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Scottish devolution: a framework for audit and accountability

The accountability approach

The accountability and audit landscape is well-established across the UK and continues to provide a sound base for accountability to respective Parliaments for the use of public resources.

- Individuals may be designated as personally answerable to Parliament for the conduct of certain functions.
- Annual accounts report on the finances and performance of public bodies.
- National audit bodies are tasked with responsibility for the conduct of the statutory audits of annual accounts and for performance audits (examinations of economy, efficiency and effectiveness).

Under the current devolution arrangements, some UK-wide public bodies will support the delivery of devolved functions in Scotland, specified UK-wide public bodies which carry out reserved functions in Scotland have additional obligations to the Scottish Parliament in respect of certain activities in Scotland¹, and some Scottish public bodies may be responsible for matters which continue to be of UK-wide interest. Where functions are devolved to the Scottish Parliament and a new public body is established to deliver these, that body will be brought within the existing accountability and audit framework, within the scope of the Auditor General for Scotland.

The accountability framework for these arrangements needs to be:

- based on clear principles which recognise the statutory position and legitimate interests of the different parties involved

¹ See Parts 5 and 6 of the Scotland Act 2016

- built on established accountability structures which have been shown to work well
- reciprocated as far as possible, so that what applies to a relationship between the UK and Scottish bodies can also be seen to apply between Scotland and UK-wide bodies
- aware and supportive of the interests of each legislature in scrutinising the delivery of public services which have a distinct and significant impact on their responsibilities
- reviewed periodically to ensure that they continue to be seen as efficient and effective, and do not result in duplication

In many cases, statutory provisions will underpin the functions and relationships for public bodies delivering services across borders, and these will take precedence over non-statutory agreements. In other cases, agreements may be reached which do not require statutory authority, or which go beyond the statutory requirements.

The arrangements in place (and yet to be put in place) reflect the implementation of the Fiscal Framework, and enhance the interests and ability to ensure accountability of the respective Parliaments. Any such agreements should be captured in a written document between the public bodies involved. This framework should be referred to when legislation is considered in the future.

Principles for Accountability and Devolution

This framework supports the policy principles set out in the Fiscal Framework and is intended to foster positive and productive relationships between the respective Parliaments, Executives and public bodies. The UK and Scottish Governments will review these principles as part of a wider review of the Fiscal Framework.

This framework does not supersede bespoke agreements made between executives or requirements set out in legislation regarding obligations to deliver services or arrangements for audit and accountability.

This framework does not inhibit the rights of access of national auditors to the bodies to which they have been appointed as auditor, nor does it inhibit the ability of national auditors to work together to help each other fulfil their statutory functions effectively

- 1. Each public body will only be directly accountable to one elected legislature for the performance of the body as a whole.**
 - 1.1. UK government and UK public bodies are accountable to the UK Parliament.
 - 1.2. Scottish government and Scottish public bodies are accountable to the Scottish Parliament.
 - 1.3. Subject to the principles below, formal obligations to deliver services, make reports and give account can only be set by the sponsoring legislature.

- 2. Public bodies may deliver public services to the executive in another jurisdiction with the agreement of its own executive.**
 - 2.1. UK government bodies may make agreements with the Scottish Government to deliver devolved services.
 - 2.2. Scottish public bodies may make agreements with the UK Government to deliver reserved services.
 - 2.3. UK parliamentary bodies and their Scottish counterparts may make arrangements to support each other in fulfilling their remit, bilaterally or with the agreement of their Parliaments.
 - 2.4. If there is no agreement (or statutory provision), each executive will deliver its own services, but decisions on the delivery model should take account of value for money across the whole system.

- 3. The executive in the commissioning jurisdiction is accountable to its own legislature for delivery of services, regardless of which jurisdiction the public body providing the services is in.**
 - 3.1. The public body delivering the commissioned service is responsible to the commissioning body as outlined in any commissioning agreement.
 - 3.2. The commissioning executive is accountable to its parliament for the way it has obtained delivery of the services.
 - 3.3. The commissioning executive is accountable to its parliament for the delivery of services by public bodies within its jurisdiction, and for any agreements made with UK public bodies.

3.4. Where statutory provisions make other arrangements, the contracted delivery body may have direct accountability to both legislatures for specific activities.

4. A public body will be free to charge for any services commissioned by the legislature or executive other than its own sponsor.

4.1. If delivering discretionary services, not required by statute of its own parliament, the public body may recover funding for those services from the commissioning body or seek approval for that work to be funded through the supply process.

4.2. Charging between public sector bodies should normally be at full cost recovery only.

5. A legislature may seek, and a public body will provide, information, advice or reporting direct to the legislature of another jurisdiction:

- where there is a specific statutory provision for this;
- where this has been agreed in a Memorandum of Understanding; or
- on a voluntary basis (subject to there being no significant impact on resources or delivery of its core services).

5.1. In all cases, the position of the relevant executives should be taken into account. Where strict formality may suggest that requests should be routed via the executive, a direct approach is permissible provided the executive is kept informed.

5.2. In cases where the public body is directly accountable to a parliament², the request should be made via the requesting legislature's equivalent body. For example, a Scottish committee seeking audit information from a UK public body should ask the Auditor General for Scotland to obtain that information. The Auditor General for Scotland should then discuss the request with the C&AG.

6. A public body will not be bound by any direction from the alternate executive or any recommendation of the alternate legislature, except where this leads to an agreed change in the service agreement.

² i.e. bodies which do not report to a parliament through a minister who oversees its operations in whole or in part, e.g. national auditors

6.1. any recommendations made by the requesting legislature should be limited to their (devolved or reserved) competence and directed at their own executive, unless it has statutory powers to require action from another public body.

7. Noting the statutory arrangements outlined below, public bodies should enable and support national auditors in carrying out their responsibilities

7.1. The statutory framework for each national auditor ensures that they have complete discretion in how they carry out their functions and that national auditors are free to determine their work programme independently.

7.2. National auditors may make arrangements between themselves to ensure that they can fulfil their responsibilities to meet the legitimate accountability needs of the different legislatures. In the unlikely event of disagreement, national auditors should be prepared to discuss this with the relevant legislature that requires the audit assurance.