and these arguments are reviewed in brief in this paper. At a UK level, the Equality and Human Rights Commission has brought together several equalities bodies and functions, and some of the claimed benefits of this are highlighted.

Definition of a Commission: According to Bealey (1999) a commission is "a group of people appointed for some special purpose. They may be temporary and ad hoc: they may be permanent and trusted with some special function. Many permanent commissions have regulatory functions, such as in Britain, the Monopolies and Mergers Commission. Sometimes they comprise a public enterprise like the British Forestry Commission".

Definition of Commissioner: There is no exclusive definition of the term 'Commissioner'. Most commonly, it is used to refer to officials appointed or commissioned by the state to perform certain duties or functions in relation to a public service. A Commissioner could be a member of a commission, such as the recently established Scottish Legal Complaints Commission which replaced the former Scottish Legal Services Ombudsman (The SLCC was

established by the Legal Profession and Legal Aid (Scotland) Act (2007) and opened for business on 1 October 2008), or the role of Commissioner can exist as a 'stand-alone' post such as Scotland's Commissioner for Children and Young People (The SCCYP was established by the Commissioner for Children and Young People (Scotland) Act 2003). The Commissioner designation is also used in a variety of other organisations in the private and voluntary sectors.

Scottish Commission for Human Rights

The Scottish Commission for Human Rights is an example of a permanent Commission established by statute to carry out a particular function, in this case, to promote human rights and, in particular, to encourage best practice in relation to human rights (Scottish Commission for Human Rights Act 2006).

Background

The Scottish Executive carried out two public consultations on the possibility of establishing a Human Rights Commission, in 2001 and 2003. The consequent Bill was originally introduced in Parliament as the "Scottish Commissioner for Human Rights Bill" (SP Bill 48). The Bill, as introduced, proposed to give the Commissioner the power to appoint a chief executive (Sch 1 section 11). The chief executive was to be designated the accountable officer (Sch 1 section 12).

In its Stage 1 report the Justice 1 Committee was sufficiently concerned over aspects of the Bill not to recommend the general principles of the Bill to the Parliament. Among the concerns the Committee had was that there was no statutory duty on the Commissioner to produce, and lay before the Parliament, a strategic plan for a 3 year rolling period.

The Committee was also not convinced that the Scottish Executive had provided a compelling case to explain why it had changed its initial approach from establishing a Commission to a Commissioner (Justice 1 Committee 2006 para 148). The Committee accepted that the:

“...approach chosen by the Executive of one Commissioner and up to two deputy Commissioners (with support staff) will have the advantage of creating a readily identifiable figurehead for the promotion of human rights in Scotland. Effective decision making and clear accountability for those decisions would also be positive features of this structure.

However, the Committee expressed its concern that:

“...to entrust the task of promoting awareness, understanding and respect for human rights to one person, even with deputies, is potentially fraught with difficulties. Even the most eminently qualified candidate with a legal or human rights background cannot possibly claim to fully understand and, therefore, represent the interests of all groups in Scottish society. Input into strategy formulation and decision

making by a small collective group of part-time Commissioners or human rights experts (perhaps forming a Commission, advisory group or other body) may be more likely to result in balanced and representative outcomes.”

(Justice 1 Committee 2006 para 146-147)

The Committee, therefore, recommended that the Executive reconsider whether a Commissioner would be preferable to a Commission or an alternate statutory body (Justice 1 Committee 2006 para 149).

The Committee report also outlined the SPCB’s written request that it should be the SPCB which should appoint the Accountable Officer and that the Accountable Officer should also be the Commissioner him or herself (Justice 1 Committee 2006 para 125).

In his response to the report the Minister, Robert Brown MSP, agreed to a number of the changes suggested by the Justice 1 Committee including:

- Creating a Commission rather than a Commissioner
- Requiring the Commission to publish a strategic plan
- Providing that the SPCB will appoint the Commission’s accountable officer.

The Minister also decided that, although the Committee’s report did not touch on the statutory requirement for a chief executive, the Scottish Executive would remove such a requirement and leave it up to the Commission to decide if they wished to create such a role.

Amendments laid by the Minister at Stage 2 included those to:

- establish a body corporate to be known as the Scottish Commission for Human Rights (and referred to in this Act as the “Commission”) (amendment 1)
- establish a Commission consisting of a member appointed to chair the Commission and no more than 4 other members. The member appointed to chair the Commission is to be an individual appointed by Her Majesty on the nomination of the Scottish Parliament. The other members are to be individuals appointed by the SPCB (amendment 2)
- give the SPCB the power to designate a member of the Commission or of the Commission’s staff as the accountable officer (amendment 2)
- require the Commission to lay before the parliament every four years a strategic plan setting out how the Commission proposes to fulfil its general duty during that period (amendment 21, later replaced by amendment 146)

As well as the amendments put forward by the Minister, amendments were also laid by Finance Committee Convener Des McNulty. The Finance Committee had carried out an Inquiry into Accountability and Governance, including the current and future roles and possible governance arrangements of Parliamentary commissioners and ombudsman Finance Committee (2006).

Mr McNulty's amendments, taken on the first day of Stage 2, reflected his preference that the role of the new body should be combined with that of the public services ombudsman (amendment 120). Mr McNulty also moved an amendment (125) to remove the power to appoint a chief executive.

On day one of Stage 2 the Justice 1 Committee disagreed with amendment 120 and amendment 1, to establish a body corporate, was rejected by the Convener (Pauline McNeill MSP), using her casting vote, thereby maintaining the status quo.

On day two of Stage 2 the Committee agreed to amendments 125 and 146, respectively removing the statutory need for a chief executive and adding a statutory requirement for a strategic plan. In rejecting amendment 1, but agreeing to amendment 125, Schedule 1, paragraph 12 had to be amended, so that the role of accountable officer would be decided by the SPCB from either the Commissioner, a deputy Commissioner or member of the Commissioner's staff.

At Stage 3 the Minister reintroduced amendments to establish a body corporate Commission (amendment 1) and on the membership of the Commission (amendment 100). These amendments were agreed to (amendment 1, after a division) and so the Bill became the "Scottish Commission for Human Rights Bill", establishing a Commission. It was passed by the Parliament on 2 November 2006, and received Royal Assent as the Scottish Commission for Human Rights Act 2006 (asp 16) on 8 December 2006.

Timeline since enactment

29 November 2007	the Parliament agreed to nominate Professor Alan Miller for appointment as the first chair of the Scottish Commission for Human Rights, for an initial period of five years
1 May 2008	the Presiding Officer, on behalf of the SPCB, announced the appointment of Professor Kay Hampton, Ms Shelagh McCall and Mr John McNeill as the part-time members of the Scottish Commission for Human Rights.
25 June 2008	The SPCB approved the proposed staffing structure of the Commission and the terms and conditions for its staff. The SPCB noted that the Commission would be required to submit a further request should it wish to increase the number of staff from 8 to 10 as they had intimated.
14 August 2008	the SPCB designated Professor Miller as the accountable officer for the Commission

The Commission is currently carrying out a consultation on its first strategic plan to guide its work until April 2012 and has sought comments on it by the 31 March 2009.

Equality and Human Rights Commission

The (UK) Commission for Equality and Human Rights was established as a body corporate by the Equality Act 2006 (c.3). It is a non-departmental public body (NDPB) which took on its role from 1 October 2007 and operates under the name of the Equality and Human Rights Commission.

The Commission has a statutory duty to prepare a strategic plan (section 4). The Commission also has a statutory duty to appoint a chief executive (Sch 1 part 1 para 7).

The Board of Commissioners, led by the Chair, Trevor Phillips, is responsible for setting the strategic direction of the Commission.

The Chief Executive and Commissioner, supported by the senior management team, is accountable to the Board of Commissioners for making sure that they achieve their business aims and for advising on emerging strategic priorities. The Chief Executive is designated as the Commission's Accounting Officer and is also accountable to the UK Parliament and the Principal Accounting Officer of the Government Equalities Office (GEO).

The Commission's three statutory committees for Disability, Scotland and Wales are each chaired by a member of the Board of Commissioners: Jane Campbell (Disability), Morag Alexander (Scotland) and Neil Wooding (Wales).

The Equality and Human Rights Commission took over the role and functions of the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC), with new responsibilities for sexual orientation, age, religion and belief, and human rights. The legacy Commissions had similar Boards.

On their website (Equality and Human Rights Commission), the Commission lists several benefits in having a single commission including the following:

- bringing together equality experts means they can act as a single source of information and advice
- being a single point of contact for individuals, businesses and the voluntary and public sectors
- helping businesses by promoting awareness of equality issues, which may prevent costly court and tribunal cases
- tackling discrimination on multiple levels - some people may face more than one type of discrimination
- giving previously under-represented groups, such as older people, a powerful national body to tackle discrimination

Overall, the Commission claims that a single commission enables the good work of previous commissions to continue but from a more powerful base, while learning valuable lessons from each other.

The public face of the Commission can be the Chief Executive, Board members or the Chair, depending on the subject being discussed.

The Commission is currently working on its 3 year strategic plan for 2009-2012, which must be published on 1 April 2009. As part of the development of the plan the Commission carried out consultation events and an online consultation in November and December 2008.

The Commission carries out its work across all the strands of its work. It works not in strand specific ways but in thematic or sectoral ways.

Constitutional arrangements

Whether designated as a Commission, Commissioner or Ombudsman the status, powers, duties and responsibilities, financial powers, powers of appointment and other constitutional aspects of such organisations tend to be set out in the statute establishing the body in question. While these constitutional arrangements allow for different degrees of autonomy, they also place different constraints on the exercise of powers, duties and responsibilities.

While not intending to be representative of all statutorily appointed commissions, commissioners and ombudsmen, the table below illustrates the different constitutional provisions made for three statutory organisations termed respectively Ombudsman, Commission and Commissioner.

What seems clear from this table is that it is not the title of the organisation which determines its constitution but its parent Act. The three organisations whose key statutory characteristics are listed below are marked more by the similarities in their constitutional make-up than by any differences suggested by the Commission, Commissioner or Ombudsman titles applied to them.

Table 1: Statutory provision

	Scottish Public Services Ombudsman	Scottish Commission for Human Rights	Scottish Commissioner for Children and Young people
Status	<p>The Ombudsman, deputy Ombudsmen and Ombudsman’s staff are not to be regarded as servants or agents of the Crown or as having any status, immunity or privilege of the Crown; and the Ombudsman’s property is not to be regarded as property of, or property held on behalf of, the Crown. The Ombudsman, in the exercise of that officer’s functions, is not subject to the direction or control of—</p> <p>(a) any member of the Parliament, (b) any member of the Scottish Executive, (c) the Parliamentary corporation.</p>	<p>The Commission—</p> <p>(a) is not a servant or agent of the Crown, and (b) has no status, immunity or privilege of the Crown</p>	<p>Neither the Commissioner nor any member of the Commissioner’s staff is to be regarded as a servant or agent of the Crown or as having any status, immunity or privilege of the Crown. The Commissioner’s property is not to be regarded as property of, or property held on behalf of, the Crown.</p>
Appointment / Membership	<p>For the purposes of this Act there is to be an officer known as the Scottish Public Services Ombudsman (in this Act referred to as the “Ombudsman”) who is to be an individual appointed by Her Majesty on the nomination of the Scottish Parliament.</p>	<p>There is established a body corporate to be known as the Scottish Commission for Human Rights (and referred to in this Act as the “Commission”). The Commission consists of the following members—</p> <p>(a) a member appointed to chair the Commission, and (b) not more than 4 other members.</p> <p>The member appointed to chair the Commission is to be an individual appointed by Her Majesty on the nomination of the Scottish Parliament.</p> <p>The other members are to be individuals appointed by the Parliamentary corporation.</p>	<p>There is to be a Commissioner for Children and Young People in Scotland.</p> <p>The appointment of the Commissioner is otherwise on such terms as the Parliamentary corporation may determine.</p> <p>The terms may include provision as to the circumstances in which the Commissioner may hold any other office or appointment.</p>

<p>Terms of office / tenure</p>	<p>The Ombudsman and a deputy Ombudsman each— (a) holds office for such period not exceeding five years as the Parliamentary corporation, at the time of appointment, may determine, (b) may be relieved of office by Her Majesty at the request of the officer in question, (c) vacates office on 31st December in the year of service in which the officer in question attains the age of 65, (d) may be removed from office by Her Majesty in pursuance of a resolution of the Parliament which, if passed on a division, must be voted for by a number of members equivalent to not less than two thirds of the total number of seats for members of the Parliament, and (e) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine. A person whose period of office as Ombudsman or deputy Ombudsman expires under sub-paragraph (1)(a) is eligible for reappointment; but reappointment to the same office for a third consecutive period is competent only if, by reason of special circumstances, such reappointment is desirable in the public interest. Subject to sub-paragraph (2), nothing in this paragraph prevents a person who</p>	<p>Each member of the Commission— (a) holds office for such period not exceeding five years as the Parliamentary corporation, at the time of appointment, may determine, and (b) is eligible for reappointment to the same office (whether the reappointment is for a consecutive period or otherwise) but reappointment for a third period is not competent. (2) The member appointed to chair the Commission may be— (a) relieved of office by Her Majesty at the member's request, or (b) removed from office by Her Majesty if condition A or B is satisfied. (3) Any other member of the Commission may be— (a) relieved of office by the Parliamentary corporation at the member's request, or (b) removed from office by the Parliamentary corporation if condition A or B is satisfied. (4) Condition A is that— (a) the Parliamentary corporation is satisfied that the member has breached the member's terms of appointment, and (b) the Parliament resolves that the member should be removed from office for that reason. (5) Condition B is that the Parliament resolves that it has lost confidence in the member.</p>	<p>(1) The Commissioner is to be an individual appointed by Her Majesty on the nomination of the Parliament. (2) A person is disqualified from appointment as the Commissioner if that person is, at the date when the appointment is to take effect, or in the year prior to that date has been— (a) a member of the Parliament; (b) a member of the House of Commons; or (c) a member of the European Parliament. (3) The Commissioner is to be appointed for such period, not exceeding five years, as the Parliamentary corporation may determine. (4) A person who has been appointed for one period as the Commissioner may be appointed for a second period (whether or not consecutive) but not for any additional period. The appointment of the Commissioner is otherwise on such terms as the Parliamentary corporation may determine. (3) The terms may include provision as to the circumstances in which the Commissioner may hold any other office or appointment.</p>
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	previously held office as Ombudsman or deputy Ombudsman (except such a person who ceased to hold office by virtue of subparagraph (1)(c)) from being appointed again to that office or to the other office.		
Pay and remuneration	<p>(1) The Ombudsman and a deputy Ombudsman are each entitled to—</p> <p>(a) a salary of such amount, and</p> <p>(b) such allowances, as the Parliamentary corporation may determine.</p> <p>(2) The salary payable to a person holding office as Ombudsman or deputy Ombudsman is to be abated by the amount of any pension payable to that person in respect of any public office in the United Kingdom or elsewhere to which that person was previously elected or appointed.</p>	<p>Each member of the Commission is entitled to—</p> <p>(a) such remuneration, and</p> <p>(b) such allowances, as the Parliamentary corporation may determine.</p> <p>In other respects, each member of the Commission holds office on such terms and conditions as the Parliamentary corporation may determine.</p>	<p>The Commissioner is entitled to—</p> <p>(a) a salary of such amount; and</p> <p>(b) such allowances, as the Parliamentary corporation may determine.</p>
Staff	<p>(1) The Ombudsman may appoint such staff, on such terms and conditions, as the Ombudsman may determine.</p> <p>(2) The Ombudsman may make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff and (without prejudice to that generality) may—</p> <p>(a) make contributions or payments towards provision for such pensions, allowances or gratuities, and</p> <p>(b) establish and administer one or more pensions schemes.</p>	<p>(1) The Commission may, with the consent of the Parliamentary corporation as to numbers, appoint staff.</p> <p>(2) The appointment of staff is to be on such terms and conditions as the Commission may, with the approval of the Parliamentary corporation, determine.</p> <p>(3) The Commission may, with the approval of the Parliamentary corporation, make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff.</p>	<p>(1) The Commissioner may, with the consent of the Parliamentary corporation as to numbers, appoint staff to assist in carrying out the Commissioner's functions.</p> <p>(2) The Commissioner may, with the consent of the Parliamentary corporation, determine the terms of appointment of such staff, including arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff of the Commissioner.</p>

Financial provision	The Parliamentary corporation is to pay— (a) the salary and allowances of the Ombudsman and any deputy Ombudsman, (b) any expenses incurred by the Ombudsman in the exercise of the functions of the Ombudsman,	The Parliamentary corporation is to pay— (a) the remuneration and allowances of each member of the Commission, and (b) any expenses incurred by the Commission in the exercise of its functions, so far as those expenses are not met out of sums received and applied by it under section 3(3).	The Parliamentary corporation is to pay— (a) the salary and allowances of the Commissioner; and (b) any expenses properly incurred by the Commissioner in the exercise of the Commissioner's functions.
Accountable Officer	(1) The Parliamentary corporation is to designate the Ombudsman, a deputy Ombudsman or a member of the Ombudsman's staff as the accountable officer for the purposes of this paragraph. (2) The functions of the accountable officer are— (a) those specified in sub-paragraph (3), and (b) where the accountable officer is not the Ombudsman, the duty set out in sub-paragraph (4), and the accountable officer is answerable to the Parliament for the exercise of those functions. (3) The functions referred to in sub-paragraph (2)(a) are— (a) signing the accounts of the expenditure and receipts of the Ombudsman, (b) ensuring the propriety and regularity of the finances of the Ombudsman, (c) ensuring that the resources of the Ombudsman are used economically, efficiently and effectively.	(1) The Parliamentary corporation must designate a member of the Commission or of the Commission's staff as the accountable officer for the purposes of this paragraph. (2) The functions of the accountable officer are— (a) signing the accounts of the expenditure and receipts of the Commission, (b) ensuring the propriety and regularity of the finances of the Commission, (c) ensuring that the resources of the Commission are used economically, efficiently and effectively, and (d) the duty set out in sub-paragraph (3), and the accountable officer is answerable to the Parliament for the exercise of those functions	(1) The Parliamentary corporation is to designate the Commissioner or a member of the Commissioner's staff as the accountable officer for the purposes of this paragraph. (2) The functions of the accountable officer are— (a) signing the accounts of the expenditure and receipts of the Commissioner; (b) ensuring the propriety and regularity of the finances of the Commissioner; (c) ensuring that the resources of the Commissioner are used economically, efficiently and effectively; and (d) where the accountable officer is not the Commissioner, the duty set out in sub-paragraph (4). (3) The accountable officer is answerable to the Parliament for the exercise of those functions.

Accounts and Audit	<p>(1) The Ombudsman must—</p> <p>(a) keep accounts, and</p> <p>(b) prepare annual accounts in respect of each financial year, in accordance with such directions as the Scottish Ministers may give.</p> <p>(2) The Ombudsman must send a copy of the annual accounts to the Auditor General for Scotland for auditing.</p> <p>(4) If requested by any person, the Ombudsman must make available at any reasonable time, and without charge, in printed or in electronic form, the audited accounts, so that they may be inspected by that person.</p>	<p>(1) The Commission must, in accordance with such directions as the Scottish Ministers may give—</p> <p>(a) keep proper accounts and accounting records,</p> <p>(b) prepare annual accounts in respect of each financial year, and</p> <p>(c) send a copy of the annual accounts to the Auditor General for Scotland for auditing.</p> <p>(2) If requested by any person, the Commission must make available at any reasonable time, and without charge, in printed or electronic form, the audited accounts, so that they may be inspected by that person.</p>	<p>(1) The Commissioner must keep proper accounts at all times and prepare annual accounts in respect of each financial year.</p> <p>(2) The Commissioner must send a copy of the annual accounts to the Auditor General for Scotland for auditing.</p> <p>(4) If requested by any person, the Commissioner must make available at any reasonable time, and without charge, in printed or electronic form, the audited accounts, so that they may be inspected by that person.</p>
General Powers	<p>(1) The Ombudsman may do anything which appears necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the exercise of the Ombudsman's functions.</p> <p>(2) Without prejudice to that generality, the Ombudsman may in particular—</p> <p>(a) acquire and dispose of land and other property, and</p> <p>(b) enter into contracts.</p>	<p>(1) The Commission may do anything which appears necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the exercise of its functions.</p> <p>(2) In particular, the Commission may—</p> <p>(a) enter into contracts, and</p> <p>(b) with the consent of the Parliamentary corporation, acquire and dispose of land.</p>	<p>(1) The Commissioner has a general power to do anything necessary or expedient for the purposes of, or in connection with, the exercise of the Commissioner's functions.</p> <p>(2) In particular, the Commissioner may enter into contracts and acquire and dispose of property.</p> <p>(3) The Commissioner may charge for such services as may be specified by the Scottish Ministers, by order made by statutory instrument, as chargeable services for the purposes of this Act.</p> <p>(4) A statutory instrument containing an order under sub-paragraph (3) is subject to annulment in pursuance of a resolution of the Parliament.</p>

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18 February 2009

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

REVIEW OF SPCB SUPPORTED BODIES COMMITTEE

SCRUTINY IMPROVEMENT: GOVERNMENT RESPONSE TO ACTION GROUP REPORTS

Introduction \ overview

1. Since the publication of Professor Crerar's Review of regulation, audit, inspection and complaints handling of public services in Scotland a considerable amount of work had been done across public services to explore how we can create a more proportionate system of external scrutiny and complaints handling that emphasises excellence in delivery and a culture of self improvement within delivery bodies who know the people who use services. This includes:

- work to simplify the landscape of scrutiny by reducing the number of scrutiny bodies;
- work by the Accounts Commission and scrutiny bodies to reduce the burdens on local authorities through the better planning and scheduling of service inspections;
- the consideration of scrutiny improvement in the wider 'effective public bodies programme'; and
- the five action groups set up to produce practical ways to implement the Crerar Review.

2. These strands are closely linked and together will deliver a coherent package of reform. This report focuses on the action groups but also provides a brief update on work in the other areas.

Work to simplify the landscape of scrutiny by reducing the number of scrutiny bodies

3. We are committed to reduce the number of scrutiny bodies. Current plans include:

- transferring the functions of Waterwatch to the Scottish Public Services Ombudsman (SPSO) and Consumer Focus Scotland - this is subject to consideration by the Review of SPCB Supported Bodies Committee;
- transferring work of the Scottish Prisons Complaints Commission to SPSO so that SPSO directly handles complaints about the Scottish Prisons Service which are within its remit - this is subject to consideration by the Review of SPCB Supported Bodies Committee;
- abolishing the Scottish Charity Appeals Panel;
- combining the existing functions of NHS Quality Improvement Scotland and the Care Commission's independent healthcare's function in a new health scrutiny body;
- combining the functions of the Social Work Inspection Agency, the Care Commission (minus its independent healthcare function). Her Majesty's Inspectorate of Education's (HMIE) current responsibilities for inspection of

child protection and the integration of children's services into single new scrutiny body for social care and social work;

- working with mental welfare stakeholders to explore how best to reform the organisation of the Mental Welfare Commission for Scotland's functions.

4. The intention is to deliver a package of structural reform by 2011. This is subject in part to the work of the Review of Scottish Parliament Corporate Body (SPCB) Supported Bodies Committee which has been set up by the Parliament to consider and report on whether alterations should be made to the terms and conditions of the office-holders and the structure of the bodies supported by the SPCB. The Committee is now considering a range of proposals relating to the future of its commissioners and ombudsman. This includes the future location of functions currently carried out by Waterwatch and the Scottish Prisons Complaints Commission.

Work by the Accounts Commission and scrutiny bodies to reduce the burdens on local authorities through the better planning and scheduling of service inspections

5. In March 2008, the Cabinet Secretary for Finance and Sustainable Growth asked the Accounts Commission to find ways of reducing the burdens on local authorities through the better planning and scheduling of service inspections. The Accounts Commission has recently submitted its second report on progress. Working with the main scrutiny bodies, the Accounts Commission is finding ways of reducing the burdens on local authorities which shows that they and the local government scrutiny inspectorates are identifying real opportunities to bring work together to reduce the burden of scrutiny on councils and to improve its impact and effectiveness.

6. The Commission has agreed with its scrutiny partners that Best Value 2 should be the vehicle for a single corporate assessment and for shared risk assessment and scrutiny planning. Progress is being made in developing the shared risk assessment framework which will govern the work in the longer term, and the Commission expects to test it in practice between May and August this year. It will be implemented from November 2009 as a basis for planning and scheduling future scrutiny activity. The Controller of Audit will continue to report quarterly on progress.

Wider effective public bodies programme

7. The existing regulatory bodies exercise important responsibilities and have carried these out well over the years. However, the public sector has grown in a piecemeal fashion over the past 20 years or so, with a vast range of delivery bodies. While partnership working can go some way to filling gaps it cannot be the only solution. Reform of the scrutiny system is a key strand of the Government's desire to see a more simplified and coherent approach to public service delivery including a much clearer role for public bodies.

8. It is important that all Scottish public bodies are aligned with the National Performance Framework and develop outcome based approaches. Many bodies

have taken up the challenge and guidance has been issued to all Public Bodies to ensure this is consistently applied.

9. It is also important that public bodies are engaged in Single Outcome Agreements in a manner appropriate to their role and function. This is set out in the guidance. Further discussion will take place between Scottish Government, CoSLA, SOLACE and public bodies to take the principles forward into operation.

10. A Public Bodies Strategic Programme, with the support of a strategic group comprising Government directors and Chief Executives of public bodies are working together to ensure that public bodies can maximise their contribution to the Government's purpose and to maximize cross public sector collaboration and improve service delivery.

Action groups set up to produce practical ways to implement the Crerar Review

11. When the Government published its response to Professor Crerar's Review in January 2008, we acknowledged that there was a considerable amount of work to follow through on the recommendations. A number of distinct strands of work were identified and a series of fixed-term action groups were tasked with reporting back to clear delivery deadlines. These groups were co-ordinated by Government but relied on the input of others including user interests and scrutiny bodies. The work of the groups and their progress was overseen by a Scrutiny Improvement Programme Board made up of representatives from Scottish Government CoSLA, Solace, Audit Scotland and the Scottish Parliament. The Programme Board will continue to oversee and co-ordinate the work of implementation and project teams taking scrutiny improvement initiatives forward.

12. The groups covered 5 broad themes:

- Policy and approach to scrutiny;
- Accountability and governance of scrutiny bodies;
- Complaints handling;
- User focus; and
- Reducing the burdens of scrutiny.

13. More details of the groups and copies of their papers and minutes of meetings can be found [here](#).

Government Response

14. The groups have now reported and the Scottish Government has considered their findings. Ministers are now able to publish our response. **Annex A** sets out the full range of recommendations together with the Government's response.

15. The recommendations can be grouped together under a number of key headings:

- Scrutiny – how it can play a supportive role in the wider context of public service improvement;
- Public Focus - how the needs and priorities of users can be more effectively built into the scrutiny process;
- Independence – the need for external scrutiny to be independent and free to make judgements about service delivery without fear and favour;
- Proportionality – ensuring that scrutiny is used in an appropriate way and is of the appropriate scope and intensity for the level of risk involved;
- Transparency – ensuring that all parties understand why scrutiny is being used, how decisions are made and how reports are produced;
- Accountability – how scrutiny can demonstrate its impact, its costs, and its value for money and that its findings are fair and capable of being defended.

Improvement

16. All the action group reports have taken improvement to be one of the aims of their recommendations. This is in line with the Government's view, as set out in its initial response to the Crerar Review that '*scrutiny in Scotland also plays an important role in influencing a culture of continuous improvement and striving towards excellence*'. The Accountability and Governance report discusses the nature of the relationship between scrutiny and improvement, acknowledging that the role scrutiny has in helping a service provider to improve is not a simple process. Over and above any recommendations made by scrutiny bodies, the acts of preparing for scrutiny then discussing a scrutiny report can themselves be an integral part of delivery bodies identifying opportunities for improvement.

17. The Accountability and Governance group also raised an issue around improvement and accountability. They envisaged a situation where the scrutiny body made suggestions for improvement which a council, in its role as the locally elected democratic body, decided not to pursue. As the report points out, this raises the wider point of balancing the accountability of resource allocation decisions made by directly elected bodies against the expectation that all public bodies should be able to deliver continuous improvement. The report recommends that the experience, knowledge and expertise that scrutiny bodies have accumulated to date should work alongside national and local considerations in advising on the setting of strategic targets.

18. The Policy and Approach group recommends that Ministers should agree strategic priorities and priority risk categories with the Parliament, Local Government, the Auditor General for Scotland and the Accounts Commission. The existence of a public set of priorities and risk criteria, against which existing scrutiny can be judged, will increase the accountability of all bodies involved in scrutiny including Government.

19. The Reducing Burdens Action Group recommended the creation of a single common data request agreement. Under this agreement scrutiny bodies will have access to an agreed set of data held by each local authority. This data will be used by scrutiny bodies as they prepare for their inspections. However, it will also be a

valuable tool for local authorities as they examine their own performance and look for ways of delivering improvement.

20. The Complaints report discussed the link between complaints and improvement, noting that the information generated through handling complaints is vital feedback and learning for service providers and for scrutiny bodies, providing evidence to inform improvement. The report recommended a number of measures to improve the way in which the learning from complaints is used to drive improvement.

21. What is clear from Crerar and the action group recommendations is that unnecessarily complex and disproportionate systems of scrutiny or complaints handling can hinder the imperative to learn lessons and bring about important improvements to services. The recommendations from all the action groups aim to support a more risk based and proportionate approach and re-align scrutiny activity so that service improvements can be made as a result. Reducing burdens through introducing a stronger emphasis on assisted self-evaluation, and the introduction of more proportionate scrutiny - as recommended in Reducing Burdens and Policy and Approach – will allow scrutiny bodies and service providers to focus more on improvement. It is apparent that improvement is most likely to be achieved if all bodies – delivery and scrutiny – look at how they can change their roles to put a greater emphasis on delivering better services and learning from their own and others experiences.

Public Focus

22. Most of the action group reports highlight the need for more active involvement of the public in scrutiny.

23. The User Focus action group concentrated on how the scrutiny system can better focus on the experience of the user, as well as the interests of the wider public. It sets a challenge to scrutiny bodies in particular by setting out seven key features that every body should be able to show it meets fully. All scrutiny bodies will be required to report to Ministers by June of 2009 on how they will implement the recommendations in the UFAG report with a further report due in April 2010 on how they are responding to the issue of user focus.

24. The Complaints report has the needs of the service user at its core and sets out proposals for creating a complaints handling system which will make the service user's experience simpler, quicker and more consistent. Specifically the group recommended a set of principles based on customer focus and simplification which, in the view of the group, should form the basis of all public complaints handling processes.

25. The Accountability and Governance Group acknowledged users and the wider public expect periodic independent scrutiny of services without fear or favour. They also noted that users or potential users of services are not a homogenous group and take-up of services (where they are optional) can vary considerably and for a wide variety of reasons.

26. When recommending an assisted self evaluation model, the Reducing Burdens Group noted that the involvement of service users and stakeholders in self-evaluation and setting outcome agreements is essential to ensure outcomes relate to service users needs and that reporting is in relation to these. A clear focus on citizens and service users will be key to effective self-evaluation and to ensure that any self-evaluation activity is for the purpose of service improvement. Reporting on the impact and the benefits to service users is a fundamental part of improvement systems.

27. One of the interesting issues raised by the action groups is how we define 'the public'. People's expectations of services will be determined by their own status: a user of a service or the carer of a service user may have different expectations from a taxpayer who funds, but does not use, services. The User Focus report recognises the need for a common understanding of these terms in taking this forward and suggested ways in which the terms could be defined. Ministers agree that these definitions should be used as work progresses.

Independence

28. The Accountability and Governance action group considered Professor Crerar's recommendations around the need for scrutiny to be independent from those providing the services and operationally independent from political interference. The group recommended a set of governance principles designed to ensure operational independence for scrutiny bodies. It considered whether there should be a single status for all scrutiny bodies to guarantee operational independence but concluded that it would be sufficient for Ministers to agree the governance principles and enshrine them in each body's governance document. The Parliament will wish to consider whether this could also apply to bodies supported by the SPCB.

29. The Accountability and Governance group also looked at Professor Crerar's concerns around the perceived gap in independence within the public health sector. It set out a range of options for Ministers to consider. Since the group reported, Ministers have announced change to the structures of health scrutiny bodies and additional rigorous and independently reported scrutiny of the healthcare environment is being put in place in advance of structural change.

Proportionality

30. The importance of creating a proportionate system of scrutiny whilst safeguarding the needs of the most vulnerable is a common issue in the action groups' reports. It comes out most strongly in the Reducing Burdens group. In their report the group suggests a system of risk assessment that is closely aligned to that being developed through the work of the Accounts Commission on its scrutiny coordination role. This approach, with its emphasis on scrutiny bodies sharing intelligence to agree a common risk assessment for individual local authorities, should lead to a system where external scrutiny is focussed on areas (councils or individual services) which need more attention. Well performing organisations or services will see a reduction in external scrutiny in line with this proportionate approach. The proportionate approach should be supported by a strong intelligence

base: the group stressed that local authorities will need to produce evidence of robust and reliable evidence of their self evaluation processes. It is accepted that, regardless of the outcome of individual risk assessments, scrutiny bodies must retain the right to conduct unannounced inspections in areas that have been defined as high risk at a national level, such as child protection.

31. The Complaints Group looked at how to ensure that complaints handling processes were proportionate, which they defined as flexible in method and appropriate to the circumstances. This applies to the internal complaints handling systems of delivery bodies as well as the SPSO and other second tier complaints handling bodies. The group also recommended a standardised complaints process which is designed to ensure that more complaints are dealt with at a local level, resolving the issues quickly for the complainant. Taking a proportionate approach to risk, the group has proposed the priority should be given to introducing standardised complaints processes in those sectors where there is the greatest risk to consumers of service failure – targeting their efforts at the areas of most importance to the service user and their carers.

32. The Policy and Approach group considered ways to ensuring that the whole system of scrutiny becomes more proportionate. As part of this they have proposed Principles for Systematic Scrutiny Checks (SSCs) against which all existing and any proposed new scrutiny should be assessed. This will ensure that public service scrutiny is targeting priority services and is being applied on the basis of a strategic assessment of risk and against cost and benefit information consistently for the first time

Transparency

33. Transparency was a key issue for the Complaints group who were of the view that introducing a standardised complaints system would help people to see and understand how decisions about their cases have been reached. This will help service users and their carers to have confidence in the system and it will also play a key role in encouraging service providers to take more responsibility for resolving complaints.

34. The User Focus group looked at how transparency could be improved in relation to the way in which scrutiny bodies examine, and then report on, the performance of the bodies which they inspect. The User Focus group felt that moving towards a greater use of grading would be helpful, for several reasons. It would mean that it was easier for service users to understand the scrutiny body report on the service they used. It would also be easier for users and stakeholders to look at how various services providers (in the same sector) compared with each other. This would help the users and other stakeholders to better hold service providers to account for their performance. It has already provided to be a powerful motivator for improvement in those sectors which use a grading approach.

35. The User Focus group then went on to say that having a grading system which, wherever possible, shared the same approach and language across all service providers, would be even better. This would further increase the ability of the user to hold services to account, as they would now have even greater ability to

compare service providers. It would also help improve the user's understanding of the scrutiny process, and what it delivered. The User Focus group also felt that if both users and the service provider itself had a better understanding of the purpose of grading, then the service provider would be more likely to see grades as a way of focussing on areas for improvement, and less likely to spend time and energy on trying to argue about the grade awarded to them by the scrutiny body.

36. To increase the transparency around whether scrutiny is fit for purpose, proportionate and risk based, the Policy and Approach group's report sets out a process for the systematic checking of scrutiny activity. The group proposes that existing review processes such as Best Value audits and Policy and Financial Management Reviews should be used for these purposes.

37. The Policy and Approach action group also recommended that principles for systematic scrutiny checks (SSC) should be introduced into existing performance review systems. It carefully considered possible accountability arrangements for this work and how these could be made as transparent as possible. It concluded that it should be carried out independently of scrutiny bodies by Government and Parliament rather than through the creation of an additional tier of scrutiny panels.

38. The Accountability and Governance group considered transparency around the publication of scrutiny reports. It proposed expanding current practice amongst scrutiny bodies of publishing reports and presenting those simultaneously to the Parliament and Ministers to ensure that all interested parties are in receipt of the reports at the same time.

Accountability

39. Accountability issues arose in most of the action groups' reports. It was, of course, one of the main focuses of the Accountability and Governance group which looked at how accountability lines between Ministers, scrutiny bodies, Parliament, service users and the wider public could be made more transparent and subject to clearer governance arrangements. The group recognised the diversity of functions and status across different scrutiny bodies and explored a range of options. It concluded that some of the more radical of these options would profoundly alter the current accountability relationships between Parliament, the Scottish Government and public services. This would also be contrary to the accountability model which already had been accepted by the Finance Committee in their 2006 Report.

40. In looking at new arrangements for complaints handling and additional responsibilities for the SPSO, the Complaints group noted the importance of ensuring that the SPSO is seen to be both publicly accountable and independent, balancing the needs of service users with those of service providers.

41. The User Focus report explored the vision for user focus in scrutiny and how scrutiny itself contributes to the assurance of public accountability by challenging delivery bodies and helping service users and the wider public to articulate their concerns.

42. In its work on a model of assisted self evaluation, the Reducing Burdens group recognised that it is the delivery body which is accountable for its performance and for improving its services. It argues that to secure accountability self evaluation must meet the following 2 principles:

- it must dovetail with the essential functions of external scrutiny bodies to ensure that those who need less scrutiny get less scrutiny; and
- it must be integrated with, and form part of, the organisational or partnership performance management and public reporting arrangements.

Impact on equality

43. Equality was a thread that ran through each of the workstreams. The Policy and Approach action group set out a number of objectives for scrutiny including that it should help to ensure that local bodies promote equality and access to services for all people, especially those at risk of social exclusion. However, the report also noted that there are a range of interest groups for whom equality legislation and policy offers protection over and beyond 'vulnerable' members of society. Assurance on the promotion of equality, for example and on other statutory requirements will still be required and so scrutiny to ensure compliance should continue. Ensuring that this the promotion of equality and access to services is embedded in changes to the way in which scrutiny is carried out and how scrutiny bodies are structured will be a key part of the next phase of our work.

44. The User Focus group saw equality as a key principle of how all organisations can contribute towards the vision of user focused scrutiny, proposing that all bodies should ensure that equality is embedded in the activity of the body and in the design and delivery of all functions. The group noted that cultural and procedural change is required if scrutiny is to become more user focused. It noted that Best Value and the public sector equality duties already provide a helpful framework and organisations are encouraged to exercise leadership and effective use of resources to effect this change and to deliver on the recommendations contained in the report.

45. The Reducing Burdens group researched data currently collected from local authorities by scrutiny bodies with a view to agreeing what should be collected in the future. The group agreed that it was important that any scaled down duplicate reporting requirements could still look at outcomes relating to equality.

46. The equality dimension of complaints handling was addressed by the Complaints Action group as it looked at how the new complaints system could help give those individuals traditionally less likely to have a voice the confidence to complain about services. The group also considered the importance of advocacy in a more consumer-focused complaints system, both in improving services and in helping people where they have a concern over services, noting that it is especially important for vulnerable and disadvantaged groups.

47. The Government is committed to reviving the Scrutiny Forum which involves all the main regulators and inspectorates across Scotland. The Forum provides an opportunity for the different regulators to meet, learn from each other and work

effectively together and will be useful as a means of delivering on some aspects of the action groups' recommendations.

Next steps

48. The Scottish Ministers welcome the reports of the action groups and recognise the challenge of moving from broad recommendations to workable solutions. They are appreciative of the time and commitment of the group members and to those who supported or gave evidence to the groups. As a result of this work, we have a clear and well thought out direction of travel and Ministers are determined to make significant progress on the basis of the recommendations.

49. Annex A sets out the Government's response to each recommendation, together with how it will be taken forward. Further reports on progress will be provided in due course.

The Scottish Government
March 2009

ACTION GROUPS UPDATE AND GOVERNMENT RESPONSE

RECOMMENDATIONS

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
ACCOUNTABILITY & GOVERNANCE				
A1	Expand current practice amongst scrutiny bodies of publishing reports and presenting those simultaneously to the Parliament and Ministers. This should be set out as best practice in framework documents.	Accept	Ministers accept this recommendation as good practice for the formal publication of reports and will write formally to scrutiny bodies to encourage them to adopt this recommendation. Parliament and Government should discuss the resource implications and procedural issues for Parliament in adopting this new approach.	Government / Parliament
A2	Ministers to formally adopt the key principles of governance to ensure operational independence for scrutiny bodies.	Accept	Ministers accept this recommendation as good practice and will write formally to scrutiny bodies to encourage them to adopt this recommendation. Parliament and Government should also discuss how scrutiny bodies supported by the SPCB and the SCPA could move towards adopting the key principles of governance to ensure their operational independence is made consistent and transparent.	Government / Parliament
A3	Ministers should publish a source template for scrutiny bodies to use in developing Framework Documents and include this in the	Accept	Ministers accept this recommendation and will develop a draft template for inclusion in	Government

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
	Scottish Public Finance Manual (SPFM).		the Scottish Public Finance Manual (SPFM).	
A4	That, subject to discussions on the findings of the SCPA inquiry, the SPCB proposals for legislative change in respect of Parliamentary Commissioners (and AGS in respect of tenure in post) merit further consideration for inclusion in statute.	Accept	<p>On 9 December Ministers issued their response to the SCPA's report. The response included a commitment to legislate on 4 issues: a single fixed term of appointment for the Auditor General; amending the composition of the Audit Scotland Board; a fixed maximum term of appointment for non executive members of the Audit Scotland board; and the extension of privilege to Auditor General reports. Measures will be included in the PSR Bill due for introduction in 2009</p> <p>The Scottish Government is working closely with the Parliament on the wider implications for Parliamentary Commissioners during the current Committee Review of the SPCB Supported Bodies.</p>	Government
A5	Ministers to confirm the principle that where responsibility for strategic policy issues rests with Ministers, accountability for the relevant scrutiny bodies also rests with Ministers.	Accept in principle	<p>The Scottish Government already concentrates on providing leadership and direction, and focus on strategic priorities. As part of the National Performance Framework, the Scottish Government establishes the direction of travel for public services in the current Spending Review period.</p> <p>This clearly demonstrates our performance as a government and serves to sharpen the focus</p>	Government

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
			<p>of all of us responsible for public services on the delivery of these priorities.</p> <p>As such the role of external scrutiny remains crucial and, subject to the need for ensuring the operational independence of scrutiny bodies set out in A2, Ministers accept this recommendation in principle.</p>	
A6	<p>That Ministers should accept the principle that, in general, Ministers should set the national strategic standards in all areas of public services, recognising the need for input of expertise, user engagement and working within the context of new relationships with local government.</p>	Accept	<p>As per response to A5, this recommendation is wholly consistent with the new approach to Government which we have set out already. The Scottish Government focuses on the key long term challenges for Scotland and enables, and encourages, more effective partnership working – across the public sector and with all stakeholders, recognising the status of local government.</p>	Government
A7	<p>That Ministers should examine their approach to setting national standards to consider an approach which sets out those national standards where a quantitative approach is sufficient (such as in enforcement) and those where the focus needs to be on improvement.</p>	Accept in principle	<p>The public sector as a whole contributes to one overarching purpose and all performance management systems are aligned to a single, clear and consistent set of priorities. The Scottish Government set targets where we judge that it will be an incentive to delivery. The Scottish Government will consider the need for local variation as part of this. Elsewhere, we have established the direction of travel in which we expect indicators to move in the Spending Review period. The Scottish Government will therefore examine the suggested approach, recognising</p>	Government

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
			that a key role of external scrutiny, using any type of standards however expressed, is to help to ensure that the service improves to secure outcomes.	
A8	That Ministers should ensure that scrutiny bodies remain closely involved with the development of standards.	Accept	Related to A7, the Scottish Government agree that it is essential that the experience, knowledge and expertise of all stakeholders, including scrutiny bodies, are brought to bear in the development of future standards. The Scottish Government agree with the need, set out in the AGAG report for clear, transparent and separate processes associated both with setting standards and any subsequent scrutiny, making use of those same standards.	Government
A9	There are a number of options related to the scrutiny of health available to Ministers which AGAG noted and endorsed for consideration by Ministers.	Accept in principle	Related to A2 above, the Scottish Government will consider how best the key principles of operational independence for scrutiny bodies will apply in the new health body.	Government
USER FOCUS				
U1	Scrutiny bodies should adopt the definition of ‘user’ and ‘user focus’ set out in this report.	Accept	Ministers are reassured that UFAG recognise the complexity of the issues and are not are seeking to lay down a ‘one size fits all’ approach. Ministers welcome this flexibility, accept this recommendation as good practice and will write to all scrutiny bodies to encourage them to adopt this recommendation.	Government / Parliament

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
			Parliament and Government should also discuss how scrutiny bodies supported by the SPCB and the SCPA could move towards adopting these, and other definitions set out by UFAG, in order to ensure consistency across all scrutiny bodies.	
U2	<p>Scrutiny bodies should adopt the vision, underpinning principles and seven broad features of user focus set out in this report. These are:</p> <ol style="list-style-type: none"> 1. An organisational commitment to user involvement recognising the value added by overcoming barriers for the users and maximising involvement opportunities. 2. User involvement in the scrutiny body governance structures; 3. User involvement in the design of scrutiny activity; 4. User involvement in delivery of scrutiny; 5. User involvement as members of scrutiny teams (informing evaluations and judgements through first hand activities); 6. Accessibility of their scrutiny findings in reports that are easy to read and understand; and 7. When the scrutiny body has a direct role in helping service providers improve, that the scrutiny body is supporting user involvement in subsequent improvement action. 	Accept in principle	<p>Ministers accept this recommendation as good practice and will write to all scrutiny bodies to encourage them to adopt this recommendation.</p> <p>Parliament and Government should also discuss how scrutiny bodies supported by the SPCB and the SCPA could move towards adopting these, and other definitions set out by UFAG, in order to ensure consistency across all scrutiny bodies.</p>	Government / Parliament
U3	Scrutiny bodies and public bodies should draw on the examples of good practice in user focus and involvement as a basis for further work.	Accept	Crerar and the User Focus Action Group both agree that there is already a high-level of user focus in some scrutiny bodies. Ministers accept the recommendation that the potential	Government

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			improvements for service delivery should be highlighted, especially where it has beneficial implications for other services involving the public.	
U4	Scrutiny bodies and public bodies should establish a mechanism for the sharing and disseminating of good practice and the development of action learning.	Accept in principle	Related to U3 above, Ministers accept that there should be a mechanism for such work, and that it should largely be driven forward by the scrutiny bodies themselves and their relevant stakeholders.	Scrutiny bodies
U5	Ministers should support the current work being undertaken by the Improvement Service and Customer Focus Scotland on a common approach to measuring user satisfaction and experience in Scottish local government. Ministers should review the work by April 2009 with a further expectation of a common approach being developed across local government by April 2010.	Partially accept	Ministers recognise the value to be added by work such as developing a common approach to measuring user satisfaction and experience in Scottish local government. Ministers welcome the opportunity to be updated on progress to date. Ministers would also welcome the development of a common approach across local government by April 2010. This would be within the context of our outcomes-based approach with local government, and other delivery partners. As such the Scottish Government leaves the detailed management of services to those who can best understand and tailor their resources and activities in line with local priorities.	Government \ local partners
U6	Ministers should ask that that all performance scrutiny reports from scrutiny bodies, for new programmes of work, are produced in “dual-format” format, with both an accessible summary and a full technical report, with effect from April 2009.	Accept	Ministers welcome the assessment from UFAG that the best way to ensure reports are user focussed is through the adoption of the ‘dual format’ report. This has already been used successfully by HMIE, SWIA and the Care Commission. Ministers therefore accept	Government / Parliament

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
			<p>this recommendation as good practice and will write to all scrutiny bodies to encourage them to adopt this recommendation.</p> <p>Linked to recommendation A1 above, Parliament and Government should discuss the resource implications for Parliament in adopting this new approach.</p> <p>Parliament and Government should also discuss how scrutiny bodies supported by the SPCB and the SCPA could move towards adopting these, and other definitions set out by UFAG, in order to ensure consistency across all scrutiny bodies.</p> <p>Crerar and the User Focus Action Group both accepted that there was already highly successful “dual-format” reporting in some scrutiny bodies. The Scottish Government accepts that not all scrutiny bodies will have budgeted to use this approach during existing scrutiny programmes. As such it considers it reasonable for such reporting requirements to be built into the planning of scrutiny activity from April 2009. Ministers therefore accept that this will result in this approach being rolled out over a period of time. There are a number of innovative and effective mechanisms in place by which such reports are already produced and Ministers expect such good practice to be the basis for this new</p>	

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			work being undertaken, where not already in place.	
U7	Ministers should expect greater commonality across all scrutiny bodies in terms of the grading approaches they use and (i) direct that this is addressed within the developing work on Outcome Agreements and Best Value 2 (ii) review progress by April 2010 and (iii) have a firm expectation of roll out within new programmes of service scrutiny by April 2011.	Partially accept	<p>Linked to U6 above, Ministers accept the principle that service users should be able to expect greater commonality in terms of the performance information that is available to them.</p> <p>Ministers accept this recommendation as good practice and will write to all scrutiny bodies to establish what work can be done within the current reporting framework to achieve greater commonality.</p> <p>For future work, Ministers will ensure this recommendation is considered in the development work for both Best Value 2 and Outcome Agreements. However this commitment recognises that Single Outcome Agreements are part of an overall framework of performance management, shared between local government and the Scottish Government.</p> <p>Government and Parliament, as a major stakeholder in the use of scrutiny reports and data, should discuss the implications for Parliament in this new approach.</p> <p>Linked to U10 below, Ministers will review progress by April 2010 and will then consider how greater commonality could be built into the planning process by April 2011.</p>	Government / Parliament
U8	Ministers, scrutiny bodies, service providers and the Scottish Parliament should accept that to bring about greater user focus	Accept in principle	The Scottish Government accepts that there will be some additional resources required to	Government

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	within any scrutiny system both cultural and procedural change is required. Such change will involve challenges and opportunities for service providers, scrutiny bodies and crucially, the users themselves. The change will also require additional resources from the outset, in terms of both financial support and staff time for training etc. Best Value and the public sector equality duties already provide a helpful framework and organisations are encouraged to exercise leadership and effective use of resources to effect this change and to deliver on the recommendations contained in this report.		move all scrutiny bodies towards a consistently high level of user focus. However, both Crerar and the User Focus Action Group accept that there is already a high-level of user focus already in some scrutiny bodies. A more effective use of resources will therefore enable scrutiny bodies to examine the potential for reallocation of resources to support this work, within existing budgets	
U9	All scrutiny bodies should be required to report to Ministers by June 2009 on their approach to implementation of the recommendations in this report and plans to progress further. Each scrutiny body should be able to demonstrate that it is responding to issues of user focus by April 2010.	Accept	Linked to U3 and U4 above, Scottish Government will write to all scrutiny bodies to alert them to this and subsequently monitor progress. Ministers expect that this work should largely be driven forward by the scrutiny bodies themselves and their relevant stakeholders.	Government / scrutiny bodies
U10	Ministers should establish a mechanism for involving scrutiny bodies and other bodies as appropriate, to help drive forward improvement in user focus and to increase co-ordination and the development of greater commonality.	Accept	Linked to U3, U4 and U9 above, Scottish Government will write to all scrutiny bodies to alert them to this and subsequently monitor progress. Ministers expect that this work should largely be driven forward by the scrutiny bodies themselves and their relevant stakeholders. However, Ministers will review existing mechanisms and networks to determine whether any additional support is required.	Government / scrutiny bodies
POLICY & APPROACH				
P1	Ministers should agree strategic priorities and priority risk categories with the Parliament, Local Government and the	Accept	Ministers will write formally to stakeholders to confirm the priorities set out in report.	Government

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
	Auditor General for Scotland – to introduce a co-ordinated and systematic checking process for all new and existing scrutiny.			
P2	<p>The priorities for public service scrutiny should be:</p> <p>1. Protection, welfare and access to opportunities for:</p> <ul style="list-style-type: none"> • Children, • Adults in need of support and protection¹, • Older people; <p>2. Assuring public money is being used properly.</p>	Accept	Ministers accept these priorities and will write formally to all stakeholders to encourage all scrutiny bodies to adopt this recommendation and to link these priorities closely to local scrutiny decisions as recommended by the Reducing Burdens Action Group.	Government & Parliament
P3	<p>Alongside these priorities there will be other circumstances in which Government, Parliament and the Auditor General will wish to continue or establish scrutiny functions. These are likely to include</p> <p>I. Where there is the need for periodic independent assurance about whether services are safe and/or meeting regulatory requirements. This will be crucial in an area such as equalities;</p> <p>II. Where service provider self-evaluations are unsatisfactory, or indicate that greater improvements could be achieved;</p> <p>III. Where there is the need to assess the impact of a national policy priority such as outcome agreements or the national performance framework;</p> <p>IV. Where a serious service failure arises in one area and assurance is required about wider implications</p>	Accept	Government accepts the need to retain specific scrutiny activity over and above scrutiny based on the strategic priorities set out above, and will ensure the circumstances recommended here form the basis of scrutiny alongside the priorities.	Government & Parliament
P4	The priority risk categories which should be applied will be:	Accept	Government accepts these as being the priority risk categories that will be used	Government & Parliament

¹ For scrutiny prioritisation purposes, this definition should include all adults in the care of the State.

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	<ul style="list-style-type: none"> • Corporate governance risk; • Service failure risks; and • Outcome risks. 		nationally and locally to assess the need for scrutiny. These categories will help decisions to be made on the need for scrutiny, the type of scrutiny function needed and the length of time it should be applied.	
P5	To achieve a whole-system view of scrutiny, Government and key strategic partners should seek opportunities to assess to what extent each public service scrutiny function delivers for the three life-stage groups at P2 above, and systematically review these to ensure that scrutiny is proportionate and risk-based	Accept	Government will include the principles of SSC as the Best Value audit process is updated and as the links between BV and existing PFMR processes are reviewed.	Government
P6	To ensure strategic priorities for scrutiny keep pace with wider policy development Government, Parliament, the Auditor General and Local Government should agree a scrutiny priority review every 4 years. This should, involve key scrutiny bodies and other stakeholders	Accept	A Strategic Priority Review arrangement should be put in place to happen every 4 years.	Government, parliament, local Government & scrutiny bodies
P7	To improve the understanding of the impact of scrutiny, service providers and scrutiny bodies should use the themes and measures as set out in the PAAG report to be able to demonstrate the resources which are required to respond to external scrutiny.	Accept in principle	Government and Audit Scotland should ensure that the impacts of scrutiny – its cost and benefit – is set out by service providers and scrutiny bodies in a consistent manner in future. There is no standard way of demonstrating cost and benefit at the moment and the challenge will be to use the PAAG report recommendations to develop a useful system	Government, parliament, local Government & scrutiny bodies.
P8	Local government will have a key role in assessing the impact of external scrutiny on its services and the resources required to replace that with self-assessment.	Accept in part	Government and local government will work with Audit Scotland, using the cost and benefit measures suggested in PAAG, to assess resources required to increase reliance	Local Government coordinated by COSLA and

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			on self-assessment and scale back external scrutiny. However, as stated at P2 and P3 there will always be a need for some form of external scrutiny. So Government does not accept that self-assessment will fully “replace” external scrutiny.	SOLACE
P9	Principles for Systematic Scrutiny Checks (SSC) should be introduced into existing performance review systems, which should be carried out independently of scrutiny bodies by Government and Parliament. Policy & Financial Management Reviews (PFMR) and Best Value audits, could be used where appropriate, to allow periodic reviews of all existing scrutiny.	Accept in principle	In reviewing how public bodies are held to account, Government will consider how its review and audit processes could include the principles of SSC.	Government
P10	The SSC principles should be used for testing any proposed new scrutiny functions. Existing processes should be enhanced with a series of evaluation tools such as risk matrices and take account of national priorities to test the relevance and scope of existing, or any proposed new scrutiny functions.	Accept	Government and Parliament should develop guidance to ensure new scrutiny functions are consistently tested and checked.	Government & Parliament
P11	The SSC proposals should be undertaken by officials from Government and Parliament with no direct responsibility for the services under consideration, and should: a) Be triggered either by proposals for new functions, or as part of a existing reviews such as PFMR or Best Value audits; b) Make use of as much relevant local and national information as is available, including: I. The strategic priorities and priority risk categories, II. The risk matrices as a tool, III. The impact assessment framework , and	Accept in principle	Government and Parliament should introduce a process for ensuring scrutiny is proportionate on the basis of the SSC proposals. This should be done by developing scrutiny arrangements that are already available, such as Best Value audits. For future scrutiny proposals Parliament and Government should set out clearly how the SSC proposals will always be considered in setting up new functions.	Government & Parliament

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
	<p>IV. An assessment of costs and benefits;</p> <p>c) Be made public so as to make the decision-making process as transparent as possible</p> <p>d) Be undertaken in accordance with core guidance on creating new bodies, creating new legislation and on policy-making</p>			
P12	<p>There is an important local dimension to the process set out above. For local government services, the RBAG report has set out recommendations to co-ordinate the application of priorities and risks at a local level. For non-local government services – based on the recommendations in the RBAG report – local scrutiny should:</p> <p>(a) Be aligned with Local priorities and local risk factors;</p> <p>(b) Take account of National strategic priorities;</p> <p>(c) Apply to geographic areas based on Community Planning Partnership boundaries, or local authority boundaries where appropriate.</p>	Accept	Government will take account of the RBAG proposals for local government scrutiny coordination and the work of the accounts Commission and prepare to spread this out beyond local government scrutiny into other services. It will be important for scrutiny bodies and local government to work together to ensure that local priorities have the right level of ambition.	Government
REDUCING BURDENS				
R1	<p>To deliver improvements in service delivery and better outcomes for the people of Scotland, it is recommended that:</p> <p>councils and their partners continue to develop robust self-evaluation processes.</p>	Accept	Councils are at different stages of readiness regarding self evaluation and scrutiny bodies should work with them to help councils to develop and implement assisted self evaluation.	Local government supported by Government CoSLA and SOLACE
R2	<p>To deliver improvements in service delivery and better</p>	Accept	Councils are working with their partners to	Local

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
	<p>outcomes for the people of Scotland, it is recommended that:</p> <p>councils, partners and scrutiny bodies use assisted self-evaluation, which sits on a continuum of audit and inspection, as a key approach to provide rigorous external challenge of performance and practices, and to help develop partners' capacity for effective self-evaluation. Over time, robust self-evaluation based on sound performance information should replace most cyclical inspections.</p>		<p>consider this; it is essential that scrutiny bodies are closely involved in the process so that their expertise and capacity can be use to support the work.</p> <p>AS set out in P3, although the Government accepts that there should be a much greater role for self evaluation, it is important to note that this will continue to be done in conjunction with independent scrutiny particularly in high risk areas. The emphasis of scrutiny will switch from well performing delivery bodies who will see a reduction to scrutiny to poorly performing organisations and services where the amount of scrutiny might increase until improvements can be demonstrated.</p> <p>The Government notes that the recommendations from the action concentrate mainly in easing the burden for local government. However, the Government is aware that excessive and uncoordinated scrutiny also impact on providers from the private and third sectors and is exploring how these issues can be addressed.</p>	<p>government and scrutiny bodies</p>
R3	<p>To deliver improvements in service delivery and better outcomes for the people of Scotland, it is recommended that:</p> <p>scrutiny bodies substantially alter the frequency and depth of their work in councils to reflect the strength of self-evaluation and performance.</p>	Accept	<p>As part of the Accounts Commission work on coordination, scrutiny bodies are developing a joint risk assessment process which will inform the frequency and intensity of inspection of local government and services provided by local government. There are some</p>	<p>Accounts Commission and scrutiny bodies supported by Government</p>

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			services such as child protection which, due to the risk factors and the potential impact on vulnerable groups, will always require some additional form of regular scrutiny over and above the joint risk assessment and assisted self evaluation.	
R4	<p>To deliver improvements to co-ordinated scrutiny planning, risk assessment and information sharing to reduce the burden of scrutiny, it is recommended that:</p> <p>the Accounts Commission ensures that all scrutiny bodies work together to deliver joint scrutiny planning and risk assessment processes.</p>	Accept	This is already being taken forward by the Accounts Commission who have now provided two progress reports to Ministers	Accounts Commission and scrutiny bodies
R5	<p>To improve the co-ordination of external scrutiny between those undertaking it and to reduce the burden on public bodies, it is recommended that:</p> <p>a single common data request agreement will be specified covering:</p> <ul style="list-style-type: none"> • a core set of information to be made available publicly and fully maintained in a standard format by local government and scrutiny bodies for access by the public; and • a secondary set of information to be made available through local intranets and a national portal and fully maintained in a standard format by local government and scrutiny bodies. 	Accept	Local government and scrutiny bodies should examine the detail of the RBAG report and agree a method of bringing it into force. Government will consider how the principles can be expanded to other (non local authority) delivery bodies including those in the third sector.	Local government and scrutiny bodies
R6	To provide access to information useful both to support the	Accept	Work is underway and an update is expected	South

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	<p>on-going work of local government and external scrutiny and audit, while reducing the overall burden, it is recommended that:</p> <p>work is undertaken within South Lanarkshire Council, with support from Audit Scotland and the Care Commission, to develop and pilot a website based portal capable of holding all the required information which is easily accessible by local government and scrutiny bodies.</p>		in January	Lanarkshire Council
R7	<p>To provide access to information useful both to support the on going work of local government and external scrutiny and audit, while reducing the overall burden, it is recommended that:</p> <p>resources are made available both to ensure that the pilot can be developed and then extended for use across all of local government and scrutiny bodies.</p>	Accept With caveat	<p>Once the pilot exercise has been completed, Government will work with local government to agree the best way to expand this to all councils.</p> <p>Government will reflect further on how to implement the public focus issues raised by Crerar in relation to publishing information on scrutiny programmes</p>	Government CoSLA and SOLACE
FIT FOR PURPOSE COMPLAINTS				
F1	A set of principles based on the present SPSO guidance (<i>Valuing Complaints</i>) founded on <u>consumer focus</u> and <u>simplification</u> should form the basis of all public service complaints handling processes, which will be developed in partnership between the SPSO and service providers.	Accept in principle	Subject to current consideration of SPSO by the Review of SPCB Supported Bodies Committee (the 'Parliamentary Committee'), the Government supports the proposal that SPSO should develop these principles for approval by Scottish Parliament.	SPSO
F2	There should be a standardised complaints handling process for each public service sector based on these principles – so that, for example, all care homes have a process in common and all registered social landlords have their own common process.	Accept in principle	Subject to current consideration of SPSO by Parliamentary Committee, Government supports proposals requiring providers to adopt complaints handling procedures based on model procedures prepared by SPSO.	SPSO

RSSB/S3/09/5/8
Agenda item 2

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F3	A signposting service, with a single point of contact, should be established to provide guidance and general advice to consumers on complaining, and this should be based around an existing service such as Consumer Direct.	Accept	Suitable existing signposting service should be identified , in consultation with Consumer Direct, Citizens Advice and Scottish Consumer Focus.	Government & SPSO
F4	Mediation for providers and consumers as well as advocacy for consumers in need of support should be introduced where appropriate, and Government should consider how best to resource mediation and advocacy in complaints handling	Accept in principle	SPSO model complaints procedures will consider need for advocacy and appropriate role of mediation in different public sector areas. Government will then consult on any additional provision that may be required locally or nationally and how this could be resourced within available funding.	Government and SPSO
F5	All public service organisations should review their schemes of delegation to ensure that the authority to resolve complaints at the front line and by complaints handlers is maximized and that the chain of decision making is as short as possible.	Accept in principle	Subject to current consideration of SPSO by Parliamentary Committee, this will form part of response by all public service organisations to development of principles and model complaints procedures by SPSO.	All public service organisations
F6	All public service organisations should review the training needs of front line employees and complaints handlers to ensure they have the skill and confidence to exercise authority delegated to them in handling complaints.	Accept in principle	Subject to current consideration of SPSO by Parliamentary Committee, this will form part of response by all public service organisations to development of principles and guidance by SPSO.	All public service organisations
F7	All public service organisations should review and enhance the status of complaint handlers. In addition, the SPSO should establish a cross-sectoral network of complaints handlers and a website to allow complaints handlers to share best practice in complaints handling. Further, the SPSO should coordinate the training for complaints handlers and develop a recognised qualification for complaints handlers.	Accept in part	SPSO should offer guidance and suggest training to providers, enhancing the status of complaint handlers - and should oversee the provision of networking. SPSO will need to prioritise such a network against other priorities in developing consistent complaints handling processes across public services.	SPSO
F8	The SPSO, working with scrutiny bodies and service providers, should improve the way in which the learning from complaints is	Accept	Close working on principles of better complaints handling with providers and	SPSO, COSLA and the

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	used to drive improvement and the way in which providers can demonstrate this to consumers. Each council should review its current arrangements for learning from complaints and decide whether they are fit for purpose. The SPSO should work with COSLA and/or the Improvement Service to develop a best practice guide on how to learn from complaints.		significant scrutiny bodies, as well as joint work with local government. See also F12	Improvement service
F9	Priority should be given to introducing standardised complaints processes in the sectors where there is the greatest risk to consumers from service failure and from which most complaints emerge – namely across the social care sector and across services provided by local government (including social work and education systems).	Accept in principle	Subject to current consideration of SPSO by Parliamentary Committee, Government will expect SPSO to prioritise these areas in developing model complaints handling processes, and will consider whether any legislation is required to amend social work and education complaints systems, and SPSO will work closely with the Care Commission to ensure appropriate changes are made in the social care sector.	Government, SPSO, COSLA and the Care Commission
F10	The SPSO should work with local government and the Care Commission to develop complaints systems for social care and social work services which must include clearer communication about responsibility for handling complaints and better sharing of information on complaints.	Accept in principle	See response to F9	SPSO, COSLA, Care Commission
F11	Government should consider a National Care Standard for complaints handling	Reject	Not necessary – given the statutory authority that SPSO should have to assure compliance, and given existing Care Commission authority over care providers	n/a
F12	In the wider scrutiny landscape, Government should identify how scrutiny bodies must ensure appropriate use is made of complaint outcomes.	Accept	Performance principles to be introduced to revised PFMR and BV audits to ensure scrutiny bodies can demonstrate how use of outcomes is made. SPSO should ensure action is consistent with complaint principles.	Government & SPSO

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
			See also F8.	
F13	To reduce the complexity and perceived inconsistencies in approach, and in the structure of the complaints landscape legislation should be introduced to allow changes to the complaints landscape and to allow better sharing (e.g. to allow the SPSO and complaints handling bodies to share headline information on cases under consideration)	Accept in principle	The Government is supportive of proposals F13 and F16, and has invited the Parliamentary Committee reviewing bodies sponsored by the Scottish Parliament Corporate Body to consider these changes. Thereafter, it will work with the Parliament to identify what legislation is required and the appropriate legislative vehicle.	Government, SPSO & Parliament
F14	To reduce the complexity and perceived inconsistencies in approach, and in the structure of the complaints landscape Government and/or Parliament should not establish any new complaints-handling bodies without first considering if the SPSO could take on the function, or, only where that would be inappropriate, whether an existing body could expand its role to cover the new function.	Accept	Subject to current consideration of SPSO by Parliamentary Committee, Government will abide by this recommendation.	Government & Parliament
F15	The complaints handling function should not be embedded within bodies with an inspection and regulation role, save in exceptional circumstances such as to protect particularly vulnerable consumers.	Accept	Government will ensure no new proposals are made to embed complaints with regulation functions, and will ensure all existing functions are reviewed within PFMR and BV audits to ensure separation other than in exceptional circumstances.	Government & Parliament
F16	The number of stand-alone complaints handling bodies should be reduced, and functions should be transferred, where appropriate, to simplify the process and landscape for consumers. Specifically, Government should consider the following:	Accept in principle	See response to F13	Government & Parliament
F16i	Transferring the role currently performed by local authority Complaint Review Committees for social work to the SPSO.	Accept	Government should consult on transferring to SPSO and discuss the outcome with Parliament, to seek legislative vehicle.	Government

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
F16ii	Transferring responsibility for local authority Education Appeal Committee work and Independent Adjudication functions from local government to an independent tribunal.	Requires further consideration	Following the report of the Administrative Justice Steering Group chaired by Lord Philip, Government will consult on options for education appeals and discuss the outcome with Parliament to seek legislative vehicle if required.	Government
F16iii	Ensuring that 'clinical' prison complaints should be dealt with either by the new home for Prison Complaints Commissioner functions or by NHSScotland, if the provision of health in prisons transfers to NHSScotland.	Accept	Linked to proposals F16vi, and so subject to current consideration of SPSO by Parliamentary Committee.	Parliament
F16iv	Transferring the bus complaints function within the Passenger Transport Users Committee to the SPSO;	Accept in principle	Government should consult on transferring to SPSO or the Traffic Commissioner for Scotland with the PTUC and its Bus Passenger Platform Sub-committee and discuss the outcome with Parliament.	Government
F16v	Transferring the complaints function of Waterwatch Scotland to the SPSO.	Accept in principle	Subject to current consideration of SPSO by Parliamentary Committee, Government supports this proposal.	Parliament
F16vi	Transferring the Scottish Prisons Complaints Commissioner's functions to the SPSO, and pursuing opportunities to put the functions of the prison complaints regime on a statutory footing.	Accept in principle	Subject to current consideration of SPSO by Parliamentary Committee, Government supports the proposal that SPSO should now directly handle those complaints about the Scottish Prisons Service which are within its remit.	Parliament
F16vii	Retaining the police complaints framework, which is still being embedded, and allow this to develop further, but the case for merging with the SPSO should be considered during the next Parliamentary session. The PCCS should endeavour to share services with the SPSO where practically possible.	Accept	PCCS will ensure services are shared where possible. Government will look again at the arrangements after 2011.	Government

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
F17	The SPSO should retain responsibility for considering ‘upper-tier’ complaints.	Accept in principle	Subject to current consideration of SPSO by Parliamentary Committee Government supports retention of this responsibility.	Parliament
F18	To oversee a new fit for purpose complaints system, the SPSO should be given the authority and appropriate resources to work with service providers and sectoral interests to develop and approve, for each sector, standardised public service complaints handling systems which include realistic but challenging timescales and processes to keep all parties informed of progress.	Accept in principle	Subject to current consideration of SPSO by Parliamentary Committee Government supports enshrining this new responsibility in legislation.	Government
F19	To oversee a new fit for purpose complaints system, the SPSO should be given the authority and appropriate resources to work with service providers and sectoral interests to coordinate training for complaints handlers, develop a complaints handling network and website, and issue guidance for service provider front-line employees and complaints handlers about how to deal effectively with complainants, including those whose behaviour is unacceptable, unreasonable or inappropriate.	Accept in principle	Government and SPSO need to consider existing resources, within budgets of service providers and scrutiny bodies	Government & Parliament
F20	To oversee a new fit for purpose complaints system, the SPSO should be given the authority and appropriate resources to work with service providers and sectoral interests to coordinate the way outputs and outcomes from complaints are reported and followed through to improve services.	Accept in principle	Subject to current consideration of SPSO by Parliamentary Committee. Government’s general approach is that oversight of systemic response to complaints outcomes will rest with scrutiny bodies responsible for inspection and quality rather than SPSO itself – see responses to F8 and F12	Government & Parliament
F21	To oversee a new fit for purpose complaints system, the SPSO should be given the authority and appropriate resources to work with service providers and sectoral interests to allocate responsibility to service providers (or scrutiny bodies, if appropriate) to lead on individual complaints where more than one body could handle it, to ensure clarity over responsibility and	Accept in principle	Subject to current consideration of SPSO by Parliamentary Committee Government supports giving this authority to SPSO. The power to allocate responsibility will be a residual one where matters cannot be settled locally, and should not require additional	Government & Parliament

Ref	Action Group Recommendation	Response	Next Steps	Responsibility
	eliminate duplication of effort.		resources for SPSO.	
F22	The Parliament should be asked to approve the single set of principles on which all complaints handling process would be based.	Accept in principle	See response to F1.	Government & SPSO
F23	Government and Parliament should consider options for giving the SPSO authority to develop and approve complaints processes, and Government should consider introducing a general requirement on all public service providers to comply with approved complaints handling processes.	Accept in principle	See response to F2. Government supports provision of a legislative duty to comply with appropriate model procedures, subject to any adjustments agreed between SPSO and the public service	Government
F24	Government should ask SPSO to prepare now, with appropriate resourcing, for taking on additional roles identified in this report and ask service providers to work towards compliance with new processes and utilise the new features within their complaints handling systems.	Accept	Parliament to consider SPSO, but providers and existing SPSO should begin work immediately.	SPSO and service providers
F25	The SPSO should work with service providers and scrutiny bodies, as well as COSLA for the local government sector, to develop a consistent way to capture performance against the complaints handling principles, including assessment of the costs of providing professional complaints handling services.	Accept	SPSO will work with COSLA to develop consistent capture method for performance in complaints handling.	SPSO

ACTION GROUPS UPDATE AND GOVERNMENT RESPONSE

ACTION GROUP PROGRESS

	Deliverables	Published	Variations
FCSAG	<p>Aim to deliver a better, more transparent and consistent complaints system for service users and the public.</p> <p>Proposals on process improvement and structural reform.</p> <p>Recommendations on</p> <p>a) local government and care systems to be the priority for improvement;</p> <p>b) centralised sign-posting for complainants;</p> <p>c) improved advocacy and mediation;</p> <p>d) improved training for front-line staff;</p> <p>e) structural change to water and prison complaints within SPSO;</p> <p>f) standardising Education Appeal Committee and Complaint Review Committee (social work) functions.</p>	Published July 2008	<p>a) not recommending scaling back of SPSO investigation role;</p> <p>b) mergers could reduce services and lose expertise</p>
PAAG	<p>Aim to reduce the volume and impact.</p> <p>Proposals for reviewing all scrutiny – limiting scrutiny to those sectors which are regarded as service priorities.</p> <p>Recommendations on a) systematic scrutiny reviews;</p> <p>b) strategic priorities and core risk criteria;</p> <p>c) framework for assessing (impact) cost/benefit to be used in reviews;</p> <p>d) national and local application of priorities and risk criteria</p>	Publishing December 2008	<p>a) assessing the impact and costs and benefits in monetary terms;</p> <p>b) not recommending use of Expert Panels;</p> <p>c) life-stage priorities confusing for bodies scrutinising universal services;</p>
AGAG	<p>Aim to improve the governance and accountability of scrutiny organisations in accordance with the five principles of scrutiny as recommended in the Crerar Review.</p> <p>Proposals to address the broad issues of accountability and governance to help deliver:</p> <ul style="list-style-type: none"> • more transparent accountability relationships between 	Published October 2008	<p>a) not recommending significant amendment to independent scrutiny of health;</p> <p>b) no structural recommendations (not in remit);</p>

	Deliverables	Published	Variations
	<p>Minsters, scrutiny bodies, Parliament, service users and the wider public;</p> <ul style="list-style-type: none"> • improved and clearer governance in respect of scrutiny bodies; and • clear principles for use in any future work when examining scrutiny issues. <p>Recommendations on</p> <p>a) updating scrutiny body framework documents to formally adopt the key features of governance to ensure operational independence for scrutiny bodies using common form of words (irrespective of present “status”), and publishing this in the Scottish Public Finance Manual;</p> <p>b) scrutiny body reports to be published simultaneously to the Parliament, Ministers and the public;</p> <p>c) develop a common set of roles and responsibilities which could be added to the non-executive members of scrutiny body boards irrespective of their organisational status;</p> <p>d) Scottish Ministers should set the national standards in all areas of public services, recognising the need for input of expertise and user engagement.</p>		<p>c) no recommendation on moving to a single scrutiny “status”. Focus is on operational independence irrespective of status;</p> <p>d) not taking forward Crerar recommendation for stronger role for Parliament – AGAG concludes parliament has sufficient powers already in place. It will be for Parliament to encourage committees to use these powers consistently.</p>
UFAG	<p>Aim to provide proposals for improvements to the current scrutiny system to enable a greater focus on the experience of the user and of the wider public.</p> <p>Proposals to set out: a clear definition of users and user focus; a vision for an enabling environment; the 7 principles that will be present in a scrutiny system based around the use; and examples of good practice in user engagement and involvement.</p> <p>Recommendations on</p> <p>a) adopting the vision for user focus set out in the report and the ‘Seven broad features of user focus in scrutiny’ also set out;</p> <p>b) In very limited circumstances direct user involvement would be</p>	Published October 2008	<p>a) UFAG not providing a template system for user involvement – rather setting out the features and principles of systems to be developed by the scrutiny bodies;</p> <p>b) UFAG recognises need for further resources to support culture change;</p> <p>c) May be sensitivity in introducing grading systems into the BV2 process which Accounts Commission is developing for Government.</p>

	Deliverables	Published	Variations
	<p>inappropriate, so scrutiny bodies should be required to make arrangements for informed discussion in these circumstances, about the interests of such deliberately excluded users;</p> <p>c) existing good practice by scrutiny bodies within Scotland as a suitable basis for further work;</p> <p>d) implementing change should be through encouragement to adopt cultures and processes, rather than have practice pushed out and imposed;</p> <p>e) suitable supporting mechanisms will be required - such as a Forum co-ordination role;</p> <p>f) potential for the current pilot work on council satisfaction being undertaken by SCC/CoSLA/Improvement Service as a means to wider sharing of data and encourage adoption of findings;</p> <p>g) user-focussed reports are produced in ‘dual-report’ format;</p> <p>h) all performance management outcomes for services should be expressed via grades, with an aspiration that these can be shared across all services.</p>		
RBAG	<p>Aim to reduce scrutiny burden on service providers while maintaining the confidence of key stakeholders that services are being delivered effectively and key outcomes are being achieved.</p> <p>Proposals to establish single data set for all local government corporate assessments, and self-evaluation model to ultimately allow external assessment to be scaled back.</p> <p>Recommendations on</p> <p>a) scrutiny bodies and local government developing proportionate and intelligence-led approach to scrutiny, based on robust self-assessment;</p> <p>b) developing and adopting assisted self-evaluation to replace most cyclical inspection over time, to reflect the strength of self-evaluation and performance.</p> <p>c) the Accounts Commission ensuring that all scrutiny bodies</p>	Published September 2008	<p>a) report tightly focused on reducing burdens on local government;</p> <p>b) not taking forward Crerar recommendation on public access to inspection programmes – RBAG prefers that inspection portal should not be accessible to the public or to service users. This is inconsistent with UFAG;</p> <p>c) RBAG suggests removing all cyclical inspection, however, PAAG suggests there are a number of higher risk services for which cyclical inspection should not be removed;</p>

	Deliverables	Published	Variations
	<p>deliver joint scrutiny planning and risk assessment.</p> <p>d) a single common data request agreement will be specified covering:</p> <ul style="list-style-type: none"> • a core set of information to be made available publicly and fully maintained in a standard format by local government and scrutiny bodies for access by the public; and • a secondary set of information to be made available through local intranets and a national portal and fully maintained in a standard format by local authorities and scrutiny bodies. <p>d) Resources to be found for South Lanarkshire Council, Audit Scotland and the Care Commission to develop and pilot a website based portal capable of holding all the required information which is easily accessible by local authorities and scrutiny bodies</p>		<p>d) RBAG call for annual scrutiny risk assessments, whereas Accounts Commission and PAAG call for less frequent reviews;</p> <p>e) challenge to sequence of the transition steps between reliance on external assessment to self-evaluation – funding/support/resources required for developing self-evaluation;</p> <p>f) Capacity Issues – better scrutiny planning will be affected by service providers being able to produce robust evidence of what they are delivering and how they are improving (this will be an essential part of risk assessment)</p>