

1. Introduction

- 1.1 The Transport (Scotland) Act 2005 placed a duty on Scottish Ministers to create Regional Transport Partnerships (RTPs) covering the whole of Scotland. This paper provides members of the Partnership Board with a summary of guidance published by the Scottish Government on the specific aspects of appointments to governance in RTP positions and membership of RTP committees. There are also references to guidance providing basic information on the role of the Board of a public body in Scotland, including specific guidance on the role of a Chairperson.

2. (a) Chairperson

- 2.1 The Scotland's Transport Future: Regional Transport Partnerships – Guidance on Membershipⁱ published in December 2005 assists all members of RTPs by amongst other matters: summarising the statutory requirements of RTPs and describing the key roles, skills and relationships required to exercise the statutory duty placed by the Transport (Scotland) Act 2005 on Scottish Ministers to create regional transport partnerships covering the whole of Scotland. The Guidance outlines that Paragraph 4(1) of Schedule 2 of The Regional Transport Partnerships (Establishment, Constitution and Membership) (Scotland) Order 2005 requires each RTP to elect a Chairperson from amongst its members. The Chairperson can be a councillor member or another member of the Partnership.
- 2.2 The Guidance highlights that the Chairperson will play an important role in building and leading the RTP and will be drawn from the membership (councillor or other). The appointed Chair, it is stated, will have a key role not just in guiding formal discussion and decision-making but in vital preparatory work, working closely with members and officers. The guidance goes on to suggest that the Chairperson should aim to avoid votes on matters as far as possible, find consensus by weighing up the points made in discussion by members and keeping the focus on the objectives and responsibilities of the RTP.
- 2.3 The 2005 Transport Scotland guidance also outlines that the Chairperson is also likely to be the most visible of the members i.e. the RTP's public face. This representational role will require a solid grasp of the issues and the ability to present the RTP as a serious player to a range of stakeholders, including the constituent councils. The Chairperson will also be the key point of contact for the Minister for Transport. A key part of the role will be to foster good working relationships between the Minister and the RTP Chairpersons, collectively and individually, which will help to foster open and positive collaboration between the Scottish Government and RTPs.
- 2.4 The 2005 Guidance also references "On Board: A Guide for Board Members of Public Bodies in Scotland", which it states provides a comprehensive standard induction pack covering a range of issues such as roles and responsibilities of public bodies, and accountability and governance

arrangements to supplement tailored induction and training. The “On Board” guidance was updated and re-published in March 2017. The 2017 guidance highlights that the Chair of any public body has additional responsibilities over and above those of Board members, particularly in relation to leadership and the conduct of Board business. The guidance highlights those communications between the public body Board and the Scottish Ministers should normally be through the Chair. They are responsible for ensuring that the public body’s policies and actions support the Scottish Ministers’ wider strategic policies and that its affairs are conducted with probity. Whilst not an exhaustive list, the “On Board” guidance summarises the role and key responsibilities of the Chair as follows:

- Leads representation and links with Ministers and Scottish Parliament;
- Leads the Board, ensures that the Board has the ability to carry out functions effectively and chairs Board meetings;
- Leads the Board’s approach to strategic planning;
- Leads the Board’s approach to the establishment of committees and ensures the Board considers substantive reports from any committees established;
- Ensures that the work of the Board and any committees is subject to regular self-assessment and that the Board is operating strategically and effectively;
- Ensures the Board has a balance of skills appropriate to directing the public body’s business, in accordance with recognised good practice in corporate governance;
- Ensures the Scottish Ministers are advised of the body’s needs when Board vacancies arise;
- Ensures the Board members are fully briefed on terms of appointment, duties, rights and responsibilities;
- Together with the other Board members, receives appropriate induction training, including financial management and reporting requirements and, as appropriate, on any differences that may exist between private and public sector practice;
- Ensures there is a Code of Conduct for Board members in place, approved by the Scottish Ministers;
- Assesses the performance of individual Board members on a continuous basis and undertakes a formal appraisal at least annually;
- In consultation with the Board as a whole, as appropriate, is responsible for undertaking an annual appraisal of the performance of the Chief Officer.

2.5 Standards Commission Model code and Guidance provided further advice on relations between members and employees of devolved public bodies, which includes relevant further information on the role and extent of responsibility of a Chairperson. Section 6 of the advice highlights that the Chair of the Board or any committee will often be consulted on the preparation of agendas and reports. Employees will always be fully responsible for the contents of any report submitted in their name and have the right to submit reports to members on their areas of professional competence. The advice highlights that whilst

employees will wish to listen to the views of members, they must retain final responsibility for the content of the reports. The section concludes by drawing attention to a clear distinction of role between Chair and Director:

“It is clearly important that there should be a close professional working relationship between the Chair of a committee and the director or senior manager of any service which reports to that committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question an employee’s ability to deal impartially with other members, and the ability of Chairs to deal impartially with other employees”.

- 2.6 The Governance Scheme of The South-East of Scotland Transport Partnership outline a number of specific duties for the Chairperson and a number of the policies of the Partnership outline specific roles, responsibilities and powers for the Chairperson.

3. (b) Deputy Chairperson(s)

- 3.1 The office of Deputy Chairperson(s) does not have a specific remit within legislation or guidance, the main specified duty is that in the Chairperson’s absence a Deputy Chairperson, shall preside at all meetings of a Partnership. The Governance Scheme of the Partnership does outline specific duties or responsibilities for the position in line with this provision. The Partnership has previously had 3 Deputy Chairpersons but since late 2016 has progressed on the basis of 2.

4. Timescales for Chair and Deputy Chair(s) Appointments

- 4.1 The 2005 Order states that the maximum length of time a member can serve as either Chair and Deputy-Chair is two full Council terms. Transport Scotland issued updated advice on 9 June 2017 which is included as an Annex which provides further clarification on the position of maximum term of office and that as either Chair or Deputy Chair, a member’s period of service cannot extend into a third council term.

5. (c) Performance and Audit Committee

- 5.1 The remit of the Performance and Audit Committee is in summary: to scrutinise any matter relating to the Partnership having regard to the Partnership’s responsibility for best value and continuous improvement; to take certain decisions on staffing matters including appeals and disputes; to advise and maintain standards; and review the adequacy of audit matters.
- 5.2 The Committee it is proposed should comprise 8 councillor members, one from each authority; and 4 non-councillor members, chosen (in the event of disagreement) by the Partnership. Each councillor member shall be entitled to nominate a substitute from their own authority. The Chairperson of the Partnership shall not be entitled to substitute for any member of the committee. The Committee’s quorum shall be 4. At present, Doreen Steele,

Callum Hay and Simon Hindshaw are non-councillor members of the Committee.

- 5.3 The Partnership Board is asked to nominate a councillor member from each authority for the Committee and to nominate a further 1 non-councillor member of the Committee, subject to the existing non-councillor members, outlined at para 5.2 wishing to continue in their role. The Committee normally meets 2 weeks in advance of each Partnership Board meeting.

6 (d) Board Succession Planning Committee

- 6.1 The role of the SEStran Succession Planning Committee is to: lead on meeting the Board's responsibilities in relation to planning for succession through appointments and Board member development; offer advice to the Board on future appointments and reappointments; review and evaluate the skills, knowledge, expertise, diversity (including protected characteristics) of current Board members, and requirements of future members, on an annual basis; and monitor the development and continuous improvement a succession plan that can be presented to the Board.
- 6.2 The Succession Planning Committee shall consist of the Chairperson of the Partnership, two other Board members, the Partnership Director, the Secretary and representative from SEStran's Human Resources advisers.
- 6.3 The Partnership Board is asked to agree the nomination, alongside the Chairperson, of two Board members for the Committee.

7 (e) Appointments Committee

- 7.1 In terms of the Governance Scheme, the Performance and Audit Committee is to take decisions on all staffing matters which are not otherwise delegated to the Partnership Director. This includes performance appraisal and remuneration matters related to the Partnership Director, and changes to terms and conditions. It is not intended to change this remit.
- 7.2 In March this year, the Board agreed to the creation of an Appointments Committee. The Appointments Committee is a permanent Committee in its own right and will solely be concerned with the recruitment of a Partnership Director. Its permanency will make sure that recruitment can take place quickly in the future without the need for the step of creation of a special committee or sub-committee each time.
- 7.3 The Appointments Committee's remit, therefore, will be to assess candidates for the post of Partnership Director in line with a process set out by the Performance and Audit Committee, and make a decision on appointment on completion of that process
- 7.4 The Appointments Committee will comprise the Partnership Chair, the Chair of Performance and Audit Committee, and a non-councillor member nominated by the Board.

8 Recommendations

8.1 The Board are requested to agree:

- a) The appointment of a Chairperson of the Partnership
- b) The appointment of Deputy Chairperson(s) of the Partnership
- c) The appointment of a member from each constituent council to the Performance and Audit Committee and 4 non-councillor members to the Committee
- d) The appointment of two members to the Succession Planning Committee.
- e) The appointment of a non councillor member to the Appointments Committee

Gavin King
Secretary
8th June 2022

Appendices

1. RTP Guidance on Membership (Amendment)
2. On Board Guidance March 2017

Background Papers

2005 RTPs Guidance on Membership

<https://www.webarchive.org.uk/wayback/archive/20150219083438/http://www.gov.scot/Publications/2005/12/21113337/33380>

The Regional Transport Partnerships (Establishment, Constitution and Membership) (Scotland) Order 2005

<http://www.legislation.gov.uk/sdsi/2005/0110697588/contents>

2017 On Board - A Guide for Board Members in Public Bodies

<http://www.gov.scot/Publications/2017/03/9182>

Standards Commission Advice Note

¹<http://www.standardscommissionscotland.org.uk/uploads/files/1452184352151218AdviceonRelationsbetweenMembersandEmployeesofDPBs.pdf>

Policy Implications	The Chairperson, Deputy Chairperson(s) and Committee members will have key and lead roles to play in leading strategic planning, in accordance with recognised good practice in corporate governance.
Financial Implications	The appointment of a Chairperson, Deputy Chairperson(s) and Committee members will have positive impact on SEStran's internal audit and governance scrutiny processes and on statutory duties.
Equalities Implications	The Chairperson, Deputy Chairperson(s) and Committee members will have key and lead roles to play in leading strategic planning on this issue and also ensuring that the Board has the balance of skills appropriate to direct business, in accordance with recognised good practice in corporate governance and SEStran's statutory duties.
Climate Change Implications	The Chairperson, Deputy Chairperson(s) and Committee members will have key and lead roles to play in leading the Board's approach to strategic planning on this issue.

Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ
 T: 0131-244 7057, F: 0131- 244
 Joanne.gray@transport.gov.scot



RTP Lead Officers/relevant officer
 (by email)

Your ref:

Our ref:

Date:
 9 June 2017

Dear Sir Madam

I have recently been asked for clarity on the tenure of Chairs or Deputy Chairs of Regional Transport Partnerships (RTPs). I am therefore writing to you all to set out our interpretation of what the statute means.

The length of time a Chairperson or Deputy Chairperson can hold office is set out in Schedule 2, Section 4 of The Regional Transport Partnerships (Establishment, Constitution and Membership) (Scotland) Order 2005. This is supplemented with the Regional Transport Partnership, Guidance for Membership, issued in December 2005. Since the Guidance was issued there has been a change in the length of a council term, invoked by other legislation. For this this reason, and to avoid any misunderstanding we consider it appropriate to issue an amendment to the 2005 Guidance. As a result, we have updated paragraph 43 of the 2005 Guidance to describe in more detail what is intended by the 2005 Order. You should use the text below in place of the existing paragraph 43 in the Guidance. Please bear in mind that by doing so we are not altering the statute in any way

New Paragraph 43 – Regional Transport Partnership, Guidance for Membership

43. The Order restricts the maximum period that a single member can serve as either Chairperson or Deputy Chairperson to two full council terms. A member may serve in both roles at different times. For example, it may be that an RTP would want someone to serve as a Deputy before being elected Chairperson, although there is no requirement for this. A member could accordingly serve two council terms as Deputy then two as Chairperson; or any other combination within the prescribed limits. Within the limits set by the Order, this will be for the RTP to decide. As the maximum period of service is restricted to two full council terms (a full council term being the period between ordinary elections of councillors for local government areas), a member's period of service as either Chairperson or Deputy Chairperson cannot extend into a third council term.

I trust this is helpful.

Yours sincerely

JOANNE GRAY



ON BOARD

A GUIDE FOR MEMBERS OF
STATUTORY BOARDS

MARCH 2017



- Public bodies play an essential role in performing certain functions on behalf of, or alongside Government. They allow the public sector to benefit from the skills, knowledge, expertise, experience, perspectives and commitment of the members who sit on their Boards and focus in depth on clear and specific functions and purposes.

Public bodies come in a variety of forms, depending on their functions and relationship with Scottish Ministers and/or the Scottish Parliament. Public bodies are set up for specific purposes and there is no set template of what a public body should look like. **Annex A** provides an overview of the classification of public bodies. This classification has important implications for accountability and reporting arrangements. Information on individual bodies and contact details are available from the **National Public Bodies Directory**.

This guidance provides the basic information that you will need to understand your role as a member of the Board of a public body in Scotland and to help make your time with the Board fulfilling and effective. It supplements the information contained in your letter of appointment which formally sets out your specific roles and responsibilities as a Board member.

This guidance is for all those appointed under statute to be members of the Boards of our public bodies, primarily Non Departmental Public Bodies (NDPBs) and Public Corporations (which are “sponsored” by the Scottish Government and whose Boards are accountable to Ministers for the discharge of their statutory functions) and most Non-Ministerial Offices (whose Boards are directly accountable to the Scottish Parliament, rather than Ministers, for their statutory functions). Where relevant, the guide distinguishes between “sponsored” bodies and Non-Ministerial Offices.

As Management Advisory Boards in Executive Agencies and some Non-Ministerial Offices have different responsibilities to statutory Boards, **separate guidance** has been prepared for members of these Boards.

All public bodies should have in place supportive guidance which reflects the specific nature of their work and the extent to which separate arrangements may apply to the work of the Board.

INTRODUCTION

➤ Induction and Training

When a new Board member joins a public body, they may not have had much direct experience of that body. Effective induction serves as a valuable source of information and should provide material on specific job requirements, roles, responsibilities, policies and purposes. This guidance provides the starting point of your induction into the public body that you have joined. You should also receive further induction guidance and training from your public body on a range of topics, including:

- ➔ the structure, governing legislation and work of your public body and links with the sponsor Directorate (if appropriate), the Scottish Government and the Scottish Parliament
- ➔ the Ethical Standards Framework and Code of Conduct for Board members
- ➔ corporate roles and responsibilities as a Board member

Annex B provides a checklist of the types of induction guidance and training that may be available from your public body. You should refer to this checklist when discussing your induction requirements with the Chair and Chief Executive.

FURTHER GUIDANCE



Key reference materials and contacts are listed under each of the main sections of this guidance. The main source of further information and guidance will be the public body that you have just joined, particularly the Chair and Chief Executive. Between them, they will be able to provide you with most of the advice and information that you are likely to need during your time as a Board member of a public body in Scotland.

This guidance has been produced in an interactive format to allow users to view documents referenced through the use of hyper-links. The guide will be kept under review to ensure that it continues to help promote best practice for Board members. The guide will not be produced in hard copy by the Scottish Government.

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Ethics and Standards of Behaviour Guidance Note 5



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Public Service Delivery and Reform

Guidance Note 1





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Health and Social Care Integration

Scotland's Digital Future

Best Value, Efficient Government and Relocation



➤ Overview

Scottish Ministers and all those within the wider Scottish Administration* are committed to high quality, continually improving, efficient public services that are responsive to local people's needs. To deliver on this commitment it is important that public bodies, third sector and private organisations work effectively in partnership with communities and each other.

This section explains the key policy developments and strategies on the delivery and reform of public services in Scotland, the relevance of public service delivery and reform to you as a Board member of a public body, and the influential role you can play in making a real change to the lives of the people of Scotland.

➤ Scottish Ministers, the Scottish Government and the Scottish Administration

Throughout this guidance you will see references to Scottish Ministers, the Scottish Administration or the Scottish Government. The diagram at [Annex C](#) explains the organisation of central government in Scotland.

➤ Key References and Contacts

National Performance Framework

Scottish Government Economic Strategy

Christie Report

Scottish Government's Response to the Christie Report

Scotland's Digital Future – Delivery of Public Services

Community Empowerment (Scotland) Act 2015

Key Messages

- ➔ As a Board member, you have a responsibility to ensure the effective governance and financial management of your public body within the context of public service delivery and reform for the benefit of the people of Scotland.
- ➔ Public bodies are required to demonstrate their commitment to public service delivery and reform by recognising their role in the delivery of the Programme for Government and the National Performance Framework.
- ➔ Public service reform is built on four pillars: Prevention, Performance, People and Partnership (supported by Place) – which should be reflected in public bodies' corporate strategic priorities and plans.
- ➔ The Scottish Government has developed a distinct approach to support the achievement of National Outcomes and public service reform. It is centred around empowerment and participation: enabling people to co-design, shape and deliver public services that they use; and building on the strengths of families and communities.

* The Scotland Act 1998 created the Scottish Parliament and the Scottish Administration. The Scottish Administration consists of the Scottish Ministers, including the Law Officers, and the key Non-Ministerial Offices and Officeholders in Scotland. The Scottish Administration performs its functions on behalf of Her Majesty the Queen and its staff are civil servants.



➤ PUBLIC SERVICE DELIVERY AND REFORM

In your role as a Board member of a public body in Scotland, you will be required to discharge specific duties in relation to the effective governance and financial stewardship of the body concerned. These duties are covered in sections three to five of this guidance, the body's Framework Document and your letter of appointment.

As a member of a public body in Scotland, you also have a general responsibility to discharge these duties within the context of public service delivery and reform to the benefit of the people of Scotland.

The main policy developments and strategies which have shaped the Scottish Government's approach to public service delivery and reform are:

- ➔ The outcomes-based approach of the **National Performance Framework**
- ➔ The **Christie Report** and the Scottish Government's **Four Pillars of Public Service Reform**
- ➔ The strategic priorities of the **Government Economic Strategy**
- ➔ **Community Planning** whereby local authorities, public bodies, the Scottish Government and the third sector work together and with the local community
- ➔ Increased participation and delivery of public services through digital technology as described in **Scotland's Digital Future: Delivery of Public Services**
- ➔ The **Scottish Approach** centred around the core concepts of **Participation and Co-production, Assets-based Approaches** and **Improvement Methodology**.

The next section expands upon these policy developments and strategies, and their relevance to you as a Board member of a public body in Scotland.

➤ NATIONAL PERFORMANCE FRAMEWORK

The Scottish Government's vision for a successful Scotland is set out in the **National Performance Framework**. The Framework actively supports wider engagement between the Scottish Government and its delivery partners, including local government, third sector and public bodies.

It consists of five main parts which support and reinforce each other:

- ➔ The Scottish Government's **Purpose**
- ➔ The **Purpose Targets** to track progress towards the Purpose
- ➔ Five **Strategic Objectives** to focus on action
- ➔ 16 **National Outcomes** describing what the Scottish Government wants to achieve
- ➔ 50 **National Indicators** to track progress towards the Purpose and National Outcomes.



National Outcomes

A shared approach to the achievement of National Outcomes encourages public service providers to direct attention towards the key long-term challenges for Scotland. As the achievement of shared outcomes is dependent on increased collaboration, effective partnership working and closer alignment of service provision, public bodies are required to ensure that their corporate strategies and plans support the National Outcomes described in the National Performance Framework.

It follows that all public bodies must demonstrate the role that their corporate strategies and plans have in delivering **National Outcome 16** which refers specifically to high quality, continually improving, efficient public services that are responsive to local people's needs.

Public bodies must also demonstrate their role in delivering the other National Outcomes which are relevant to the type of services they provide, working closely with partners to the benefit of the people of Scotland. This may involve crossing traditional organisational boundaries between public bodies which have separate and distinct roles but which also have a shared interest in the delivery and reform of particular areas of public service (e.g. health, justice and education). This focus on shared outcomes and partnership working can achieve outcomes which might not otherwise be possible by one body acting alone. It also opens up opportunities for sharing of limited resources to ensure more efficient, effective and sustainable public services.

Scotland Performs

The **Scotland Performs** website measures and reports on the wide range of indicators set out in the National Performance Framework. As such, it provides an open and transparent account of the progress of government in Scotland in the creation of a more successful country, with opportunities for all through increasing sustainable economic growth.

► PUBLIC SERVICE REFORM

The Christie Commission

In 2010 the Scottish Ministers invited Dr Campbell Christie to lead a Commission to identify the best ways to address the challenges of delivering public services, based on evidence of what works.

The Christie Commission concluded that to achieve the outcomes that matter most to the people of Scotland, public, third sector and private organisations had to work more effectively in partnership with communities and with each other to design and deliver excellent public services that meet the needs of local people. The need for new ways of delivering public services has never been more important than it is today.

The **Christie Report** provided an assessment of the challenges facing public services and recommended an urgent, sustained and coherent programme of public service reform.



THE SCOTTISH GOVERNMENT'S FOUR PILLARS OF PUBLIC SERVICE REFORM



In its response to the Christie Report, the **Scottish Government identified four pillars of reform** in order to deliver better outcomes for the people of Scotland, to reduce inequalities and to ensure the delivery of sustainable services now and in the future:

Prevention – reduce future demand by preventing problems arising or dealing with them early on. To promote a bias towards prevention, help people understand why this is the right thing to do, the choices it implies as well as the benefits it can bring.

Performance – to demonstrate a sharp focus on continuous improvement of the National Outcomes, applying reliable improvement methods to ensure that

services are consistently well designed, based on the best evidence and are delivered by the right people to the right people at the right time.

People – we need to unlock the full creativity and potential of people at all levels of public service, empowering them to work together in innovative ways. We need to help create ways for people and communities to co-produce services around their skills and networks.

Partnership – we need to develop local partnership and collaboration, bringing public, third and private sector partners together with communities to deliver shared outcomes that really matter to people.

The Scottish Government's approach to public service delivery and reform also focuses on the importance of "place" (locality) in the design and delivery of public services. The focus on place provides the basis for partnership and stronger community participation in the design and delivery of local services, harnessing the full spectrum of talents and capacities of public bodies, citizens, third sector organisations and local businesses.

In the next sections some of the information provided may not directly impact on your role as a Board member of a public body. However, it is essential that Board members have an awareness of work being taken forward by the Scottish Government in relation to public service reform.

➤ THE SCOTTISH APPROACH TO GOVERNMENT

The **National Performance Framework** and the **Government's response to Christie** describe 'what' we are trying to achieve, the 'Scottish Approach' describes 'how' it should be delivered; centering around three core elements of Participation and Co-production, Assets and Improvement, as summarised right.

The approach seeks to safeguard essential services, preserve front-line jobs and secure higher quality services through, for example:

- ➔ greater integration of health and social care
- ➔ the move to single police, and fire and rescue services
- ➔ the reform of post-16 education.

➤ GOVERNMENT ECONOMIC STRATEGY

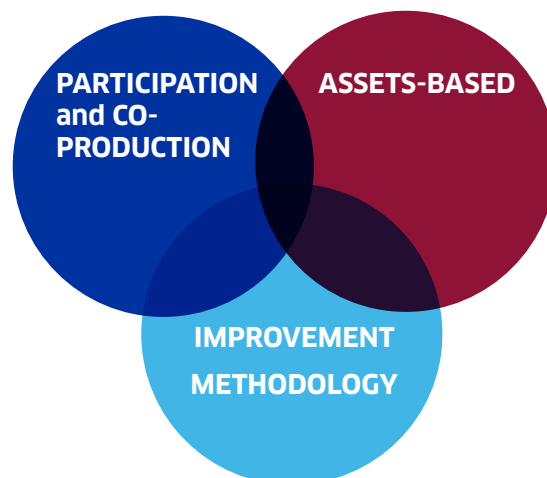
Scotland's Economic Strategy reaffirms the Scottish Government's commitment to creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. It sets out an overarching framework for achieving the two mutually supportive goals of increasing competitiveness and tackling inequality in Scotland. It forms the strategic plan for existing and all future Scottish Government policy and prioritises boosting investment and innovation, supporting inclusive growth and maintaining a focus on increasing internationalisation.

➤ COMMUNITY EMPOWERMENT

Community Empowerment (Scotland) Act 2015

The **Community Empowerment (Scotland) Act 2015 (the 2015 Act)** provides a legal framework that will promote and encourage community empowerment and participation, by creating new rights for community bodies and placing new duties on public authorities. Part 2 of the 2015 Act includes duties which

The Scottish Approach



- **Participation and Co-production** – enabling people to shape and co-design the services they use.
- **Assets-based** – valuing the strengths of people and communities to build social capital and capacity, rather than focusing solely on perceived deficits.

● **Improvement Methodology:**

Creating Conditions for Change

- ➔ Setting out a compelling vision of the future to serve as a reference point as the change process moves forward;
- ➔ Backed by a story which helps people to recognise where they have been and where they are going;
- ➔ Identifying key actions towards realising the vision.

Making the Change

- ➔ A clear framework for improvement;
- ➔ A strategy to engage, empower and motivate the workforce and develop their skills;
- ➔ An understanding of how the change will work locally, recognising communities and their assets are different;
- ➔ Building the guiding coalitions, governance and data necessary to drive and sustain the change.



further strengthen community planning, replacing provisions in the **Local Government in Scotland Act 2003**.

The 2015 Act gives Community Planning Partnerships (CPPs) a statutory footing for the first time. It places specific duties on CPPs, and statutory partner bodies, in relation to improving local priority outcomes and tackling inequalities of outcome across communities within their area. The Act does a number of other things including: extending the community right to buy, making it simpler for communities to take over public sector land and buildings, and strengthening the statutory base for community planning. It also includes a new regulation-making power that will in future require that Scottish public authorities promote and facilitate the participation of members of the public in their decisions and activities, including in the allocation of their budget.

➤ HEALTH AND SOCIAL CARE INTEGRATION

Public Bodies (Joint Working) (Scotland) Act 2014

The shape of Scottish society is changing. People are living longer, healthier lives and as the needs of our society change, so too must the nature and form of our public services. New legislation in the form of the Public Bodies (Joint Working) (Scotland) Act 2014 requires Health Boards and local authorities to integrate their health and social care services.

Local teams and professionals across health and social care will work together to deliver quality, sustainable care and services resulting in improved outcomes for the people and families who use these services.

➤ SCOTLAND'S DIGITAL FUTURE

Scotland's Digital Future: Delivery of Public Services sets out the ambitions and actions including a "digital first" approach to service delivery, with public bodies working collaboratively with each other and service users to digitally transform the delivery of public services and to adopt the national products available through the digital ecosystem including **mygov.scot**, Scottish Wide Area Network and others. In addition, the Central Government Digital Transformation Service can support your organisation in understanding your digital maturity, developing your strategy and sourcing the skills and capability to deliver on your transformation ambitions.

Audit Scotland's report **Managing ICT Projects**, published in August 2012, set out recommendations for Senior Responsible Owners and Accountable Officers. In June 2015 Audit Scotland considered the Scottish Government's progress in strategic oversight and support of central government ICT programmes including the revision of the ICT Assurance framework, supporting guidance and templates. Key findings and recommendations were published in **Managing ICT contracts in central government: An update**.

➤ BEST VALUE, EFFICIENT GOVERNMENT AND RELOCATION

Best Value, Efficient Government and Relocation are all essential elements of the public service reform agenda. These issues are covered in **Guidance Note 4**.

FURTHER INFORMATION

Community Planning
Community Empowerment (Scotland) Act 2015
Improvement Framework
Improvement Service
Public bodies (Joint Working) (Scotland) Act 2014
McClelland Review
Central Government ICT Assurance Framework
Scottish Government's response to the McClelland Review
Audit Scotland Managing ICT contracts in central government: An update



**Principles of
Corporate Governance**
Guidance Note 2



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Principles of Corporate Governance

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Corporate Governance

Translating Principles into Action



➤ Overview

Corporate governance concerns the strategic direction and effective stewardship of the organisation. A number of concerns have been raised about corporate governance in the private and public sectors in recent years, mainly relating to the perceived lack of control at the top of some organisations and inadequately designed systems that failed to prevent fraudulent, inefficient or inappropriate behaviour.

A number of initiatives have addressed these concerns and strengthened the approach to corporate governance in both the private and public sectors. This section explains the main developments that have led to the principles of corporate governance and how these translate into the conduct and management of public business.

➤ Key References and Contacts

UK Corporate Governance Code

Ethical Standards in Public Life etc. (Scotland) Act 2000

Good Governance Standard for Public Services

Key Messages

- ➔ Corporate governance is concerned with the strategic direction and effective stewardship of the organisation;
- ➔ There have been a number of reviews in the private sector which together led to the development and publication of a **UK Corporate Governance Code**;
- ➔ There are similarities between the public and private sectors in terms of corporate governance principles – but Board members should recognise that it is not always possible to draw a direct parallel between the two; and
- ➔ The **Nolan Committee** set new standards of conduct for Board members of public bodies in 1995 and the **Ethical Standards in Public Life etc. (Scotland) Act 2000** introduced the ethical standards framework, which includes Codes of Conduct for Board members, a Chief Investigating Officer and a Standards Commission.



➤ Corporate Governance

Corporate governance is the way in which organisations are directed, controlled and led. It defines relationships and the distribution of rights and responsibilities among those who work with, and in, the public body, determines the rules and procedures through which objectives are set, and provides the means of attaining those objectives and monitoring performance. Importantly, it defines where accountability lies throughout the public body.

Corporate governance has been a high-profile topic in recent years, principally because of concern about ensuring control at the top of, and within, organisations. There is a perception that, in certain cases, senior managers appear to have been able to act without restraint and that inadequately designed systems have failed to prevent fraudulent, inefficient or inappropriate behaviour. **The results of poor corporate governance cannot be underestimated.** The international financial crisis was partially attributed to failures in governance within the Boards of major financial institutions.

Key Developments in the Private Sector

A number of key corporate governance reports in the private sector have contributed to the development of the **UK Corporate Governance Code**:

Reports that shaped corporate governance in the UK

Cadbury, 1992

Greenbury, 1995

Hampel, 1998

Turnbull, 1999

Myners, 2001

Smith, 2003

Higgs, 2003

Tyson, 2003

Turnbull, updated 2005

Walker, 2009

Women on Boards, 2011

Francis, 2013



The UK Corporate Code – impact on the public sector

Although there are elements of the UK Corporate Code which are relevant to Board members of public bodies, it applies primarily to companies listed on the London Stock Exchange.

While there are a number of similarities between the public and private sectors in terms of corporate governance principles, Board members should be aware that it will not always be possible to draw a direct parallel between the two. Whilst public bodies face many similar challenges as private organisations, they cannot be considered to be exactly the same.

Effective strategic engagement between the Scottish Government and the public body is essential in order that they work together as effectively as possible to maintain and improve public services and deliver improved outcomes. There is greater accountability, with control over public services handed in greater measure to those who use them, while Scottish Ministers take strategic policy decisions. The varying size and nature of ‘arm’s length bodies’ and the range of functions they carry out means that there is no one absolute template for how the relationship between Scottish Government Directorates and the public body operates. Further consideration on the relationship between Scottish Government Directorates and public bodies is examined in [Guidance Note 3](#).

Findings from the Financial crisis report – lack of diversity and groupthink

Although the [Walker Report](#) specifically related to the collapse of banks and financial institutions its findings had significant ramifications for the Boards of all types of bodies. A key finding of the review was that ‘groupthink’, attributable in turn to a lack of diversity, had been a major contributory factor to the governance failures of the relevant Boards.

Many subsequent studies have identified that companies with Boards that are apparently more diverse, such as in relation to gender, age and industry background, perform better than those companies with less diverse Boards. The different perspectives that different types of Board members bring mean that they are more likely to be able to constructively challenge proposals. If Board members are too similar to the executives, a Board’s decision-making risks being narrow and blinkered.

It is important to understand that a Board made up of people who are ‘visibly diverse’ will not necessarily be immune to groupthink. Visible diversity is simply an indicator but no guarantee that the Board’s members have the diversity of skills, knowledge, experience and perspectives needed to make it effective. Having said that, a lack of diversity on the Boards of Scotland’s public bodies, which can be evidenced in relation to factors ranging from gender to BME status, employment sector and income, is an indicator that our Boards are not yet sufficiently diverse.



The impact for Scottish Public Bodies

Scottish Ministers are committed to redressing this imbalance with gender parity being a particular area of focus. Boards themselves should give consideration to establishing a committee to consider matters such as planning for succession and Board performance as this should lead to more diversity at Board level. **The aim should be to have 50:50 gender balance by 2020.**

Key Developments in the Public Sector

There have been a number of high-profile reports and inquiries in Scotland highlighting inadequacies in the governance of public bodies. In one report, a Parliamentary Committee concluded that the governance arrangements in a public body did not identify or prevent a crisis which it should have done. Although not the primary factor, the Committee believed that the Board failed sufficiently to challenge the Chief Executive over a significant operational development that ultimately failed.

In another report, the Scottish Parliament's Public Audit Committee concluded that, on the evidence received, members of the Board of a public body had acted with probity throughout a very difficult period but could not escape criticism for not being aware of problems of which they should have been aware.

As in the private sector, there have been a number of developments aimed at improving corporate governance in the public sector:

Nolan Principles

In 1995, the **Committee on Standards in Public Life (the Nolan Committee)** identified seven principles of conduct underpinning public life and recommended that public bodies should draw up Codes of Conduct incorporating these principles.

NOLAN COMMITTEE 1995



Recommendation

Public bodies should draw up Codes of Conduct incorporating seven Nolan Principles of:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership.



The then Scottish Executive took the Nolan Committee recommendations one step further with the introduction of the **Ethical Standards in Public Life etc. (Scotland) Act 2000** which brought in a statutory Code of Conduct for Board Members of Devolved Public Bodies and set up a **Standards Commission for Scotland** to oversee the ethical standards framework.

The Scottish Executive also identified nine key principles underpinning public life in Scotland, which incorporated the seven Nolan principles and introduced two further principles, Duty (Public Service) and Respect. These nine principles and their practical implications for Boards and Board members are explored in **Guidance Note 5**.

ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000

Conduct for Board

- Statutory Code of Conduct for Board Members of Devolved Public Bodies;
- Appointment of a Chief Investigating Officer to investigate and report to the Standards Commission for Scotland (the Standards Commission;)
- Standards Commission to oversee ethical standards framework; and
- Seven Nolan Principles plus two further principles of Duty (Public Service) and Respect.

International Framework: Good Governance in the Public Sector

In 2014 the Chartered Institute of Public Finance and Accountancy and the International Federation of Accountants produced an updated **International Framework: Good Governance in the Public Sector**.

The 2014 Framework defines and describes one interpretation of the principles that should underpin good governance.

GOOD GOVERNANCE IN THE PUBLIC SECTOR

Core Principles

- Behave with integrity, demonstrating strong commitment to ethical values, and respect the rule of law;
- Ensure openness and comprehensive stakeholder engagement;
- Define outcomes in terms of sustainable economic, social and environmental benefits;
- Determine the interventions necessary to optimise the achievement of the intended outcomes;
- Develop the entity's capacity, including the capability of its leadership and the individuals within it;
- Manage risks and performance through robust internal control and strong public financial management; and
- Implement good practices in transparency, reporting and audit to deliver effective accountability.



➤ Translating Principles into Action

The remaining sections of this guidance provide the practical advice that is needed to enable public bodies and Board members to apply the concepts of good corporate governance to their own organisations. They pull together good practice from the private and public sectors to provide guidance to Board members across the three main dimensions of corporate governance:

- ➔ Roles, Responsibilities and Relationships ([Guidance Note 3](#))
- ➔ Effective Financial Management ([Guidance Note 4](#))
- ➔ Ethics and Standards of Behaviour ([Guidance Note 5](#))

These guidance notes explain the meaning of these dimensions of corporate governance more fully and their relevance to you as a Board member of a public body in Scotland.



Roles, Responsibilities and Relationships

Guidance Note 3





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> Overview

Every member of a Board of a public body must be clear about their specific roles and responsibilities if the Board and the public body are to operate successfully.

This section outlines the roles and responsibilities of the Board, its committees, individual Board members and key internal and external stakeholders, such as the Chief

Executive, Scottish Ministers and the Scottish Government sponsor Directorate. It explains the importance of managing these relationships effectively, including a clear understanding of the strategic governance and decision-making responsibilities of the Board and the operational and statutory accountability responsibilities of the Chief Executive, including as the body's Accountable Officer.

> Key Messages

- The four main functions of the Board of a public body are: to ensure that the body delivers its functions in accordance with Ministers' policies and priorities; to provide strategic leadership; to ensure financial stewardship; and to hold the Chief Executive and senior management team to account.
- Board members must adhere to collective corporate responsibility, confidentiality and the highest standards of conduct.
- Individual Board members should contribute fully to Board deliberations and exercise a healthy challenge function. The Chair will ensure that all Board members have an opportunity to contribute to Board discussions.
- Committees are established to deal with particular areas of interest outside main Board meetings and are required to submit substantive reports to summarise issues, debates and decisions.
- The Chair has additional responsibilities to Board members, particularly leadership, directing a diverse team and harnessing the benefits of this, and the conduct of Board business.
- The Chief Executive is accountable to the Board for the overall organisation, management and staffing of the public body. Where a public body manages its own budget, the Chief Executive is normally designated as its Accountable Officer with responsibility for the proper management of public funds under the public body's control. The Board should have regard to the issues and concerns of the Accountable Officer.
- Where an Accountable Officer considers that any action that he/she is required to take is inconsistent with the proper performance of his/her duties as Accountable Officer, he/she should obtain written authority from the body for which he/she is designated.
- The Board focuses on strategy, performance and behaviour – the Chief Executive advises the Board on all matters and is solely responsible for operational issues. Board members have no authority to instruct the Chief Executive or any member of staff on operational matters.



> Key References

Audit Committee Handbook
Audit Scotland – The Role of Boards
Equality Act 2010
NDPB Model Framework Document
Scottish Public Finance Manual (Accountability)

> Fundamental Principles of Board Life

There are three fundamental principles of Board life to which all Board members (including the Chair) must adhere:

Principle 1 – Corporate Responsibility

While Board members must be ready to offer constructive challenge, they must also share collective responsibility for decisions taken by the Board as a whole. If they fundamentally disagree with the decision taken by the Board, they have the option of recording their concerns in the minutes. However, ultimately, they must either accept and support the collective decision of the Board – or resign. Board decisions should always comply with statute, Ministerial directions (where this is provided for in statute), Ministerial guidance and the objectives of the sponsor Directorate, as appropriate (noting of course that certain bodies are required to demonstrate independence in order to maintain credibility).

Principle 2 – Confidentiality

All Board members must respect the confidentiality of sensitive information held by the public body. This includes commercially sensitive information, personal information and information received in confidence by the organisation. It is also essential that debate of a confidential nature inside the Boardroom is not reported outside it.

Principle 3 – Conduct

Board members have a responsibility to set an example by demonstrating the highest standards of behaviour. It is important that nothing you do or say when you are acting as a Board member tarnishes in any way the reputation of the public body or the Board. If you have specific concerns about the manner in which the public body is being run, these should be raised with the Chair in the first instance. If you fail to achieve resolution with the Chair, it is open to you to take them to the relevant senior civil servant in the Scottish Government (usually a Director or Director-General) – but you should appreciate that this is a significant step.

> Role of the Board

The four main functions of the Board are: to ensure that the body delivers its functions in accordance with Ministers' policies and priorities; to provide strategic leadership; to ensure financial stewardship; and to hold the Chief Executive and senior management team to account. It has corporate (collective) responsibility, under the leadership of the Chair, for the following:

- ➔ Taking forward the strategic aims and objectives for the body agreed by the Scottish Ministers;
- ➔ Determining the steps needed to deal with changes which are likely to impact on the strategic aims and objectives of the body or on the attainability of its operational targets;
- ➔ Promoting the efficient, economic and effective use of staff and other resources by the public body consistent with the principles of Best Value, including, where appropriate, participation in shared services and/or collaborative service delivery arrangements;
- ➔ Ensuring that effective arrangements are in place to provide assurance on risk management, governance and internal control;



- Taking into account relevant guidance issued by Scottish Ministers;
- Receiving and reviewing regularly financial information concerning the management and performance of the public body and being informed in a timely manner about any concerns regarding the activities of the public body;
- Ensuring systems are in place to enable early notification to be provided to the Scottish Government about emerging issues which will impact on the operation or reputation of the public body;
- Appointing (with the approval of the Scottish Ministers) the public body Chief Executive and, in consultation with the Scottish Ministers, setting appropriate performance objectives and remuneration terms linked to these objectives which give due weight to the proper management and use of resources within the stewardship of the public body and the delivery of outcomes; and
- Demonstrating high standards of corporate governance at all times, including openness and transparency in its decision-making.

➤ **Providing Strategic Leadership**

The Board usually fulfils its leadership role by developing the public body's corporate strategy. The Board then agrees a corporate plan to turn the strategy into action over a period of about three years and promotes continuous improvements in corporate performance over this period. **Both the strategy and corporate plan must align with the remit of the organisation, the National Performance Framework and the National Outcomes and indicate how the public body will contribute to public service reform.**

The corporate plan will usually be approved by the Scottish Ministers. Ministers should write to sponsored bodies at least annually setting out the policies and priorities which they wish them to pursue.

➤ **Representing Ministerial Interests**

In the majority of cases, Boards of public bodies are appointed by Ministers to ensure delivery of Ministerial policies. **Board members should be clear about Ministerial policies and expectations for their public body.** If they are in any doubt on this point, they should seek clarification from the Chair or sponsor Directorate.



PROVIDING STRATEGIC LEADERSHIP



The Board

- Develops and agrees the organisation's strategy;
- Sets cost effective plans to implement the strategy;
- Ensures that the strategy and plans are aligned with the **National Performance Framework** and the public body's statutory duties, and the policies and priorities of the Scottish Government;
- Reviews the public body's corporate and business plans and performance on a regular basis, including their own performance as a Board;
- Establishes a performance management framework which enables under-performance of the body to be addressed quickly;
- Establishes the values and standards of the organisation and ensures that the organisation adopts and complies with Codes of Conduct for Staff and the Board;
- Ensures that the highest standards of governance are complied with, that the organisation complies with all Ministerial guidance, its Framework Document and legislation, and that a framework of prudent and effective controls is in place to enable risks to be assessed and managed;
- Focuses on the positive impact that the organisation is making in the outside world, i.e. effects on customers and citizens; and
- Ensures that the public body is a Best Value organisation and delivers Value for Money for the public sector as a whole.

> Ensuring Financial Stewardship

The Board is collectively responsible for ensuring that the organisation adheres to strict standards of financial propriety, and

complies with the financial requirements contained in the Framework Document and the **Scottish Public Finance Manual**.

ENSURING FINANCIAL STEWARDSHIP



The Board

- Satisfies themselves that financial information is accurate and that financial controls and systems of risk management are robust and defensible;
- Considers and approves forward budget allocations and financial targets within key strategic and planning documents, such as corporate and operational business plans;
- Monitors the financial position against budget allocations and key financial targets and takes corrective action where required;
- Has regard to the issues and concerns of the Accountable Officer; and
- Approves high value, novel or contentious expenditure proposals, for submission to the Scottish Government and Ministers for approval when it is necessary/appropriate to seek approval from the Scottish Government.



> Holding the Chief Executive to account

It is the Board's duty to hold the Chief Executive (and senior management team) to account for the operational management of the organisation and the delivery of agreed plans on time and within budget.

HOLDING THE CHIEF EXECUTIVE TO ACCOUNT ▼

The Board:

- Ensures an effective team and management arrangements are in place at the top level of the organisation;
- Oversees the development (and review) of the corporate strategies, plans and policies of the public body;
- Ensures the operation and work of the public body is closely aligned with the work of other service delivery public bodies in support of the wider aims of public service delivery and reform;
- Oversees the development of performance and key financial targets;
- Monitors performance and ensures that corrective action is taken to address any under-performance; and
- Provides continuity of direction and effective management by making appropriate arrangements for delegation.



➤ Role of the Board as an Employer ➤ Role of the Board Committees

In most cases the Board is the employer of the individuals who work for the public body, although the management of staff, apart from the Chief Executive (whose performance is appraised by the Chair), is a matter for the executive.

The Board should be satisfied that the public body is meeting its moral and legal obligations to its employees and that the senior management team is fulfilling its obligations in this regard.

The Board is usually responsible for the recruitment of the Chief Executive and, in some cases, other senior staff. If you take part in a recruitment exercise, you will need to be familiar with employment legislation and any codes of best practice in relation to equal opportunities issues. You should receive training in recruitment and selection before serving in that capacity.

Many Boards establish committees to deal with particular areas of interest outside of main Board meetings. The extent to which Boards use committees will be dependent on the size of the organisation. Examples of Board committees include:

- ➔ Remuneration Committee
- ➔ Audit Committee
- ➔ Succession Planning Committee
- ➔ Area or Regional Boards where appropriate.

Committees may also be set up to deal with specific aspects of the Board's role, such as:

- ➔ Staff Governance
- ➔ Finance
- ➔ Policy
- ➔ Development
- ➔ Clinical Governance (in the NHS).

ROLE OF THE BOARD AS AN EMPLOYER



This includes ensuring that the body:

- ➔ Has policies and procedures that comply with employment law;
- ➔ Avoids discrimination of any kind against current or potential employees and has policies to guarantee equal opportunities and value diversity;
- ➔ Has in place agreed terms and conditions of employment which should reflect the general standards set out in the Model Code for Staff;
- ➔ Has in place clear policies and strategies relating to staff; and
- ➔ Complies with all health and safety requirements.

Where appropriate, committees can allow for specialist areas relating to the Board's role to be debated in detail by members with the appropriate knowledge or skills. The key points can then be presented to the full Board for ratification, making more effective use of scarce time. As the Board cannot be expected to understand the issues dealt with by the committee from the minutes alone, it will generally require substantive reports from the committee to summarise issues, debates and recommendations.

For some organisations individuals with specific skills and/or expertise may be invited to serve on committees as co-opted members. Co-opted members do not hold Board member status and must never constitute a majority of the membership of any committee.



➤ Role and Responsibilities of the Board Member

Your specific role as a Board member will depend on the role of the Board to which you have been appointed and the capacity in which you have been appointed, but will normally cover a number of general duties and responsibilities.

Individual Board members should act in accordance with the responsibilities of the Board as a whole and comply at all times with

the Code of Conduct adopted by the public body and with the rules relating to the use of public funds and to conflicts of interest. In this context 'public funds' means not only any funds provided to the public body by the Scottish Ministers but also any other funds falling within the stewardship of the public body, including trading and investment income, gifts, bequests and donations. General guidance on Board members' responsibilities will be summarised in their letter of appointment.

ROLE AND RESPONSIBILITIES OF THE BOARD MEMBER



The Board member

- ➔ Understands the operational environment in which their public body operates within the context of the wider public service delivery landscape;
- ➔ Attends Board meetings on a regular basis and is well prepared by reading relevant papers in advance and, if necessary, seeks further information to ensure their understanding;
- ➔ Attends training events and keeps up to date with subjects relevant to the public body's work;
- ➔ Contributes to the work of any committees that have been established by the Board;
- ➔ Represents the Board at meetings and stakeholder events when required;
- ➔ Contributes to strategic development and decision-making;
- ➔ Clarifies which decisions are reserved for the Board and which should be delegated;
- ➔ Monitors the reporting of performance and holds management to account through purposeful and constructive challenge and scrutiny;
- ➔ As necessary, seeks further information than that which is provided to give assurance on organisational performance;
- ➔ Questions and, as necessary, challenges proposals made by fellow Board members and the executive team constructively and carefully to reach and articulate a considered view on their suitability;
- ➔ Provides a creative contribution to the Board by providing independent oversight on issues of strategy, performance and resources;
- ➔ Behaves in accordance with the agreed Code of Conduct; and
- ➔ Establishes and promotes the public body's role in the community.



Performance Appraisal

You have been appointed to the Board because your personal skills, knowledge and experience match the criteria for the post and meet the needs of the public body. Your performance as a Board member will be regularly reviewed throughout the term of your appointment, usually by the Chair of the public body. All Board members should receive a performance appraisal every year that assesses their performance in relation to certain pre-established criteria and objectives, and provides an opportunity for meaningful dialogue.

The Chair is responsible for the annual appraisal of the Chief Executive and the Chair will be appraised on an annual basis by the relevant Scottish Government Director or Deputy Director (as appropriate).

Re-appointment to the Board

The Scottish Ministers will determine the period for which an appointment, re-appointment or extension to an appointment term is to be made, based on the needs of the public body concerned.

Ministers will consider whether the needs of a Board will most effectively be met by an appointment, re-appointment or extension to an appointment term subject to any relevant provisions in the legislation which established the public body. They will balance the continuity provided by re-appointment and term extensions with the opportunity to increase the diverse range of relevant skills, knowledge and experience on a Board by making a new appointment through open competition.

You may be re-appointed for second and subsequent terms in the same role without open competition, if you possess the skills and knowledge required on the Board at the time of re-appointment. You will only be considered for re-appointment if your performance has been properly assessed as effective during the initial period of appointment. The final decision as to whether or not you are re-appointed ultimately rests with the Minister, subject to the specific nature of your public body's constitution, the needs of the Board for the foreseen period of the re-appointment and the terms upon which you are appointed. No member's total period of appointment in the same position may exceed eight years. This eight year maximum is based on the aggregate time in post and applies regardless of whether the time in post was continuous or not. The terms and conditions of re-appointment should be outlined in a re-appointment letter.

Nomination to the Board of Another Organisation

Some public bodies have the right to nominate one or more Board members to the Board of another organisation. If you are nominated to be a Board member on a public body which is also a limited company, you will assume personal responsibilities as a Company Director under the Companies Acts. Any breach of your legal responsibilities as a Company Director could have serious consequences for you personally. If you are in any doubt as to your position, you should take legal advice from the Board's legal advisers.



Civil Liability as a Board Member

If you, as an individual Board member, incur a civil liability in the course of carrying out your responsibilities for the Board, you will not have to pay anything out of your own pocket provided that you have acted honestly and in good faith. However, this indemnity does not protect you if you have acted recklessly or in bad faith.

Removal from Office

In many cases, the founding legislation or the Board's standing orders will set out the grounds on which you may be removed as a Board member, such as:

- ➔ Bankruptcy
- ➔ Becoming incapable of performing your duties as a Board member
- ➔ Consistent absence from Board meetings
- ➔ Being convicted of an indictable offence.

Charity Trustees

Some public bodies hold charitable status. This has implications for Board members who will also act as charity trustees for the purposes of the **Charities and Trustee Investment (Scotland) Act 2005**. A charity trustee is a person who has the general control and management of the administration of a charity. A charity may refer to its charity trustees in a number of ways including management committee members, directors and Board members. If a Board member is also the trustee of the charity, they will have the same general duties of any other charity trustee as set out at section 66 of the 2005 Act. **The Office of the Scottish Charity Regulator's guidance publication, 'Guidance for Charity Trustees'**, gives further details on the duties of charity trustees.

The Role of Non-Ministerial Appointed Members

The vast majority of Board members in Scotland are appointed by Scottish Ministers; however there are instances where Board composition varies to include a mix of directly elected or local authority nominated members. Provision for such arrangements will normally be set out in the public body's enabling legislation.

In circumstances where it is considered appropriate, a mix of Board membership is generally designed to deliver a balance between local and national representation in the decision-making process.

However, regardless of composition, all Boards are expected to play a key role in the delivery of the Scottish Government's Purpose through alignment with the **National Performance Framework**, and are required to adhere to the established principles of public sector accountability and governance set out in this guidance, including collective responsibility for decisions and actions and confidentiality. Further clarification about roles and responsibilities should be provided by the Chair and/or the Chief Executive.

➤ Role and Responsibilities of the Chair

The Chair has additional responsibilities over and above those of Board members, particularly in relation to leadership and the conduct of Board business. The Chair of a sponsored body is accountable to the Scottish Ministers and, in common with any individual with responsibility for devolved functions, may also be held to account by the Scottish Parliament. The Chair of a Non-Ministerial body is only held to account by the Scottish Parliament. Communications between the public body Board and the Scottish Ministers should normally be through the Chair. They are responsible for ensuring that the public body's policies and actions support the Scottish Ministers' wider strategic policies



if these apply to the body and that its affairs are conducted with probity. The Chair is appraised by the relevant Director or Deputy Director on behalf of Ministers. Mutual investment in a constructive relationship

between the Chair and the Scottish Government sponsor Directorate is important to supporting the effective performance and delivery of the public body.

ROLE AND RESPONSIBILITIES OF THE CHAIR



The Chair

- Leads representation and links with Ministers and Scottish Parliament;
- Leads the Board, ensures that the Board has the ability to carry out functions effectively and chairs Board meetings;
- Leads the Board's approach to strategic planning;
- Leads the Board's approach to the establishment of committees and ensures the Board considers substantive reports from any committees established;
- Ensures that the work of the Board and any committees is subject to regular self-assessment and that the Board is operating strategically and effectively;
- Leads the Board's approach to succession planning to ensure the Board is diverse and effective;
- Ensures that the Board, in accordance with recognised good practice in corporate governance, is diverse both in terms of relevant skills, experience and knowledge appropriate to directing the public body's business, and in terms of protected characteristics under the Equality Act;
- Ensures the Scottish Ministers are advised of the body's needs when Board vacancies arise;
- Ensures the Board members are fully briefed on terms of appointment, duties, rights and responsibilities;
- Together with the other Board members, receives appropriate induction training, including on financial management and reporting requirements and, as appropriate, on any differences that may exist between private and public sector practice;
- Ensures there is a Code of Conduct for Board members in place, approved by the Scottish Ministers;
- Assesses the performance of individual Board members on a continuous basis and undertakes a formal appraisal at least annually; and
- In consultation with the Board as a whole, as appropriate, is responsible for undertaking an annual appraisal of the performance of the Chief Executive.



➤ Role and Responsibilities of the Chief Executive

The Chief Executive of the public body is employed and appointed by the Board (with the approval of Scottish Ministers). They are the Board's principal adviser on the discharge of its functions and will be accountable to the Board. The Chief Executive's role is to provide operational leadership to the public body, and ensure that the Board's aims and objectives are met and the public body's functions are delivered

and targets met through effective and properly controlled executive action. The Chief Executive's general responsibilities will include performance management and staffing of the public body. In summary, the Board focuses on strategy, performance and behaviour – the Chief Executive advises the Board on all matters and is solely responsible for operational issues.

ROLE AND RESPONSIBILITIES OF THE CHIEF EXECUTIVE



Chief Executive

- ➔ Advises the Board on the discharge of its responsibilities – as set out in the Framework Document, in the founding legislation and in any other relevant instructions and guidance issued by or on behalf of the Scottish Ministers – and implements the decisions of the Board;
- ➔ Ensures that financial considerations are taken fully into account by the Board at all stages in reaching and executing its decisions, and that appropriate financial appraisal and evaluation techniques, consistent with the **Scottish Public Finance Manual**, are followed;
- ➔ Prepares the public body's corporate and business plans, in the light of the strategic aims and objectives agreed by the Scottish Ministers where the body is sponsored;
- ➔ Advises the Board on the performance of the public body compared with its aims and objectives;
- ➔ Ensures effective relationships with Scottish Government officials – across the wider organisation, as necessary, and with the sponsor Directorate in particular;
- ➔ Ensures that timely forecasts and monitoring information on performance and finance are provided to the Scottish Government; that the Scottish Government is notified promptly if overspends or underspends are likely and that corrective action is taken; and that any significant problems, whether financial or otherwise, and whether detected by internal audit or by other means, are promptly notified to the Scottish Government;
- ➔ Ensures robust performance and risk management arrangements, consistent with the **Scottish Public Finance Manual**, are in place to support the achievement of the public body's aims and objectives and facilitate comprehensive reporting to the Board, the Scottish Government and the wider public;
- ➔ Ensures that the public body adheres, where appropriate, to the **Scottish Government's Programme and Project Management Principles**;
- ➔ Ensures that adequate systems of internal control are maintained by the public body, including effective measures against fraud and theft consistent with the **Scottish Public Finance Manual**; and
- ➔ Establishes appropriate documented internal delegated authority arrangements consistent with the **Scottish Public Finance Manual**.



➤ Role and Responsibilities of the Accountable Officer

The Permanent Secretary to the Scottish Government is the Principal Accountable Officer of the Scottish Administration. The Principal Accountable Officer designates Directors-General as Portfolio Accountable Officers. The Portfolio Accountable Officer has specific responsibilities with regard to a sponsored public body with its own Accountable Officer. These are set out in a Memorandum sent by the Principal Accountable Officer on appointment. The Portfolio Accountable Officer has no responsibilities in respect of Non-Ministerial bodies.

Where a public body manages its own budget, the Chief Executive will normally be designated as its Accountable Officer. Accountable Officers are personally answerable to the Scottish Parliament for the exercise of their functions, as set out in the Memorandum to Accountable Officers for Other Public Bodies issued to the Chief

Executive at the time of formal designation (normally at the same time as they are appointed as Chief Executive).

It is incumbent on the Chief Executive to combine their Accountable Officer responsibilities to the Scottish Parliament with their wider responsibilities to the Board. The Board and Chair should be fully aware of, and have regard to, the Accountable Officer responsibilities placed upon the Chief Executive.

If the Board has serious concerns about the actions and performance of the public body's Accountable Officer, it can recommend to the Principal Accountable Officer that Accountable Officer status should be withdrawn or suspended. The same option is open to the Principal Accountable Officer in the exercise of their own responsibilities.

ROLE AND RESPONSIBILITIES OF THE ACCOUNTABLE OFFICER



The Accountable Officer

- ➔ Signs the annual accounts and associated governance statements;
- ➔ Ensures the propriety and regularity of the public body's finances and that there are sound and effective arrangements for internal control and risk management;
- ➔ Ensures that the resources of the public body are used economically, efficiently and effectively, and that arrangements are in place to secure Best Value for the organisation and deliver Value for Money for the public sector as a whole;
- ➔ Ensures compliance with applicable guidance issued by the Scottish Ministers, in particular the **Scottish Public Finance Manual**;
- ➔ Has a statutory duty to obtain written authority from the Board/Chair before taking any action which they consider would be inconsistent with the proper performance of the Accountable Officer functions. The Accountable Officer should also notify, where considered appropriate, the relevant Portfolio Accountable Officer;
- ➔ Represents the public body before the **Public Audit Committee of the Scottish Parliament**; and
- ➔ May have their Accountable Officer status withdrawn or suspended if the Principal Accountable Officer has serious concerns about their actions and performance.



> Role and Responsibilities of the Minister

Every public body is expected to be aware of, and work within, a strategic and operational framework determined by the Scottish Ministers. Most fall within the portfolio of a specific Scottish Minister who will set overall policy aims, define expected outcomes arising from implementation of that policy and review progress against outcomes.

Public bodies are sometimes described as operating at 'arm's length' from Ministers but this does not mean that they are outwith Ministerial control. The Minister will decide how much independence and flexibility the public body should have, depending on its size, constitution, the nature of its functions and the legislation under which it operates.

Ministers may seek to increase their understanding of the public body through formal meetings with the public body's Chair and Board and other more informal events. The founding legislation for a public body may also give Ministers the power to issue a formal direction requiring it to take particular action. However, the use of such formal powers is extremely rare.

As Ministers are responsible to the Scottish Parliament, they may be asked at any time to attend Parliament or one of its Committees to answer questions from Members of the Scottish Parliament (MSPs) about the activities of public bodies within their remit.

ROLE AND RESPONSIBILITIES OF THE MINISTER



The Minister

- Considers and approves the public body's strategic objectives and the policy and performance framework within which it operates;
- Secures and approves the allocation of public funds for public bodies;
- Approves key documents such as the Framework Document and corporate plan for most public bodies;
- Makes appointments to the Board;
- Approves the terms, conditions and remuneration of the Chair and Board members;
- Approves the Chief Executive's and staff pay remit in line with Scottish Government Pay Policy;
- Lays accounts, together with the annual report, of sponsored public bodies before Parliament (Non-Ministerial public bodies do this themselves);
- Fulfils any responsibilities specified in the founding legislation, charter or articles of association, such as approving the appointment of the Chief Executive; and
- Issues letters of strategic guidance to sponsored public bodies.



➤ The Role of the Scottish Government Sponsor Directorate

The day-to-day link between a sponsored body and the Minister is provided by the sponsor Directorate. Within the sponsor Directorate, a sponsor team will ensure that the public body is adequately briefed about the Scottish Government's policies and priorities. That team will monitor the body's activities on behalf of the Minister. However, civil servants from the sponsor Directorate will not normally attend Board meetings of the public body. On any occasion that they do, they should do so as observers, not participants, and are not party to decisions taken by the Board.

Responsibility for ensuring Non-Ministerial public bodies are appropriately briefed about the Scottish Government's policies lies with the relevant Director-General.

The sponsor team prepares a Framework Document which sets out formally the relationship between the public body and the Minister and officials. While Framework Documents vary according to the functions, powers and finances of the public body, the **Model Framework** in the **Scottish Public Finance Manual** provides a useful template.

The Framework Document for a Non-Ministerial public body is prepared by the body itself based on good practice examples in existence.

Where appropriate the Framework Document will be drawn up by the Scottish Government, in consultation with the public body, and it will be reviewed at least every two to three years.

The key focus for much of the sponsorship role is to support sponsored bodies in being accountable, high performing organisations, delivering Value for Money services, which meet people's needs, as outlined in their business plan. An excellent sponsorship function is underpinned by two key elements:

- ➔ good governance structures and processes; and
- ➔ good relationships with the public body, based on openness, trust, respect and mutual support.

MODEL FRAMEWORK DOCUMENT



Contents:

- ➔ The legislative basis under which the public body was established and its statutory functions, duties and powers;
- ➔ Aims and objectives, how these are to be delivered and the key targets to be achieved;
- ➔ The roles and responsibilities of Ministers, a sponsor Directorate, the Chair, Board members, the Chief Executive and other senior officials; and the public body's accountability to Ministers (where appropriate) and to the Scottish Parliament;
- ➔ Arrangements for the planning, budgeting and control of the public body's activities and expenditure, including funding, preparation of corporate and business plans and setting of performance targets;
- ➔ Arrangements for preparation and publication of the annual report and accounts and external audit procedures; and
- ➔ Responsibilities of the public body for recruitment, pay, grading and other personnel matters.



➤ Managing Relationships

Strategic and Operational Responsibility

It is important that the Board maintains a focus on strategy, performance and behaviour and is not diverted by detailed operational matters which are the responsibility of the Chief Executive and the Senior Executive Management Team.

The Board should clearly differentiate their role in strategic governance and leadership from that of operational management. The Board should protect the Chief Executive and Senior Executive Management Team from individual Board members becoming involved in operational matters. Individual Board members have no authority to instruct the Chief Executive or any member of their staff on such matters.

Decision-Making

The Board should give all matters reserved to them due consideration and take ownership of the decisions taken. For instance, the Board should not simply 'rubber stamp' strategy proposals or a draft corporate plan put forward by the Chief Executive. It is important that both the Chief Executive and the Board understand the distinct nature of their roles.

Audit Scotland's report on The Role of Boards provides useful information about the operation of Boards in the public sector, including a series of questions at Annex 3 for Boards and individual Board members to ask themselves about how well they are working.

The Chair and Board Members

Individual Board members should contribute fully to Board deliberations and exercise a healthy challenge function. This expectation extends to Executive Directors (where, as is the case in many NHS bodies, they are Board members). However, it is important that no individual Board member (or Chair) dominates the debates or has an excessive influence on Board decision-making. The Chair has an important role to play in ensuring that all Board members are enabled and encouraged to contribute to Board discussions.

As a Board member, you should support the Chair in their efforts to conduct Board business in an efficient and effective manner. However, you should not hesitate to challenge the Chair if you believe that a decision is wrong (even illegal) or is in contravention of the Framework Document or formal instruction from Ministers, or has been taken without a full and proper debate.

Relationships with Stakeholders

The Board needs to consider the concerns and needs of all stakeholders and actively manage its relationships with them. Stakeholders – and the general public – should have access to full and accurate information on the decision-making processes and activities of each public body and have the opportunity to influence decisions and actions.

Scottish Ministers expect all public bodies to communicate clearly with their stakeholders, make information widely available, consult thoroughly and imaginatively and seek feedback on the public body's performance, acting on it as appropriate.

COMMUNICATION WITH STAKEHOLDERS



The Board should consider:

- ➔ Holding an Annual Open Meeting;
- ➔ Holding Board meetings in public, unless there is a good reason not to;
- ➔ Publishing summary reports and/or minutes of meetings;
- ➔ Inviting evidence from members of the public in relation to matters of public concern;
- ➔ Consulting stakeholders and users on a wide range of issues; and
- ➔ Making business and corporate plans and the Annual Report and Accounts widely available.



➤ Diversity, Equality and Human Rights

Diversity

The Scottish Ministers expect all public bodies to champion diversity and mainstream equal opportunities. Equality, diversity and inclusion need to become central to the work and the way the public bodies operate. The Board should give specific consideration to the impact on equality of opportunity when developing policies and making decisions. The Board should also look at how information can be presented to different groups in formats that best suit their needs and find ways of consulting effectively with people with different needs and backgrounds.

Scottish Ministers particularly welcome applications for public appointments from groups that are under-represented on Scotland's public bodies, with the aim of ensuring that Boards of public bodies are broadly reflective of the wider Scottish population **and have a gender balance by 2020**. Public bodies are expected to take positive action to support and enable greater diversity of Ministerial appointments, through:

- ➔ taking an active role in **succession planning**, and providing advice to Ministers about the Board's membership needs, both for new and re-appointments;
- ➔ ensuring that suggested criteria for the selection of new Board members meet the needs of the body, are unbiased and are not unnecessarily restrictive;
- ➔ taking action both during and between Board member recruitment exercises to attract the broadest range of candidates to the work of the Board;

- ➔ providing mentoring, shadowing and training opportunities for potential Board members; and
- ➔ establishing a succession planning committee.

From April 2017, public authorities are required to report on the steps they are taking towards diversity amongst their members in terms of relevant protected characteristics. This will be through the mainstreaming reports that are published every two years as part of the requirements of the **Equality Act 2010 (Specific Duties)** (Scotland) Regulations 2012 and should form part of Board succession planning.

Equality

Equality and fairness are at the heart of the Scottish Government's ambition for a socially just and inclusive Scotland. They are central to its purpose, outcomes and approach to public service reform.

The public sector equality duty in the **Equality Act 2010** came into force in April 2011 – this is often referred to as the general duty. Scottish public authorities must have 'due regard' to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. Scottish Ministers made regulations in May 2012 placing specific duties on Scottish public authorities, as defined in the regulations, to enable the better performance of the public sector equality duty. These are also known as the Scottish Specific Duties.

Public bodies should ensure that they operate in a way which promotes equality of opportunity and all policies must meet the requirements of equality legislation.



Human Rights

Under the **Human Rights Act 1998**, it is unlawful for a public body to act in a way that is incompatible with a right under the European Convention on Human Rights. The Board should seek assurances from the Chief Executive that the policies and procedures in place within the public body are compatible with Convention rights. The Board should also be committed to protecting the privacy of individuals in relation to how personal information is used as required by the **Data Protection Act 1998**.

FURTHER INFORMATION AND CONTACTS



The Data Protection Act 1998

Equality Act 2010

Equality Act 2010 (Specific Duties) (Scotland)
Regulations 2012

Guidance on Succession Planning for Public Bodies

Freedom of Information (Scotland) Act 2002

Information Commissioner's Office (Data
Protection)

Human Rights Act 1998

Principles of Strategic Engagement – December
2011

The Commissioner for Ethical Standards in Public
Life

Scottish Information Commissioner (FOI)

Standards Commission for Scotland



Effective Financial Management Guidance Note 4



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Further Information



> Overview

The Board, Chief Executive and senior management team must demonstrate effective financial stewardship of public funds. They must meet the requirements of the [Public Finance and Accountability \(Scotland\) Act 2000](#) and the [Scottish Public Finance Manual](#), including the need to account for the use of public money and the safe keeping of public assets.

This section explains key aspects of the [Scottish Public Finance Manual](#) which aim to ensure proper stewardship of public funds. It covers the allocation of funds to public bodies by Scottish Ministers, the requirement for robust financial monitoring and reporting systems, the importance of effective risk management and internal controls, and the processes by which internal and external audit provide assurance on the proper management of public funds and resources.

> Key Messages

- The Board satisfies itself that the public body has proper processes, systems and controls in place and receives assurances from the Chief Executive that the [Scottish Public Finance Manual](#) is being complied with. The Board also seeks assurance that systems are in place to provide accurate and timely information to the Scottish Government as part of the management of the Scottish Budget.
- The Board receives regular financial reports showing expenditure against planned budgets and progress towards financial targets and efficiency savings.
- The Board scrutinises financial and corporate plans and provides challenge on performance against these plans and any underlying assumptions.
- The Board satisfies itself that the public body has systems in place to secure Best Value in the performance of its functions.
- The Board satisfies itself that systems are in place for risk management and internal control extending from front-line services through to the Board.
- Where an organisation is responsible for expenditure, an Audit Committee must be established to advise the Board on internal control (including corporate governance) and audit matters.
- The Board is responsible for approving the annual accounts;
- The Board of a sponsored body is responsible for ensuring the Minister is provided with the annual report and accounts to be laid before the Scottish Parliament. In the case of a Non-Ministerial body, the Board is responsible for ensuring the annual report and accounts are laid before Parliament. The Chief Executive as the Accountable Officer of the public body is responsible for signing the accounts and ultimately responsible to the Scottish Parliament for their actions.
- On completion of the external audit of the annual accounts, the appointed auditor sends a copy of the accounts and the audit opinion to the Auditor General, who may add a report of their own, before the accounts and reports are laid before the Parliament.
- The [Public Audit and Post-legislative Scrutiny Committee](#) uses reports of the Auditor General as the basis for conducting enquiries.



> Key References and Contacts

Scottish Public Finance Manual

Scottish Public Finance Manual (Best Value)

Audit Scotland

Audit Scotland (Improving Public Service Efficiency)

Public Finance Accountability (Scotland) Act 2000

Scottish Parliament (Public Audit and Post-legislative Scrutiny Committee)

> The Scottish Public Finance Manual

The primary document that governs all matters relating to public finance and reporting in Scottish public bodies is the **Scottish Public Finance Manual** (SPFM).

The SPFM provides guidance to your public body and its sponsor Directorate on the proper handling of public funds. It is mainly designed to ensure compliance with statutory and parliamentary requirements (in particular, the **Public Finance and Accountability (Scotland) Act 2000**) to promote Value for Money and high standards of propriety, and to secure effective accountability and good systems of internal control.

The Board must ensure that the public body has processes and systems in place to ensure compliance with the SPFM. Board members should look to the Chief Executive (Accountable Officer) and staff of the public body for advice and assurance that the SPFM is being complied with.

The Accountable Officer has a personal responsibility for the propriety and regularity of the finances under their stewardship and for the economic, efficient and effective use of all related resources. Accountable Officers are personally answerable to the Parliament for the exercise of their functions and have a statutory duty to obtain written authority from, as the case may be, the Scottish Ministers or relevant governing body before taking any action that they consider may be inconsistent with the proper performance of their functions. The system is designed to promote good governance.

It is important to recognise that the Accountable Officer's role in relation to Value for Money is not a narrow one, restricted to considerations affecting that body, but, as defined by the SPFM, **Value for Money is to be judged for the public sector as a whole.**

This wider consideration of Value for Money would be relevant to considerations of property and accommodation, for example, in relation to shared services.

> Budgeting in a Public Body

The resources allocated to bodies by Scottish Ministers are determined as part of the Spending Review process. Spending Reviews take place every few years.

This process dovetails with the United Kingdom Spending Review which largely sets the overall Scottish budget for each Spending Review period. After deduction has been made for the costs of the Scotland Office plus the Scottish Parliamentary Corporate Body and Audit Scotland, the Scottish Government has full discretion to decide how the Scottish budget should be divided between its various portfolios, Non-Ministerial Offices and programmes. The grant-in-aid necessary to support the agreed budgets of sponsored bodies is authorised by the Scottish Parliament in the annual Budget Act.

Sponsored bodies are expected to provide supporting material to the sponsor Directorate as part of the latter's contribution to both the Spending Review and the annual budgetary process. Non-Ministerial Offices provide supporting material to the Finance Directorate within the Scottish Government. Wherever possible, this should be done as part of their own annual planning arrangements and they should therefore take



all reasonable steps to harmonise the planning process with those of the Spending Review and annual budgetary process.

The Scottish Government should write to sponsored bodies at least annually setting out the policies and priorities which Ministers wish them to pursue. Where a public body receives grant-in-aid, this is most commonly done through a Budget Allocation and Monitoring letter issued in advance of the financial year. This letter confirms the resources that Ministers have allocated to the body and sets out the priority areas of work that Ministers wish the body to pursue.

Where a sponsored body does not receive grant-in-aid, an equivalent letter should be received from the Scottish Government covering the priority areas to be pursued. The letter should draw on material from the corporate plan and the Spending Review and any further instructions from Ministers.

Typically the Board of a sponsored body will be responsible for the approval of the corporate plan (and possibly operational plans) before submission to the sponsor Directorate. The Board should receive regular financial reports (at least quarterly) showing expenditure/use of resources against planned budgets and progress towards financial targets including projected efficiency savings. Board members should provide the 'challenge function', carefully scrutinising plans, performance against plans and underlying assumptions.

The Board will also approve high value, novel or contentious expenditure proposals for submission to the Scottish Government and Ministers for approval when it is necessary/appropriate to seek approval from the Scottish Government.

➤ **Best Value, Efficient Government and Relocation**

Best Value

Best Value provides a common framework for continuous improvement in public services in Scotland, and is a key foundation of the Scottish Government's public service reform agenda.

The principles of Best Value complement good governance standards and offer a sound approach to running a public service organisation.

The duty of Best Value, as set out in the SPFM, is to make arrangements to secure continuous improvement in performance whilst maintaining an appropriate balance between quality and cost and in making those arrangements and securing that balance, to have regard to economy, efficiency, effectiveness, the equal opportunities requirements and to contribute to the achievement of sustainable development. Best Value ultimately is about creating an effective organisational context from which public bodies can deliver their key outcomes.



Accountable Officers appointed by the **Principal Accountable Officer for the Scottish Administration** have a specific responsibility to ensure that arrangements have been made to secure Best Value. The Scottish Ministers expect all Accountable Officers to comply with the duty of Best Value and for any associated matters relating to Value for Money, judged for the public sector as a whole placed upon them. In addition the Boards (or equivalents) of relevant public service organisations have corporate responsibility for promoting the efficient and effective use of staff and other resources by the organisations in accordance with the principles of Best Value. Under the terms of the Public Finance and Accountability (Scotland) Act 2000 the implementation of the duty of Best Value by relevant public service organisations is subject to scrutiny by the Auditor General for Scotland.

As a Board member, you should always bear in mind the need for your public body to continually secure Best Value in the performance of its functions. In a tight financial climate, service improvements may need to be funded from internal efficiencies.

Audit Scotland has adopted a generic framework for Best Value for all public bodies. This enables a consistent approach to auditing against Best Value principles across the public sector. Sustainable development and equalities are themes that run through the framework. It is a risk-based approach, recognising the increasing focus on partnership working, with the specific aim of:

- ➔ Reporting on overall governance and management arrangements
- ➔ Reporting on the delivery of outcomes
- ➔ Protecting taxpayers' interests by examining the use of resources
- ➔ Increasing the emphasis on self-assessment by public bodies with audit support and validation.

Efficient Government

The **Public Services Reform (Scotland) Act 2010, section 32(1)(b)** provides that as soon as is reasonably practicable after the end of each financial year each listed public body must publish a statement of the steps it has taken during that financial year to improve efficiency, effectiveness and economy in the exercise of its functions. Efficiency is not about making cuts, it is about enhancing Value for Money, improving public service and raising productivity and as such efficient Government is focused on the sound management of resources and ensuring that public bodies continually review their operations to identify opportunities for efficiency improvements. Efficiency improvements are about improving the ratio of resource inputs to outputs and can be made in any area, including the administration and delivery of services and in the procurement of goods and services. By making efficiency savings, more resources are available for re-investing in the delivery of public services.

Opportunities for efficiency improvements within your body should be identified as part of the corporate and business planning processes. As a Board member you should ensure that such opportunities are being identified and that arrangements are in place for measuring, monitoring, and reporting on the delivery of efficiency savings to the Board.

This should include having efficiency performance indicators (such as a range of input/output ratios) that will allow you to routinely monitor the efficiency of your public body's operations.



Audit Scotland's report on Improving Public Service Efficiency identified that public bodies will need to improve productivity and efficiency in the delivery of public services to meet continued demands on public spending. Audit Scotland concluded that public bodies will need to take a more fundamental approach to identifying priorities, improving the productivity of public services, and improving collaboration and joint working. A **Good Practice Checklist** was produced to help leaders in public bodies check and challenge their approach and ultimately support better productivity and efficiency.

Relocation

Relocation policy is related to Best Value and Efficient Government. Location reviews are triggered by the creation or reorganisation of bodies, as well as by property events (such as lease breaks). Relocation remains an option as part of streamlining the public bodies landscape, but should only be pursued following a rigorous and transparent process that shows any move provides best possible Value for Money for the public finances and optimum service delivery. Ministers will expect Board members to have regard to this policy in decisions they make on the most efficient and effective way of delivering services.

> Annual Report and Accounts

The accounting guidance issued to those bodies that are subject to reporting requirements set by the Scottish Ministers will set out the applicable accounting policies and principles and disclosure requirements.

Where the Scottish Government makes funds available to a sponsored body the Scottish Government will account to the Parliament

for the provision of those funds in the Scottish Government's annual accounts. A body which is a separate accounting entity, such as a Non-Ministerial body, will account for the use of those funds (and of other funds in its stewardship) in its own annual accounts.

The Board of a sponsored body is responsible for approving the body's annual accounts and ensuring that the Minister is provided with the annual report and accounts to be laid before the Scottish Parliament. The Chief Executive as the Accountable Officer of the public body is responsible for signing the accounts and ultimately responsible to the Scottish Parliament for their actions.

The accounting requirements for a public body will normally be set out in its founding legislation and/or its Framework Document.

Performance Measurement and Reporting

Key targets for efficiency and effectiveness of operations and quality of service provided will be agreed as part of the planning process. The Board should ensure that robust systems are in place to monitor performance against these targets. A report on the extent to which performance targets have been achieved should be incorporated in the Annual Report, where appropriate giving a summary of trends over a five-year period.

> Risk Management and Internal Controls

Risk concerns uncertainty of outcome. The delivery of an organisation's objectives is surrounded by uncertainty which both poses threats to success and offers opportunities for increasing success. Risk is defined as this uncertainty of outcome, whether positive opportunity or negative threat, of actions and events.



Each public sector organisation's internal control systems should include arrangements for identifying, assessing and managing risks. Risk management should be closely linked to the business planning process and performance monitoring arrangements.

Public bodies are required to provide a **Governance Statement** in order to comply with best practice as recommended by the **Turnbull Committee Report**. As part of that process, Directors (in the case of public bodies, the Board) are required to review, at least annually, the effectiveness of all controls, including financial, operational and compliance controls. Organisations need to show that they have established and maintained effective and on-going procedures for identifying, evaluating and managing business risks.

The Board must ensure that there is a system in place for continuous risk management which extends from the front-line services through to the Board. This involves having a framework of prudent and effective controls in place to enable risks to be identified, assessed and managed. The Board itself should regularly review key business risks affecting the organisation.

Audit Committee

Where a body is responsible for a budget, an **Audit Committee** must be established to advise the Board and Accountable Officer on internal control (including corporate governance) and audit matters.

All accounting entities to which the **SPFM** is directly applicable should establish an Audit Committee. The Board (or Accountable Officer) should establish an Audit Committee of at least three members, all of whom should be either Board members or independent external members.

All Audit Committees in organisations to which the **SPFM** is directly applicable are subject to the guidance in the **Audit Committee Handbook** published by the Scottish Government. A degree of flexibility will be appropriate in applying the guidance in the Handbook, particularly with regard to smaller accounting entities.

The exact role of the Audit Committee will depend on the particular circumstances of the organisation. Examples of issues affecting the role of the Audit Committee include the strategic risk management arrangements that the Board and/or Accountable Officer have established, whether or not there is a separate Risk Committee and the whistleblowing arrangements which have been put in place as part of the anti-fraud and corruption arrangements. An Audit Committee should not have any executive responsibilities or be charged with making or endorsing any decisions, although it may draw attention to strengths and weaknesses in control and make suggestions for how weaknesses might be dealt with. The overarching purpose of the Audit Committee is to advise the Board and/or Accountable Officer; it is then the Board and/or Accountable Officer who makes the relevant decisions.

To fulfil its role, an Audit Committee should generally meet around three or four times per year. Additional meetings should be convened as deemed necessary, reflecting the needs of the organisation.

All Audit Committee members, whatever their status or background, will have training and development needs. Those who have recently joined the Audit Committee will need induction training, either to help them understand their role; or if they have audit committee experience elsewhere, to help



them understand the organisation. In particular, those joining a public sector Audit Committee for the first time will need training to help them understand public

sector standards, especially those relating to governance and accountability.

AUDIT COMMITTEE



The Audit Committee should:

- Have written terms of reference from the Board, which encompass all the assurance needs of the Board and Accountable Officer. Within this, the Audit Committee should have particular engagement with the work of Internal Audit, the work of the External Auditor and with financial reporting issues;
- Support the Board and Accountable Officer by reviewing the scope, reliability and integrity of the assurances provided to them;
- Highlight those aspects of risk management, governance and internal control that are functioning effectively and, just as importantly, those that need to be improved;
- Have at least three non-executive members, under the chairmanship of a non-executive member who should be someone other than the Chair of the public body or of any other sub-committee of the Board;
- Own corporately an appropriate skills mix to allow it to carry out its overall function. At least one of the Committee members should have recent and relevant financial experience;
- Have a Chair whose role goes beyond chairing meetings – this is key to achieving Committee effectiveness. The additional workload should be taken into account in the appointment of the Chair;
- Have a Chair who is involved in the appointment of new Committee members, including providing advice on the skills and experience being sought by the Committee, and is responsible for ensuring that the work of the Audit Committee is appropriately resourced;
- Be independent and objective; in addition each member should have a good understanding of the objectives and priorities of the organisation and of their role as an Audit Committee member;
- Encourage the Accountable Officer, Head of Internal Audit and Director of Finance to attend meetings (though not as members of the Audit Committee);
- Should have regular and on-going liaison with External Auditors; and
- Should ensure it has effective communication with the Board and Accountable Officer, the Head of Internal Audit, the External Auditor, and other stakeholders. In addition, the role of the Chair and provision of appropriate secretariat support are important elements in achieving Audit Committee effectiveness.



Internal Audit

In any government related organisation there will be two significant sources of assurance that the Audit Committee can be certain will be present: Internal Audit and External Audit. Internal Audit provides an independent, objective assurance and consulting activity designed to add value and improve an organisations operations.

Internal Audit is an internal appraisal service, established by the management of an organisation, to review the internal control system. It objectively examines, evaluates and reports on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources. The scope of the Internal Audit service should be unrestricted across the organisation's operations. The Internal Auditors should have sufficient authority to access assets, records and personnel as necessary for the discharge of their responsibilities.

The work of Internal Audit is likely to be the single most significant resource used by the Audit Committee in discharging its responsibilities. This is because the Head of Internal Audit, in accordance with the Public Sector Internal Audit Standards, has a responsibility to offer an annual opinion on the overall adequacy and effectiveness of the organisation's risk management, control and governance processes. There is consequently a major synergy between the purpose of the Head of Internal Audit and the role of the Audit Committee.

The role of the Audit Committee in relation to Internal Audit should include advising the Board and Accountable Officer on:

- ➔ The Audit Strategy and periodic Audit Plans, forming a view on how well they support the Head of Internal Audit's responsibility to provide an annual opinion on the overall adequacy and effectiveness of the organisation's risk management, control and governance processes;
- ➔ The results of Internal Audit work and the management response to Internal Audit findings; and
- ➔ Internal Audit coverage.



External Audit

External Audit provides independent scrutiny of an organisation's finances, performing an audit of the financial statement of an organisation. External Audit can also give assurance that organisations have used their resources in discharging their functions properly, efficiently and effectively e.g. through a performance audit. The Audit Committee should engage with the activity of the External Auditor, ensuring that examinations are carried out effectively. As well as considering the results of External Audit work, they should enquire about and consider the External Auditor's planned approach and the way in which the External Auditor is co-operating with Internal Audit to maximise overall audit efficiency, capture opportunities to derive a greater level of assurance and minimise unnecessary duplication of work.

The **Auditor General for Scotland** is the External Auditor of a number of public bodies.

The Auditor General may appoint a member of the staff of Audit Scotland or an appropriately qualified professional firm as the auditor of your body. Where a public body is incorporated under the Companies Act, the auditor is appointed by the members of the company (i.e. the Board members).

External Audit of the Annual Accounts

An External Audit of the annual accounts undertaken by the Auditor General is conducted in accordance with the **Public Finance and Accountability (Scotland) Act 2000** and the **Code of Audit Practice issued by Audit Scotland** on behalf of the Auditor General.

On completion of the External Audit, the appointed auditor sends a copy of the accounts and the audit opinion to the Auditor General. The Auditor General may then add a report (for example, on a qualification of the auditor's opinion or other matter drawn to their attention by the auditor) before sponsored bodies send their accounts and reports to the Scottish Ministers

for laying before the Parliament. Non-Ministerial bodies lay their accounts directly before the Parliament.

EXTERNAL AUDIT OF THE ANNUAL ACCOUNTS ▼

The appointed auditor will:

- ➔ Issue an opinion as to whether the accounts give a true and fair view of the state of affairs of the public body at the year end and of its income and expenditure for the year and whether the accounts have been prepared in accordance with any applicable legislation and accounts direction;
- ➔ Issue an opinion (known as the "regularity" opinion) as to whether the income and expenditure has been properly received or incurred in accordance with legislation, the Budget Act for the relevant year and any other guidance issued by the Scottish Ministers;
- ➔ Review the Governance Statement prepared by the body and report if it is not in accordance with the auditor's understanding of the body;
- ➔ Review the body's arrangements in relation to financial sustainability, financial management, governance and transparency and Value for Money;
- ➔ Consider the body's governance arrangements and arrangements for prevention and detection of fraud; and
- ➔ Provide reports to the Board, Audit Committee and/or management on matters arising during the course of the audit.



Performance Audit

Performance audits look at the performance of a public body and include a Value for Money audit which is an examination of the economy, efficiency and effectiveness with which a body has used its resources to carry out its functions.

The **Auditor General** has powers to conduct performance audits. These audits examine the economy, efficiency and effectiveness of aspects of the public sector. They can assess:

- ➔ performance across several public bodies in a particular theme – for example, managing changes in the workforce; or
- ➔ performance of an individual public body or a particular aspect of that body's performance.

Performance audits may be conducted by Audit Scotland staff, the appointed auditor, consultants or any combination of these. A draft report on the audit will be discussed with the public body (or bodies) to ensure factual accuracy. Once finalised, the report will be laid before the Scottish Parliament and published with an accompanying news release. In most cases, the **Auditor General** will present the report to the **Scottish Parliament's Public Audit and Post-legislative Scrutiny Committee**. Performance audit reports may contain material such as checklists to assist non-executive Board members in holding management to account.

For many public bodies, the founding legislation provides that the **Auditor General** will appoint the auditor. In such circumstances, the **Auditor General** has a statutory right to carry out a Value for Money examination.

Where the **Auditor General** is not the auditor of a public body and has not appointed the auditor, they should have rights under statute or by agreement to carry out an inspection of the use of resources by those bodies.

➤ The Public Audit and Post-legislative Scrutiny Committee of the Scottish Parliament

The **Public Audit and Post-legislative Scrutiny Committee** of the Scottish Parliament is one of the committees established under the Standing Orders of the Parliament. The Public Audit and Post-legislative Scrutiny Committee uses the reports of the Auditor General, which are laid before the Parliament, as the basis for conducting enquiries. It is chaired by a senior member of the Opposition and conducts its business on non-party political lines.



PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

The key stages:

- The Auditor General's report is discussed with the body concerned and the facts are agreed;
- The report is laid before Parliament and published together with a Press Release;
- If an enquiry is to be conducted by the Public Audit and Post-legislative Scrutiny Committee, witnesses are called to give evidence – usually the Accountable Officer of the public body and the Accountable Officer of the sponsor Directorate. It is possible that the Chair or a Board member of a public body will be required to appear as a witness, where appropriate;
- After the evidence session, the Committee drafts and approves a report which is published; and
- A formal response to the Committee's report is provided by the Scottish Government (or by the body in consultation with the Scottish Government) within two months of the Committee's report being published.

FURTHER INFORMATION



Audit Committee Handbook

Audit Scotland (Auditing Best Value in Central Government Bodies)

Audit Scotland (Code of Audit Practice)

Audit Scotland (Efficient Public Services Good Practice Checklist)

Public Finance Accountability (Scotland) Act 2000

Public Services Reform (Scotland) Act 2010

Scottish Public Finance Manual (Best Value)

Scottish Public Finance Manual (Risk Management)

Scottish Public Finance Manual (Spending Reviews)

ISSUES ON WHICH BOARD MEMBERS SHOULD SEEK ASSURANCE

Typically the range of issues on which Board members should seek assurance will include:

- compliance with the SPFM, Framework Document and legislation (e.g. founding legislation, Equality Act 2010);
- financial monitoring and reporting arrangements and arrangements for delivering and reporting on efficiency savings;
- arrangements for securing Best Value for the organisation and Value for Money for the public sector as a whole;
- systems for identifying, assessing and managing risks;
- processes for preventing and detecting fraud, and, linked to this, whistleblowing procedures;
- arrangements for business continuity and disaster recovery;
- information management systems, including in relation to protection of personal data and compliance with Freedom of Information legislation;
- propriety and regularity of public finances;
- management systems that have clear lines of delegation and accountability;
- arrangements for meeting procurement requirements;
- arrangements for meeting the body's moral and legal obligations to its employees; and
- complaints handling procedures.

Boards will require to supplement these areas of assurance having regard to the purpose of the organisation and the nature of the business conducted.



Ethics and Standards of Behaviour

Guidance Note 5





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> Overview

The Scottish public has high expectations of those who serve on the Boards of public bodies and the way in which they conduct themselves in undertaking their duties. As a Board member, it is your personal responsibility to ensure that you meet these expectations by ensuring that your conduct is above reproach.

This section outlines how the Board exercises leadership in determining the values and standards of the organisation.

It describes the ethical framework introduced by the Ethical Standards in Public Life etc. (Scotland) Act 2000, particularly the nine key principles of the Model Code of Conduct which all Board members are required to observe when discharging public duties. Through this framework, the Scottish Ministers aim to ensure confidence in Scottish public bodies, the Boards of those bodies and individual Board members.

> Key Messages

- Board members of bodies listed in **Schedule 3 of the Ethical Standards Act** are subject to the nine key principles outlined in the **Model Code of Conduct**.
- It is important to take care when expressing views so you do not compromise your position as a member of a public body.
- All public bodies have a duty to publish a Register of Board Member Interests. There are specific interests which you must register and it is your personal responsibility to ensure that your entries are current.
- Board members must declare financial and non-financial interests which might be perceived to influence their contribution to a discussion or decision in Board proceedings. This requirement also applies to interests held by your close family, friends and business associates.
- The test on making a declaration is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision-making.
- You must ensure that the reputation of your public body is not damaged by the receipt (or provision) of inappropriate gifts and hospitality.
- The **Commissioner for Ethical Standards in Public Life in Scotland** (the Commissioner) considers complaints about members of devolved public bodies who are alleged to have contravened the Code of Conduct. On finding a contravention of the Code, the Commissioner reports to the **Standards Commission** for adjudication. Where a hearing is held by the Standards Commission and a contravention of the Code is established, the Standards Commission determines the level of sanction to be applied.
- **Part 4 of The Ethical Standards in Public Life etc. (Scotland) Act 2000** makes provision for Codes of Conduct for bodies not listed in Schedule 3 – such bodies and Board members are not subject to investigation by the **Commissioner**, or sanction by the **Standards Commission**.

> Key References and Contacts

The Commissioner for Ethical Standards in Public Life in Scotland

The Standards Commission for Scotland

Model Code of Conduct for Board Members
Standards Commission Guidance Note



> Introduction to Ethical Standards in Public Life

The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Ethical Standards Act) introduced the power to specify the principles and rules that underpin public life in Scotland, putting ethical standards and probity at the heart of decision-making in public service. The principles set out below should be observed by all Board members of public bodies in Scotland.

> Key Principles

Duty

You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of the public body of which you are a member and in accordance with the core functions and duties of that body.

Selflessness

You have a duty to take decisions solely in terms of public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends.

Integrity

You must not place yourself under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

Objectivity

You must make decisions solely on merit and in a way that is consistent with the functions of the public body when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.

Accountability and Stewardship

You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others and must ensure that the public body uses its resources prudently and in accordance with the law.

Openness

You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.

Honesty

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

You have a duty to promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of the public body and its members in conducting public business.



Respect

You must respect fellow members of your public body and employees of the body and the role they play, treating them with courtesy at all times. Similarly you must respect members of the public when performing duties as a member of your public body.

Board members should apply these principles in their dealings with fellow members of their public body, its employees and other stakeholders. Similarly Board members should also observe these principles in their dealings with the public when performing duties as a member of a public body.

➤ The Ethical Standards Framework

The key elements of the ethical framework introduced by the **Ethical Standards in Public Life etc. (Scotland) Act 2000** are:

- ➔ A **Standards Commission for Scotland** (Standards Commission) and a Chief Investigating Officer (now the **Commissioner for Ethical Standards in Public Life in Scotland**) to oversee the ethical framework;
- ➔ A **Model Code of Conduct for Members of Devolved Public Bodies** on a statutory basis for those bodies listed in Schedule 3 of the Act;
- ➔ Codes for smaller bodies; and
- ➔ Publicly available Registers of Members' Interests.

Through this ethical framework, the Scottish Ministers aim to ensure that Scottish public bodies and all who serve on them conduct their business in a way which merits and sustains public confidence.

➤ The Commissioner for Ethical Standards in Public Life in Scotland

The **Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013** came into force on 1 July 2013. The Order transferred the functions of the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland to a single **Commissioner for Ethical Standards in Public Life in Scotland** (the Commissioner).

The Commissioner is an independent office holder who works in two areas:

- ➔ Public appointments, regulating how people are appointed to the Boards of public bodies in Scotland; and
- ➔ Public standards, where the Commissioner can investigate a complaint about a councillor or a member of a devolved public body who is alleged to have contravened the councillors' or the appropriate public body's Code of Conduct.



Where the Commissioner identifies that a breach or breaches of a Code or Codes may have occurred, the Commissioner will report on the outcome of these investigations to the Standards Commission for adjudicatory action and application of sanctions, where appropriate.

➤ The Standards Commission for Scotland

The **Standards Commission** is an independent statutory body which has responsibility for enforcing compliance with the Codes of Conduct and providing general guidance on their interpretation. It adjudicates on cases of alleged contravention of the Codes of Conduct referred to it after investigation by the Commissioner and, where a hearing is held, has the power to impose sanctions. The Standards Commission has responsibility for various aspects of the ethical framework including:

- ➔ adjudicating on cases of alleged contravention of the Codes of Conduct for Members of Devolved Public Bodies reported to it by the Commissioner following investigation of a complaint;
- ➔ promoting and enforcing Codes of Conduct and providing guidance on the operation of Registers of Interests;
- ➔ providing **guidance** to public bodies on:
 - ➔ the promotion and observance of high standards of conduct by members of devolved public bodies and assisting them in that task;
 - ➔ the Commission's relationship with public bodies in carrying out its functions; and
 - ➔ the Registers of Interests for Members of Devolved Public Bodies.

On finding a contravention of a Code of Conduct for bodies listed in Schedule 3 of the **Ethical Standards in Public Life etc. (Scotland) Act 2000**, the **Standards Commission** can impose sanctions ranging from censure, or suspension from meetings of the public body for up to one year, to disqualification for up to five years. Details of the full range of sanctions available to the Commission are listed in **Annex A of the Members' Model Code of Conduct**.

The **Standards Commission** can also consider particular circumstances where it would be contrary to the spirit of the Code for it to be applied. In exceptional circumstances, it can issue dispensations to allow Members of public bodies, including councillors, to participate in discussion and vote on certain matters where, due to financial or non-financial interests, they would otherwise be prohibited from such participation.

➤ Code of Conduct for Board Members

Upon appointment to the Board, you should have been provided with a copy of your public body's Code of Conduct for Board Members, which forms part of your terms and conditions.

You must not at any time advocate or encourage any action contrary to the Code of Conduct. It is your personal responsibility to make sure that your actions comply with the provisions of the Code at all times as the Code contains the standards against which your conduct will be measured. You should review regularly, and at least annually, your personal circumstances against the requirements of the Code.

If you are uncertain about any aspect of the Code, you should seek advice from the Standards Officer in your public body. You



may also choose to consult your own legal and financial advisers. The **Standards Commission** also provides advice and guidance on the Code.

The nine key principles of public life are mentioned earlier in this section. The **Standards Commission guidance** to devolved public bodies will provide you with more detailed information on these principles. The following paragraphs provide a brief snapshot of information about parts of the Model Code of Conduct which Board members will require to give care and consideration to when undertaking their duties.

> Gifts and Hospitality

As a Board member, you should ensure that the reputation of your public body is not damaged through the receipt (or provision) of inappropriate gifts and hospitality. →

> Bribery

Board members must be familiar with the provisions of the **Bribery Act 2010** which came into force on 1 July 2011 and their organisation's policy in this area. The Act makes it a criminal offence for a person to take part in active bribery (making a bribe) or passive bribery (receiving a bribe). All public bodies operate a zero tolerance approach to bribery, with any allegations investigated in accordance with the relevant procedures and reported to the appropriate authorities.

> Conflicts of Interest

Public bodies should have in place clear rules and procedures for managing conflicts of interests. Together with the rules on registration of interests, this ensures transparency of your interests which might influence, or be thought to influence, your actions. You should note that the appearance of a conflict of interest in terms of public perception can be every bit as damaging as an actual conflict – both should be avoided.

GIFTS AND HOSPITALITY



- Do not canvass or actively seek gifts or hospitality;
- Your conduct should not foster the suspicion of any conflict between your official duties and your private interests;
- Your actions, when acting in an official capacity, should not give the impression of having been influenced by a gift or consideration to show favour or disfavour to any person or organisation;
- Do not accept any offer of a gift or hospitality from any individual or organisation that stands to gain from a decision that your public body may be involved in determining or that is seeking to do business with your public body;
- You should usually refuse offers of gifts and/or hospitality except in the following cases: gifts of an isolated and trivial character under £50; normal hospitality associated with your duties and reasonably regarded as appropriate; or gifts received on behalf of the public body;
- Do not accept repeated hospitality or repeated gifts from the same source; and
- If you are in doubt about the propriety of accepting a gift or an item of hospitality you should contact the Standards Officer and/or the Chair for advice.



Handling Conflicts of Interest

Public confidence in your public body and its Board members depends on it being clearly understood that decisions are taken in the public interest and not for any other reason. In deciding whether to declare an interest, the key test is whether a member of the public, acting reasonably, might think that a particular interest could influence you.

> Registration of Interests

All devolved public bodies subject to the **Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003**, as amended, have a duty to set up, maintain and make available for public inspection a register of Board member interests. The regulations describe the detail and timescale for registering. The **Model Code** is very specific about the interests that you, as a Board member, must register and these include:

REGISTRATION OF INTERESTS



- Remuneration from employment, self-employment or directorships;
- Related undertakings i.e. certain unremunerated directorships;
- Contracts with the public body;
- Gifts and hospitality;
- Houses, land and buildings that you own or have an interest in which are of significance or relevance to, or bear upon the work and operation of, the public body;
- Shares and securities – holdings in a company or organisation which are of significance or relevance to, or bear upon the work and operation of, the public body; and
- Non-financial interests including membership or holding office in other public bodies, clubs, societies and organisations such as Trade Unions and voluntary organisations.

Your Code of Conduct will contain definitions of what is required under each of these categories and if you are in any doubt as to what you should or should not be registering, you should discuss this with the Standards Officer, the Chair and/or the Standards Commission.

The Register should also be available for inspection by the public (electronic and paper version). Public bodies should prepare a page for this purpose on their website and ensure that it is operational. The electronic version of the Register does not need to include any personal information that would compromise personal security although the full details would be made available for public inspection in hard copy.

Board members are required to keep their entries in the Register of Interests up-to-date and this involves notifying the Standards Officer of any new interest or change to an existing interest within one month of the change.

Declaration of Interests

In deciding whether to declare an interest, the key test is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision-making in your role as a member of a public body.

If you have a financial, or non-financial, interest you must declare your interest at Board meetings and withdraw from decision-making on the basis of such an interest when it is appropriate to do so.



Non-Declaration of Interest

Where a material conflict of interest exists and a Board member does not declare their interest and withdraw, the Chair should take appropriate action to ensure that the Board (and the Board member concerned) is not compromised. In the event that a Board member refuses to leave the room when asked by the Chair to do so, the Chair should suspend the meeting and reconvene without the Board member concerned being present. Board members should bear in mind that any such action on their part may lead to an investigation by the Commissioner and the matter thereafter referred to the Standards Commission, which may apply a sanction in the event that it determines a breach of the Code of Conduct has occurred.

Frequent Declarations of Interest

If as a Board member you are frequently declaring interests at meetings, you should consider whether it is appropriate for you to continue in your role. In such circumstances, you may wish to discuss your continued appointment as a Board member with the Chair.

Dispensations

The **Standards Commission** does have the power to issue dispensation (where it is deemed to be in the public interest) to allow Board members to participate in a discussion and vote, despite the fact they have financial or non-financial interests which would normally prevent them from participating in discussion and voting.

In addition to general dispensations, individual applications for dispensations in exceptional circumstances can be made to the **Standards Commission** and may be granted where it is in the public interest to do so. However, Board members must not take part in any discussion or vote on a matter (in which they are conflicted) unless and until they have actually received a dispensation.

> Confidentiality

On occasions, Board members will be required to treat discussions, documents and other information relating to the work of the body in a confidential manner. It is imperative that Board members respect this duty of confidentiality at all times. In particular, as a Board member you should never use information to which you have privileged access for personal or financial gain or in a way that brings the public body into disrepute.

> Lobbying

The Code of Conduct sets out clear guidance in respect of dealing with lobbyists and lobbying. If you have any concerns over the approach or methods used by anyone in their contacts with you, you should discuss the matter with your body's Standards Officer and/or the Chair.

> Use of Social Media

When using social media the distinction between work and private life can become blurred, and speedily made comments can be misconstrued. It is important to take special care when expressing views on social media not to compromise your position as a member of a public body. Social media offers many benefits in communicating with stakeholders and interested parties. However, you should always remember that hastily expressed views through social media can reach large (sometimes unintended) audiences instantaneously and can be difficult to retract if required to do so. Your public body should have a policy in place about the use of social media. You should familiarise yourself with the content of that policy to protect the public body's reputation, its legal obligations, its information and its systems. You will be expected to approach any use of social media platforms responsibly and with care.



> Whistleblowing

Although not directly covered by the Ethical Standards Framework, Board members have a responsibility to ensure that staff have confidence in the fairness and impartiality of procedures for registering and dealing with their concerns and interests. **The Public Interest Disclosure Act 1998** gives legal protection to employees who raise certain matters or concerns, known as 'qualifying disclosures', without fear of reprisal. As a Board member, you should ensure that your public body has a whistleblowing policy and appropriate procedures in place. This will allow staff to raise concerns on a range of issues such as fraud, health and safety etc. without having to go through the normal management structure. **Audit Scotland has published guidance on employers' and employees' responsibilities in relation to whistleblowing.**

Public Bodies not covered by the Ethical Standards in Public Life etc. (Scotland) Act 2000

The **Ethical Standards in Public Life etc. (Scotland) Act 2000** makes provision for Scottish Ministers to introduce a Code or Codes of Conduct under the Public Authorities Regime for bodies not listed in Schedule 3 to the Act. While such public bodies and their Board members will be expected to act in accordance with this Code of Conduct, they will not be subject to investigation by the Commissioner or to sanctions by the Standards Commission.

Irrespective of the extent to which a public body is covered by the Ethical Standards Act, Board members are required to adhere to the principles that underpin the ethical standards framework and have regard to the provisions set out in the **Model Code of Conduct** in carrying out their public duties.

> Complaints Handling

The Scottish Public Services Ombudsman (SPSO) is the independent body that provides the final stage for complaints from members of the public about devolved public services in Scotland.

As a Board member, you have a responsibility to ensure that complaints are considered as part of your organisation's overall governance and assurance arrangements.

You should be aware of the importance of having an effective complaints policy in place. You can also help to promote a culture which values complaints and has a proactive approach to effective resolution, monitoring and learning from complaints.

The Board has a collective responsibility and Board members, the Chair and the Chief Executive are also individually responsible for ensuring the public body has an effective, efficient, customer-focused approach to complaints resolution in place.

You should also be aware of the issues and concerns people are raising in their complaints. Your scrutiny of these issues will help to ensure that service users receive a high quality service and that taxpayers receive value for money.

The SPSO has a duty to publish model **Complaints Handling Procedures (CHP)** which public bodies have a statutory requirement to adopt. The CHP includes a commitment for public bodies to publish information against performance indicators, which will provide consistent complaints data across the various sectors of the public service in Scotland.

The SPSO has produced a **short briefing note** for Board members which will help you to consider complaints as part of your organisation's governance arrangements.



COMPLAINTS HANDLING



- Ensure the public body and executive team are learning from service failures and customer insight provided by complaints, with systems in place to record, analyse and report on complaints outcomes, trends and actions taken;
- Ensure that processes are in place for the public body and executive team to identify and respond immediately to critical or systemic service failures identified from complaints handling;
- Take an active role in monitoring and reviewing learning from complaints and reviewing individual complaints to obtain an understanding of how any failures occurred and have been addressed;
- Provide the necessary challenge and hold the senior officer(s) to account for the public body's performance in complaints handling, with Board / Board members themselves regularly monitoring and reviewing the complaints handling performance of the public body; and
- Ensure that service improvements are agreed, actioned and reviewed, possibly on a quarterly basis.

FURTHER INFORMATION



Audit Scotland – Employer's Guide to Whistle Blowing

Bribery Act 2010

Ethical Standards in Public Life Etc. (Scotland) Act 2000

Ethical Standards Registration of Interests (Regulations) 2003

Scottish Parliamentary Commissions and Commissioners etc. Act 2010

The Scottish Public Services Ombudsman

The model Complaints Handling Procedure (CHP) for the Scottish Government, Scottish Parliament and associated public authorities in Scotland

SPSO's Valuing Complaints



Annex A Classification of Public Bodies





There are occasions where bodies carrying out public functions should operate more at 'arm's-length' from Government. This may be appropriate for a variety of reasons. This can be to provide independent advice and expertise on technical, scientific or other complex issues and take this outside the political arena, e.g. on ethical issues, or funding decisions. Tribunals and other quasi-judicial bodies are set up to meet specific requirements for separation of decision-making and appeals. Public bodies carry out a wide range of functions such as independent regulation, advice, investigation, adjudication, ombudsman services, appeal, funding, partnership, commercial and health services. Such 'arm's-length bodies' focus in depth on clear and specific functions and purposes. These bodies have been established to meet particular needs and situations. This flexibility and responsiveness means that the landscape of public bodies is necessarily both complex and diverse.

The following provides a snapshot of the features of public bodies operating in Scotland.

Executive Agencies – although an integral part of the Scottish Government, Executive Agencies generally have a strong focus on the management and direct delivery of public services which do not require day-to-day ministerial oversight; in some cases they may also have responsibility for a discrete area of government policy. They are staffed by civil servants, including the Chief Executive who is directly accountable to Ministers. They are not statutory bodies but operate in accordance with a Framework Document approved by Ministers, which may be reviewed, amended or revoked at any time. This has the advantage that they can normally be set up by administrative action without the need for legislation.

Executive Non Departmental Public Bodies (NDPBs) – are not part of the Scottish Government or the Scottish Administration. They perform administrative, commercial, executive or regulatory functions on behalf of Government and operate within a framework of governance and accountability set by Ministers. They are funded by the Scottish Government through grant or grant-in-aid, but many generate additional income through provision of services. They are normally established by statute, employ staff (who are not civil servants) on their own terms and conditions subject to Scottish Public Sector Pay Policy, and manage their own budgets. They are accountable to a Board whose members are normally appointed by Ministers and publish their own annual report and accounts.



Advisory NDPBs – provide independent expert advice to Ministers and others or input into the policy-making process in relation to a particular subject. They are normally established by Ministers on a non-statutory basis, do not normally employ staff (administrative support is usually provided by the Scottish Government) and are not normally responsible for budgets or expenditure other than remuneration for Board members. They are accountable to a Board whose members are normally appointed by Ministers. Ministers are answerable to Parliament for the activities of the body and can dissolve the body at any time.

Tribunals – are established by statute and have specific responsibilities for prescribed judicial functions. They are not part of the court system and are independent of the Scottish Government. They have both specialist and lay members, do not employ staff and are not responsible for budgets or expenditure other than the remuneration of Tribunal members.

Non Ministerial Departments (NMDs) – are headed by non-ministerial offices (NMOs) (Boards or statutory officeholders) who are not part of the Scottish Government but are part of the Scottish Administration in their own right. Staff are civil servants. The NMOs are generally funded by Parliament and are required to publish their own annual report and accounts. They are directly accountable to the Scottish Parliament, not Ministers, for the discharge of their statutory functions.

Public Corporations – are industrial or commercial enterprises under Government control which recover more than 50% of their costs through fees charged for services provided to customers. They employ their own staff, who are not civil servants, manage their own budgets and report to a Board whose members are appointed by Ministers.

Health Bodies – currently comprise 14 territorial health boards, 8 special health boards and the Mental Welfare Commission for Scotland (MWCS). With the exception of MWCS, health bodies are part of NHSScotland and provide healthcare services or management, technical or advisory services.

Parliamentary Commissions, Commissioners and Ombudsman – are typically responsible for safeguarding the rights of individuals, monitoring and reporting on the handling of complaints about public bodies, providing an adjudicatory role in disputes and reporting on the activities and conduct of public Boards and their members. Commission Members, Commissioners and Ombudsmen are appointed by the Parliamentary Corporation. They are accountable, and report directly, to the Scottish Parliament.

Other Significant Bodies – do not fall within the recognised categories of public bodies set out above but they have a direct relationship with either the Scottish Government or the Parliament and operate within a framework set by Ministers.

The background of the page is a photograph of a business meeting. In the foreground, a person's hand is pointing their index finger towards the right. Another hand is holding a white document. In the background, a laptop is open on a wooden table, and another person is partially visible. The scene is brightly lit, suggesting an indoor office environment.

Annex B Induction and Training for Board Members



Induction programmes, events and material should be a standard feature, with a public body providing information on a range of topics, e.g. policies, procedures, roles, responsibilities, rules and key personnel.

The following list of induction guidance and training is not prescriptive but is designed to give you an idea of the type of support that may be provided by your public body.

Meetings

A one-to-one meeting should take place with the Chair immediately following appointment to discuss in broad terms what is expected of a Board member in the first year and any individual role he or she is expected to play. (The Chair and Board member should meet on a regular basis as part of the appraisal process.)

An induction session within one month of appointment should explain:

- The legislative framework for the organisation and its remit
- Organisational structure
- The collective role of the Board
- Arrangements, formats etc. of Board meetings including agenda planning
- Details of any subsidiary Boards and committees (e.g. Regional Boards, Audit Committee) and their responsibilities
- The long-term strategy of the organisation
- The corporate planning system
- The role of the Chief Executive as the Accountable Officer
- Current priority areas of work
- Budget and financial information, including the monitoring role of the Board
- The public body's policies on openness – where appropriate, including the role of Board members in promoting the public body to the public and in the media
- Links between the public body/Board and the Scottish Government and the Scottish Parliament. This should include details of where the sponsor Directorate fits within the Scottish Government structure, details of sponsor Minister(s) etc
- Links to other key partner organisations and an outline of who the key stakeholders and customers are
- Arrangements for Board members' remuneration and expenses
- The organisation's Code of Conduct for Board members and Code of Conduct issues, including policies on the registration and declaration of interests, gifts and hospitality, use of social media by Board members etc. This should include guidance on completing the Register of Interests
- Whistleblowing procedures – how to raise concerns and how to respond to concerns being raised
- Details of arrangements for monitoring and reporting on the performance of Board members
- The Corporate Risk Register and approach to risk management

Ideally, this session should be attended by all new Board members and by some existing Board members to allow the latter to pass on experience. Some other members of the senior management team may also attend, including the Board secretary.

New Board members may require support in certain areas. The induction process should explore development needs for all new Board members and agree a development plan.

It may also be appropriate for a Board member to meet with other key staff in the organisation – for example the Chief Executive who will be able to advise of their role in their capacity as the Accountable Officer and, where the Board member is to sit on the Audit Committee, they may wish to meet audit and finance staff.



Obtaining feedback from new Board members on the induction they received will provide a useful source of information and will help ensure the process remains effective.

Publications

- The latest Annual Report and Accounts
- The latest Corporate Plan and Operational/Business Plan
- The Corporate Strategy or similar strategic document
- Any significant recent policy or consultation documents which the public body has published.

Written Material

- Guide to any legislation under which the public body was established
- Copy of the Budget Allocation and Monitoring letter from the sponsor Minister for the coming year
- National Performance Framework
- Strategic guidance from the Scottish Government
- Copy of the public body's current Framework Document
- Standing Orders for the conduct of Board meetings
- Organisational structure, staff directory, office addresses etc
- Biographical and contact details of other Board members (and, where appropriate, those in subsidiary Boards and Committees)
- Summary of key roles and responsibilities within the organisation – Board, subsidiary Boards and committees, Chief Executive/ Accountable Officer, management team, other senior staff
- Forward programme of Board meeting dates and any other key events (press launches, conferences etc.)
- The organisation's Code of Conduct for Board members
- The Standards Commission Guidance on the Model Code for Members of Devolved Public Bodies

- Copy of the organisation's Data Protection, Freedom of Information and other relevant policies and procedures relating to corporate governance and accountability – and if they exist:
 - Policy for Board members in dealing with the media
 - List of acronyms relating to the public body's area of work, partner organisations etc.
- The Corporate Risk Register
- Schedule of Matters Reserved for the Decision of the Board and Scheme of Delegation
- Action plan arising from most recent review of Board effectiveness
- The **Scottish Public Services Ombudsman** model Complaints Handling procedure and briefing note for Board members
- Minutes from at least the last four Board and Audit Committee meetings
- Copy of Corporate Parent Plan (should the public body be classified as a Corporate Parent in **Schedule 4** of the Children and Young People (Scotland) Act 2014

Terms and Conditions

- Guidance on claiming **travel and subsistence** expenses
- Guidance on claiming other allowances where appropriate (e.g. child care)
- Guidance on **tax issues** (e.g. for home to office travel)
- Guidance on Register of Interests, and Gifts and Hospitality

First Board Meeting

Time should be included so that the new Board member can be formally introduced to all present. In advance of this meeting, the new member should be made aware of any protocols, for example in relation to making points at meetings, presenting information and overall expectations as to behaviour (being inclusive, respecting others etc.). At the end of the Board meeting, the Chair should spend a few minutes with the new Board



member to allow them the opportunity to ask any questions or raise concerns that they may have.

Training

The public body should consider providing any further training deemed necessary to assist the Board, individually or collectively, to carry out its duties, particularly covering areas such as their roles and responsibilities, the financial management and reporting requirements of public bodies, appraisal systems both for individual members and collective functionality, ethical standards and any other differences which may exist between private and public sector practice.

To complement the induction that a Board member will have received from their own public body, they will find it beneficial to also attend any induction workshops for newly appointed members organised by the Scottish Government Public Bodies Unit and the Public Appointments Team.

Induction for Board Chair

The induction of a new Chair is the responsibility of the sponsor division and the Chief Executive of the body in question.

When a new Chair is appointed, sponsor teams should ensure that an early meeting is arranged with the appropriate Director-General, Deputy or Deputy Director to ensure that there is mutual agreement about what is expected of the body. It may also be appropriate for an early meeting to be arranged between the Chair and the Minister.

The induction of the new Chair should cover all the topics already mentioned. In addition, there are some topics that are specific to new Chairs including:

Appraisal

The relevant Scottish Government Director or Deputy Director (as appropriate) is responsible for setting objectives for the Chair and conducting their appraisal. There is **guidance on appraisal for Chair and Board members**.

Leadership

An important part of the induction process will be to explore with the Chair the experience they have, any training that is required and any development opportunities which may be appropriate for them.

Recruitment and Selection

It is likely that the Chair will be involved in the selection of other Board members. It is important to ensure that he/she has undertaken appropriate training in conducting interviews, including equality awareness training.



Annex C The organisation of central government over devolved matters in Scotland



The organisation of central government over devolved matters in Scotland: The Scottish Parliament, the Scottish Administration and bodies outwith the Scottish Administration

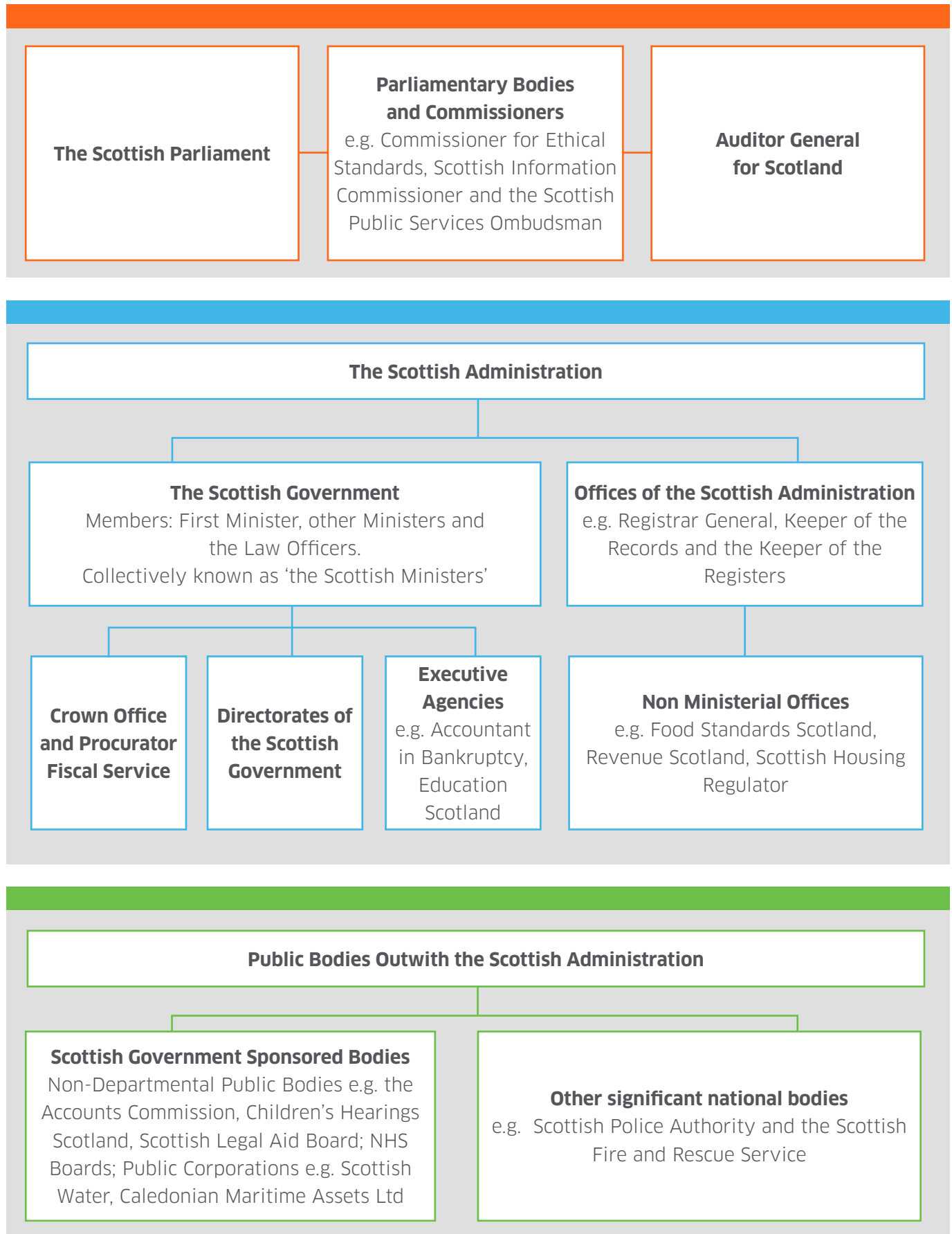


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