

# Sponsorship Framework Agreement

**December 2021**

Scottish Criminal Cases Review Commission

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## 1.0 Introduction

- 1.1 This framework document has been drawn up by the Scottish Government (SG) in consultation with the Scottish Criminal Cases Review Commission (the Commission). It sets out the broad framework within which the Commission will operate and defines key roles and responsibilities which underpin the relationship between the Commission and the SG. While this document does not confer any legal powers or responsibilities, it forms a key part of the accountability and governance framework and should be reviewed and updated as necessary, and at least every 2-3 years. Any proposals to amend the framework document either by the SG or the Commission will be taken forward in consultation and in the light of SG priorities and policy aims. Any question regarding the interpretation of the document shall be determined by the SG after consultation with the Commission. Legislative provisions shall take precedence over any part of the document.
- 1.2 References to the Commission include any subsidiaries and joint ventures owned or controlled by the Commission. The Commission shall not establish subsidiaries or enter into joint ventures without the express approval of the SG.
- 1.3 Copies of the document shall be placed in the Scottish Parliament Reference Centre. It shall also be published on the SG's and the Commission's websites.

## 2.0 Purpose

- 2.1 The Commission is to contribute to the achievement of the SG's primary purpose of increasing sustainable economic growth by aligning its aims and objectives with the SG's published Economic Strategy and National Performance Framework.
- 2.2 The Commission's statutory functions, duties and powers, as set out by Section 194 of the Criminal Procedure (Scotland) Act, are as follows:
  - **Functions:** to review and investigate cases of suspected wrongful conviction and/or sentence in Scotland under both solemn and summary procedure, and to refer cases to the High Court for determination where the Commission believes that a miscarriage of justice may have occurred and it is in the interests of justice that a reference should be made.
  - **Duties:** In considering whether to make a reference to the High Court, the Commission shall have regard to:
    - any application or representations made to the Commission by or on behalf of the person to whom it relates;
    - any other representations made to the Commission in relation to it; and
    - any other matters which appear to the Commission to be relevant.
  - Where the Commission makes a reference to the High Court, the Commission shall:
    - give to the Court a statement of reasons for making the reference; and
    - send a copy of the statement of reasons to every person who appears to the Commission to be likely to be a party to any proceedings on the appeal arising from the reference.

- Where the Commission decides not to make a reference, the Commission shall give a statement of reasons for its decision to the person who made the application.
- **Powers:** the Commission has the powers under the Act to:
  - ask the High Court for its opinion on any point on which the Commission desires assistance, in the consideration of whether to make a reference;
  - take any steps which the Commission considers appropriate for assisting in the exercise of its functions and may, in particular, undertake enquiries and obtain statements, opinions and reports itself; or request the Lord Advocate or any other person to undertake such enquiries or obtain such statements, opinions and reports;
  - apply to the sheriff to request a precognition on oath of any person who has refused to make a statement to the Commission where it appears to the Commission that the person may have information which the Commission requires for the purposes of carrying out its function; and
  - apply to the High Court for an order to obtain documents or other materials where the Commission believes that a person or public body has possession or control of a document or other materials which may assist the Commission in the exercise of any of its functions.

### 3.0 The Commission's purpose, strategic aims and objectives, as agreed by the Scottish Ministers, are to:

- review potential miscarriages of justice in criminal cases in Scotland and refer appropriate cases to the High Court for an appeal.

Anyone convicted of a criminal offence in Scotland can apply to the Commission to have their convictions and/or sentences reviewed (but normally only after a previously unsuccessful appeal). Thereafter the Commission has a statutory obligation to provide a statement of reasons for making a referral to the High Court or for deciding not to refer a case.

- **Strategic Aims:**
  - to investigate all cases efficiently, without undue delay and to a consistently high standard;
  - to work with others to deliver a quality service;
  - to promote public understanding of the Commission's role; and
  - to strengthen public confidence in the ability of the Scottish criminal justice system to address miscarriages of justice.

The Commission's strategic aims have been agreed by the Scottish Ministers and the Commission is committed to the achievement of these aims and contributing effectively to the SG's National Outcomes.

### 4.0 Relationship between the Scottish Government and the Scottish Criminal Cases Review Commission

- 4.1 Effective strategic engagement between the SG and the Commission is essential in order that they work together as effectively as possible to maintain and improve public services and deliver improved outcomes. Both the SG and the Commission will take all

steps necessary to ensure that their relationship is developed and supported in line with the jointly agreed principles set out in the statement on [‘Strategic Engagement between the SG and Scotland’s NDPBs’](#)

## 5.0 Governance and Accountability

### Legal origins of powers and duties

5.1 The Commission was established as a body corporate by the authority of section 194A of the Criminal Procedure (Scotland) Act 1995 (the Act) as inserted by Section 25 of the Crime and Punishment (Scotland) Act 1997. The Commission does not carry out its function on behalf of the Crown.

### Ministerial responsibilities

5.2 The Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities of the Commission and its use of resources. They are not however responsible for day to day operational matters and founding legislation prevents them from directing the Commission in relation to specific statutory functions. Their responsibilities include:

- agreeing the Commission’s strategic aims and objectives and key targets as part of the corporate planning process;
- agreeing the budget and the associated grant in aid requirement to be paid to the Commission, and securing the necessary Parliamentary approval;
- carrying out responsibilities specified in the founding legislation such as appointments to the Commission’s board, approving the terms and conditions of Board Members, and appointment of the Chief Executive; and
- other matters such as approving the Commission’s pay remit, in line with SG [Pay Policy](#) and Analogue Pay Agreement, and laying the accounts (together with the annual report) before the Parliament.

### Commission Board Responsibilities

5.3 The Commission’s Board, including the Chairman, normally consists of non-executives appointed by the Scottish Ministers in line with the Code of Practice for Ministerial Public Appointments in Scotland. The role of the Board is to provide leadership, direction, support and guidance to ensure the Commission delivers and is committed to delivering its functions effectively and efficiently and in accordance with the aims, policies and priorities of the Scottish Ministers. It has corporate responsibility, under the leadership of the Chairman, 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 Commission or on the attainability of its operational targets;

- promoting the efficient, economic and effective use of staff and other resources by the Commission consistent with the principles of [Best Value](#), including, where appropriate, participation in [shared services](#) arrangements and ensuring that effective arrangements are in place so that the Commission acts corporately in accordance with the priorities set out in the SG's statement of corporate expectations;
- ensuring that effective arrangements are in place to provide assurance on risk management, governance and internal control. (The Board must set up an Audit Committee chaired by a non-executive Member to provide independent advice and assurance on the effectiveness of the internal control and risk management systems.);
- in reaching decisions taking into account relevant guidance issued by the Scottish Ministers;
- ensuring that the Board receives and reviews regular financial information concerning the management and performance of the Commission and is informed in a timely manner about any concerns regarding the activities of the Commission;
- appointing, with the approval of the Scottish Ministers, the Commission's Chief Executive and, in consultation with the SG, 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 Commission and the delivery of outcomes; and
- demonstrating high standards of corporate governance at all times, including openness and transparency in its decision making.
- Functions as laid out in the Criminal Procedure (Scotland) Act

Further guidance on how the Board should discharge its duties is provided in appointment letters and in ['On Board- A guide for Board Members of Public Bodies in Scotland'](#).

### **The Chairman's Responsibilities**

5.4 The Chairman 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. Communications between the Commission's Board and the Scottish Ministers should normally be through the Chairman. He or she is responsible for ensuring that the Commission's policies and actions support the Scottish Ministers' wider strategic policies and that its affairs are conducted with probity.

5.5 In leading the Board the Chairman must ensure that:

- the work of the Board is subject to regular self-assessment and that the Board is working effectively;
- 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 Commission's business, and in terms of protected characteristics under the Equality Act;
- the Board Members are fully briefed on terms of appointment, duties, rights and responsibilities;

- he or she, together with the other Board Members, receives appropriate induction training on matters including financial management and reporting requirements and, as appropriate, on any differences that may exist between private and public sector practice;
- succession planning takes place to ensure that the Board is diverse and effective, and the Scottish Ministers are advised of the Commission's needs when Board vacancies arise;
- there is a code of conduct for Board Members in place, approved by the Scottish Ministers.

5.6 The Chairman assesses the performance of individual Board Members on a continuous basis and undertakes a formal appraisal at least annually. The Chairman, in consultation with the Board as a whole, is also responsible for undertaking an annual appraisal of the performance of the Chief Executive.

### **Individual Board Members' Responsibilities**

5.7 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 Commission 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 Commission by the Scottish Ministers but also any other funds falling within the stewardship of the Commission, including trading and investment income, gifts, bequests and donations.) General guidance on Board Members' responsibilities is summarised in their appointment letters and is also provided in [On Board](#).

### **Chief Executive Responsibilities**

5.8 The Chief Executive of the Commission is employed and appointed by the Board with the approval of the Scottish Ministers. He/she is the Board's principal adviser on the discharge of its functions and is accountable to the Board. His/her role is to provide operational leadership to the Commission and ensure that the Board's aims and objectives are met and the Commission's functions are delivered and targets met through effective and properly controlled executive action. His/her general responsibilities include the performance, management and staffing of the Commission. General guidance on the role and responsibilities of the Chief Executive is contained in [On Board](#). Specific responsibilities to the Board include:

- advising the Board on the discharge of its responsibilities - as set out in this document, in the founding legislation and in any other relevant instructions and guidance issued by or on behalf of the Scottish Ministers - and implementing the decisions of the Board;
- ensuring 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 [Appraisal and Evaluation](#) section of the [Scottish Public Finance Manual](#) (SPFM), are followed;
- ensuring that the Commission adheres, where appropriate, to the SG's [Programme and Project Management Principles](#);



- having robust performance and risk management arrangements - consistent with the [Risk Management](#) section of the SPFM - in place that support the achievement of the Commission's aims and objectives and that facilitate comprehensive reporting to the Board, the SG and the wider public. Risk management arrangements should include full consideration of organisational resilience to physical, personnel and cyber risks/threats/hazards;
- ensuring that adequate systems of internal control are maintained by the Commission, including effective measures against fraud and theft consistent with the [Fraud](#) section of the SPFM;
- establishing appropriate documented internal delegated authority arrangements consistent with the [Delegated Authority](#) section of the SPFM;
- advising the Board on the performance of the Commission;
- preparing the Commission's corporate and business plans, in the light of the strategic aims and objectives agreed by the Scottish Ministers;
- ensuring effective relationships with SG officials;
- ensuring that timely forecasts and monitoring information on performance and finance are provided to the SG; that the SG is notified promptly if over or under spends 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 notified to the SG in a timely fashion; and
- ensuring that staff pay proposals are settled in a timely manner in accordance with the SG [Pay Policy](#) and Analogue Pay Agreement.

#### **Accountable Officer Responsibilities**

5.9 The Principal Accountable Officer for the Scottish Administration (the Permanent Secretary of the SG) will designate the Chief Executive as the Accountable Officer for the Commission. 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](#). These include:

- ensuring the propriety and regularity of the Commission's finances and that there are sound and effective arrangements for internal control and risk management;
- ensuring that the resources of the Commission are used economically, efficiently and effectively and that appropriate arrangements are in place to secure Best Value;
- ensuring compliance with relevant guidance issued by the Scottish Ministers, in particular the SPFM;
- signing the annual accounts and associated governance statements; and
- a statutory duty to obtain written authority from the Board / Chairman before taking any action which he/she considered would be inconsistent with the proper performance of the Accountable Officer functions.

5.10 It is incumbent on the Chief Executive to combine his/her Accountable Officer responsibilities to the Scottish Parliament with his/her wider responsibilities to the Board. The Board/Chairman should be fully aware of, and have regard to, the Accountable Officer responsibilities placed upon the Chief Executive, including the statutory duty described above.

### **Portfolio Accountable Officer Responsibilities**

5.11 The Principal Accountable Officer for the Scottish Administration will designate the Director-General for Justice as the Accountable Officer for the SG portfolio budget for the Commission. Withdrawal of the Accountable Officer designation would also be a matter for the Principal Accountable Officer. The responsibilities of a Portfolio Accountable Officer are set out in detail in the [Memorandum to Accountable Officers for Parts of the Scottish Administration](#). He/she is personally answerable to the Scottish Parliament for ensuring that:

- the financial and other management controls applied by the SG are appropriate and sufficient to safeguard public funds and, more generally that those being applied by the Commission conform to the requirements both of propriety and of good financial management;
- the key roles and responsibilities which underpin the relationship between the SG and the Commission are set out in a framework document - and that this document is regularly reviewed;
- effective relationships are in place at Director and Deputy-Director level between the SG and the Commission in accordance with the strategic engagement principles; and
- there is effective continuous assessment and appraisal of the performance of the Chairman of the Commission, in line with the requirements of the Code of Practice for Ministerial Public Appointments in Scotland.

### **Scottish Government Director and Deputy Director**

5.12 The Director for Justice and the Deputy Director for Criminal Justice have responsibility for overseeing and ensuring effective relationships between the SG and the Commission which support alignment of the Commission's business to the SG's Purpose and National Outcomes and high performance by the Commission. They will work closely with the Commission's Chief Executive and be answerable to the Portfolio Accountable Officer for maintaining and developing positive relationships with the Commission characterised by openness, trust, respect and mutual support. They will be supported by a sponsor unit in discharging these functions. The Director for Justice shall be responsible for assessing the performance of the Commission's Chairman, at least annually.

### **Sponsor Unit Responsibilities**

5.13 The SG sponsor unit for the Commission is the Criminal Law, Licensing and Practice Unit within Criminal Justice Division. It is the normal point of contact for the Commission in dealing with the SG. The unit, under the direction of the Director/Deputy Director, is the primary source of advice to the Scottish Ministers on the discharge of their responsibilities in respect of the Commission and undertakes the responsibilities of the Portfolio Accountable Officer on his/her behalf. Specific responsibilities include:

- discharging sponsorship responsibilities in line with the principles and framework set out in the document [‘Strategic Engagement between the SG and Scotland’s NDPBs’](#) and ensuring that sponsorship is suitably flexible, proportionate and responsive to the needs of the Scottish Ministers and the Commission;
- ensuring that appointments to the Commission’s Board are made timeously and, where appropriate, in accordance with the [Code of Practice for Ministerial Appointments to Public Bodies in Scotland](#);
- proportionate monitoring of the Commission’s activities through an adequate and timely flow of appropriate information, agreed with the Commission, on performance, budgeting, control and risk management;
- addressing in a timely manner any significant problems arising in the Commission, alerting the Portfolio Accountable Officer and the responsible Minister(s) where considered appropriate;
- ensuring that the objectives of the Commission and the risks to them are properly and appropriately taken into account in the SG’s risk assessment and management systems; and
- informing the Commission of relevant SG policy in a timely manner.

#### **Internal Audit**

5.14 The Commission shall:

- establish and maintain arrangements for internal audit in accordance with the [\(Public Sector Internal Audit Standards\)](#) (PSIAS) and the [Internal Audit](#) section of the SPFM;
- set up an Audit Committee of its Board, in accordance with the [Audit Committees](#) section of the SPFM, to advise both the Board and the Chief Executive in his/her capacity as the Commission’s Accountable Officer;
- forward timeously to the SG the audit charter, strategy, periodic audit plans and annual audit assurance report, including the Commission’s Head of Internal Audit opinion on risk management, control and governance and other relevant reports as requested; and
- keep records of, and prepare and forward timeously to the SG an annual report on fraud and theft suffered by the Commission and notify the SG at the earliest opportunity of any unusual or major incidents.

- 5.15 The SG's Internal Audit Division has a right of access to all documents held by the Commission's internal auditor, including where the service is contracted out. The SG Internal Audit Division, or Delegates, has a right of access to all NDPB records and personnel for any purpose related to the discharge of the audit function.

### **External Audit**

- 5.16 The Auditor General for Scotland (the AGS) audits, or appoints auditors to audit, the Commissions' annual accounts and passes them to the Scottish Ministers who shall lay them before the Scottish Parliament, together with the auditor's report and any report prepared by the AGS. For the purpose of audit the auditors have a statutory right of access to documents and information held by relevant persons. The Commission shall instruct its auditors to send copies of all management reports (and correspondence relating to those reports) and responses to the SG.
- 5.17 The AGS, or examiners appointed by the AGS, may carry out examinations into the economy, efficiency and effectiveness with which the Commission has used its resources in discharging its functions. The AGS may also carry out examinations into the arrangements made by the Commission to secure Best Value. For the purpose of these examinations the examiners have a statutory right of access to documents and information held by relevant persons. In addition, the Commission shall provide for, in contracts and any conditions to grants, the AGS to exercise such access to documents held by contractors and sub-contractors and grant recipients as may be required for these examinations; and shall use its best endeavours to secure access for the AGS to any other documents required by the AGS which are held by other bodies.

### **Annual Report and Accounts**

- 5.18 The Commission must publish an annual report of its activities together with its audited accounts after the end of each financial year. The annual report must cover the activities of any corporate, subsidiary or joint ventures under the control of the Commission. It should comply with the Government [Financial Reporting Manual](#) (FRoM) and outline the Commission's main activities and performance against agreed objectives and targets for the previous financial year.
- 5.19 The accounts must be prepared in accordance with relevant statutes and the specific accounts direction (including compliance with the FRoM) and other relevant guidance issued by the Scottish Ministers. Any financial objectives or targets set by the Scottish Ministers should be reported on in the accounts and will therefore be within the scope of the audit. Any subsidiary or joint venture owned or controlled by the Commission shall be consolidated in its accounts in accordance with International Financial Reporting Standards as adapted and interpreted for the public sector context.
- 5.20 The draft report should be submitted to the SG for comment, and the draft accounts for information, by 15 June each year. The final version should be available for laying before the Scottish Parliament by the Scottish Ministers by 28 June each year. Whilst the statutory date for laying and publishing accounts audited by the AGS is by 31 December, following the close of the previous financial year, there is an expectation on the part of the Scottish Ministers that accounts will be laid and published as early as possible. The accounts must not be laid before they have been formally sent by the AGS to the Scottish Ministers and must not be published before they have been laid.

The Commission shall be responsible for the publication of the report and accounts e.g. on the Commission's website.

## 6.0 Management Responsibilities

### Corporate and Business Plans

6.1 The Commission must ensure that a corporate plan, agreed with the Scottish Ministers, is in place and published on the Commission's website. The Commission shall agree with the SG the issues to be addressed in the plan and the timetable for its preparation and review. The finalised plan shall reflect the Commission's strategic aims and objectives as agreed by the Scottish Ministers, indicative budgets and any priorities set by the Scottish Ministers. It shall demonstrate how the Commission contributes to the achievement of the SG's primary purpose of increasing sustainable economic growth and alignment with the SG's [National Performance Framework](#) (NPF). The corporate plan for the Commission should include:

- the purpose and principal aims of the Commission;
- an analysis of the environment in which the Commission operates;
- key objectives and associated key performance targets for the period of the plan, the strategy for achieving those objectives and how these will contribute towards the achievement of the SG's primary purpose and alignment with the NPF;
- indicators against which performance can be judged;
- details of planned efficiencies, describing how the Commission proposes to achieve better value for money, including through collaboration and shared services; and
- other matters as agreed between the SG and the Commission.

- 6.2 The corporate plan should inform the development of a separate business plan for each financial year. The business plan for the Commission should include key targets and milestones for the year immediately ahead, aligned to the NPF, and be linked to budgeting information so that, where possible, resources allocated to achieve specific objectives can be identified. A copy of the Commission's business plan should be provided to the sponsor unit prior to the start of the relevant financial year.

### **Budget Management**

- 6.3 Each year, in the light of decisions by the Scottish Ministers on the allocation of budgets for the forthcoming financial year, the SG will send to the Commission by 31 January a formal statement of its budgetary provision, a note of any related matters and details of the budget monitoring information required by the SG. Transfers of budgetary provision between the different summary classifications as advised would require the prior approval of the SG Finance Directorate. Any proposals for such transfers should therefore be submitted to the sponsor unit. Transfers of provision within the summary classifications may be undertaken without reference to the SG, subject to any constraints on specific areas of expenditure e.g. the approved pay remit.
- 6.4 If the trading and other resource income - or the net book value of disposals of non-current assets - realised is less than included in the most up to date agreed budget the Commission shall, unless otherwise agreed with the SG, ensure a corresponding reduction in its gross expenditure. (The extent to which the Commission exceeds agreed budgets shall normally be met by a corresponding reduction in the budgets for the following financial year.) If income realised is more than included in the most up to date agreed budgets the Commission must obtain the prior approval of the SG before using any excess to fund additional expenditure. (Failure to obtain prior approval for the use of excess income - excluding income resulting from gifts, bequests and donations - to fund additional expenditure may result in corresponding reductions in budgets for the following financial year.)

### **Cash Management**

- 6.5 Any [grant in aid](#) (i.e. the cash provided to the Commission by the SG to support the allocated budget) for the year in question must be authorised by the Scottish Parliament in the annual Budget Act. Grant in aid will normally be paid in quarterly instalments on the basis of updated profiles and information on unrestricted cash reserves. Payment will not be made in advance of need, as determined by the level of unrestricted cash reserves and planned expenditure. Unrestricted cash reserves held during the course of the year should be kept to the minimum level consistent with the efficient operation of the Commission - and the level of funds required to meet any relevant liabilities at the year-end. Grant in aid not drawn down by the end of the financial year shall lapse. Grant in aid shall not be paid into any restricted reserve held by the Commission.
- 6.6 The banking arrangements adopted by the Commission must comply with the [Banking](#) section of the SPFM.

### **Risk Management**

- 6.7 The Commission shall ensure that the risks that it faces are dealt with in an appropriate manner, in accordance with relevant aspects of generally recognised best practice in corporate governance, and develop a risk management strategy, consistent with the [Risk Management](#) section of the SPFM. Reporting arrangements should ensure that the sponsor unit is made aware of relevant risks and how they are being managed. The

Commission's Audit Committee is also required, at the earliest opportunity, to notify the relevant SG Audit and Risk Committee if it considers that it has identified a significant problem which may have wider implications.

### **Fraud Management**

- 6.8 The Commission should adopt and implement policies and practices to safeguard itself against fraud and theft, in accordance with the [Fraud](#) section of the SPFM. Application of these processes must be monitored actively, supported by a fraud response plan and robust reporting arrangements. This includes the establishment of avenues to report any suspicions of fraud.

### **Performance Management**

- 6.9 The Commission shall operate management information and accounting systems that enable it to review, in a timely and effective manner, its financial and non-financial performance against the strategic aims, objectives, targets and milestones set out in the corporate and business plans. The results of such reviews should be reported on a regular basis to the Commission's Board and copied to the SG. The SG shall assess the Commission's performance on a continuous basis and undertake a formal internal review at least once a year. The responsible Cabinet Secretary/Scottish Minister shall meet the Commission's chairman where appropriate and at least once every two years.

### **Commission Staff Management**

#### *Broad Responsibilities for Commission Staff*

- 6.10 The Commission will have responsibility for the recruitment, retention and motivation of its staff. The broad responsibilities toward its staff are to ensure that:
- HR policies, practices and systems comply with employment and equalities legislation, and standards expected of public sector employers;
  - the level and structure of its staffing, including grading and staff numbers, are appropriate to its functions and the requirements of economy, efficiency and effectiveness (subject to the [SG Pay Policy for Staff Pay Remits](#) and Analogue Pay Agreement);
  - the performance of its staff at all levels is satisfactorily appraised and the Commission's performance measurement systems are reviewed from time to time;
  - its staff are encouraged to acquire the appropriate knowledge, skills and experience necessary to achieve the Commission's objectives;
  - proper consultation with staff takes place on key issues affecting them;
  - adequate grievance and disciplinary procedures are in place;
  - effective whistle-blowing procedures consistent with the Public Interest Disclosure Act 1998 are in place; and

- a code of conduct for staff is in place based on the Model Code for Staff of Executive NDPBs – see chapter 5 of [Public Bodies: A Guide for Departments](#).

### Pay and Conditions of Service

- 6.11 The Commission shall submit to the sponsor unit on an annual basis confirmation of its intention to apply the SG Pay Policy for Staff Pay Remits in accordance with the Analogue Pay Agreement, whereby the Commission’s pay remit bargaining falls within that of SG. Proposals on non-salary rewards must comply with the guidance in the [Non-Salary Rewards](#) section of the SPFM. The Commission shall comply with employment and equalities legislation. The terms and conditions of the Chief Executive are subject to a separate approval exercise in line with the [SG Pay Policy for Senior Appointments](#).

### Pensions, Redundancy and Compensation

- 6.12 Superannuation arrangements for the Commission staff are subject to the approval of the SG. Commission staff shall normally be eligible for a pension provided by the Principal Civil Service Pension Scheme (the PCSPS). Staff may opt out of the occupational pension scheme provided by the Commission, but the employers’ contribution to any personal pension arrangement, including stakeholder pension, shall normally be limited to the national insurance rebate level.
- 6.13 Any proposal by the Commission to move from existing pension arrangements, or to pay any redundancy or compensation for loss of office, requires the prior approval of the SG. Proposals on compensation payments must comply with the [Settlement Agreement, Severance, Early Retirement and Redundancy Terms](#) section of the SPFM. This includes referral to the SG of any proposed compensation payment being considered for an individual outwith any existing approved scheme and before the individual is approached and any offer made either orally or in writing.

### Asset and Property Management

- 6.14 The Commission shall maintain an accurate and up-to-date record of its current and non-current assets consistent with the [Management of Assets](#) section of the SPFM. “Fixed” assets should be disposed of in accordance with the [Disposal of Property, Plant & Equipment](#) section of the SPFM. The SG’s Property Advice Division should be notified of relevant proposed disposals of property at the earliest opportunity and at least 1 month prior to them being advertised on the open market. Any proposal to acquire land, buildings or other rights in property should comply with the [Acquisition of Property](#) section of the SPFM. The Commission is also subject to the [SG Asset Management Policy](#), including the requirement for any new commitments to be signed off by the Scottish Ministers. Information concerning the Commission should be accurately recorded and updated as necessary by the Commission on the Office of Government Commerce electronic Property Information Mapping System (e-PIMS).

## 7.0 Specific Financial Provisions

### Delegated Authorities

- 7.1 The Commission’s specific delegated financial authorities - as agreed in consultation between the Commission and the SG - are set out in the attached Appendix. The Commission shall obtain the SG’s prior written approval before entering into any



undertaking to incur any expenditure that falls outside these delegations. The Commission shall also comply with any requirements for prior SG approval included in the SPFM and/or this document. Prior SG approval must always be obtained before incurring expenditure for any purpose that is or might be considered novel, contentious or repercussive or which has or could have significant future cost implications.

### **Income Generation**

- 7.3 Gifts, bequests or donations received by the Commission score as income and should be provided for in the agreed resource departmental expenditure limit (DEL) and capital DEL budgets, updated as necessary in consultation with the SG. However, the Commission should be able to demonstrate that expenditure funded by gifts etc is additional to expenditure normally supported by grant in aid (i.e. SG core funding) or by trading and other income. Before accepting such gifts etc the Commission shall consider if there are any associated costs in doing so or any conflicts of interests arising. The Commission shall keep a written record of any such gifts etc and what happened to them.

### **Financial Investments**

- 7.4 Unless covered by a specific delegated authority the Commission shall not make any financial investments without the prior approval of the SG. That would include equity shares in ventures which further the objectives of the Commission. The Commission shall not invest in any venture of a speculative nature.

### **Borrowing**

- 7.5 Borrowing cannot be used to increase the Commission's spending power. All borrowing by the Commission - excluding agreed overdrafts - shall be from the Scottish Ministers in accordance with guidance in the **Borrowing, Lending & Investment** section of the SPFM.

### **Lease Arrangements**

- 7.6 Unless covered by a specific delegated authority the Commission shall not enter into any finance, property or accommodation related lease arrangement – including the extension of an existing lease or the non-exercise of a tenant's lease break - without the SG's prior approval. Before entering/continuing such arrangements the Commission must be able to demonstrate that the lease offers better value for money than purchase and that all options of sharing existing public sector space have been explored. Non-property/accommodation related operating leases are subject to a specific delegated authority. The Commission must have capital DEL provision for finance leases and other transactions which are in substance borrowing.

### **Tax Arrangements**

- 7.7 Non-standard tax management arrangements should always be regarded as novel and/or contentious and must therefore be approved in advance by the SG. Relevant guidance is provided in the **Tax Planning and Tax Avoidance** section of the SPFM. The Commission must comply with all relevant rules on taxation, including VAT. All individuals who would qualify as employees for tax purposes should be paid through the payroll system with tax deducted at source. It is the responsibility of the Commission to observe VAT legislation and recover input tax where it is entitled to do so. The

Commission must also ensure that it accounts properly for any output tax on sales or disposals.

### **Lending and Guarantees**

- 7.8 Any lending by the Commission must adhere to the guidance in the **Borrowing, Lending & Investment** section of the SPFM on undertaking due diligence and seeking to establish a security. Unless covered by a specific delegated limit the Commission shall not, without the SG's prior approval, lend money, charge any asset, give any guarantee or indemnity or letter of comfort, or incur any other contingent liability (as defined in the **Contingent Liabilities** section of the SPFM or in International Financial Reporting Standards), whether or not in a legally binding form. Guarantees, indemnities and letters of comfort of a standard type given in the normal course of business are excluded from this requirement.

### **Third Party Grants**

- 7.9 Unless covered by a specific delegated authority the Commission shall not, without the SG's prior agreement, provide grant funding to a third party. Such funding would be subject to the guidance in the **Subsidy Control** section of the SPFM. Guidance on a framework for the control of third party grants is provided as an **annex** to the Grant & Grant in Aid section of the SPFM.

### **Impairments, Provisions and Write-offs**

- 7.10 Assets should be recorded on the balance sheet at the appropriate valuation basis in accordance with the FReM. Where an asset - and that includes investments - suffers impairment it is important that the prospective impairment and background is communicated to the SG at the earliest possible point in the financial year to determine the implications for the Commission's budget. Similarly any significant movement in existing provisions or the creation of new provisions should be discussed in advance with the SG. Write-off of bad debt and/or losses scores against the Commission's resource DEL budget classification and is subject to a specific delegated limit.

### **Insurance**

- 7.11 The Commission is subject to the SG policy of self-insurance. Commercial insurance must however be taken out where there is a legal requirement to do so and may also be taken out in the circumstances described in the **Insurance** section of the SPFM - where required with the prior approval of the SG. In the event of uninsured losses being incurred the SG shall consider, on a case by case basis, whether or not it should make any additional resources available to the NDPB. The SG will provide the NDPB with a Certificate of Exemption for Employer's Liability Insurance.

### **Procurement and Payment**

- 7.12 The Commission's procurement policies shall reflect relevant guidance in the **Procurement** section of the SPFM and relevant guidance issued by the SG's Procurement and Commercial Directorate. Procurement should be undertaken by appropriately trained and authorised staff and treated as a key component of achieving the Commission's objectives consistent with the principles of Value for Money, the highest professional standards and any legal requirements. Unless covered by a specific delegated authority any proposal to award a contract without competition (non-competitive action) must be approved in advance by the SG. Any external

consultancy contracts with a value of more than [£100,000] must be approved in advance by the Cabinet Secretary for Infrastructure, Investment and Cities and the Cabinet Secretary for Finance, Employment and Sustainable Growth. In accordance with the Commission's delegated authorities, any procurement in excess of £10,000 will be reported to the sponsor unit.

- 7.13 Any major investment programmes or projects undertaken by the Commission shall be subject to the guidance in the [Major Investment Projects](#) section of the SPFM and are also subject to a specific delegated authority. The sponsor unit must be kept informed of progress on such programmes and projects and Ministers must be alerted to any developments that could undermine their viability. ICT investment plans must be reported to the SG's Information Services Investment Board.
- 7.14 The Commission shall pay all matured and properly authorised invoices relating to transactions with suppliers in accordance with the [Expenditure and Payments](#) section of the SPFM, and in doing so shall seek wherever possible and appropriate to meet the SG's target for the payment of invoices within 10 working days of their receipt.

#### **Gifts Made, Special Payments and Losses**

- 7.15 Unless covered by a specific delegated authority the Commission shall not, without the SG's prior approval, make gifts or special payments or write-off of losses. Special payments and losses are subject the guidance in the [Losses and Special Payments](#) section of the SPFM. Gifts by management to staff are subject to the guidance in the [Non-Salary Rewards](#) section of the SPFM.

#### **Clawback**

- 7.16 Where the Commission has financed expenditure on assets by a third party, the Commission shall make appropriate arrangements to ensure that any such assets above an agreed value are not disposed of by the third party without the Commission's prior consent. The Commission shall put in place arrangements sufficient to secure the repayment of its due share of the proceeds - or an appropriate proportion of them if the Commission contributed less than the whole cost of acquisition or improvement. The Commission shall also ensure that if assets financed by the Commission cease to be used by the third party for the intended purpose an appropriate proportion of the value of the asset shall be repaid to the Commission.

#### **Board Expenses**

- 7.17 Remuneration, allowances and expenses paid to Board Members must comply with the [SG Pay Policy for Senior Appointments](#) and any specific guidance on such matters issued by the Scottish Ministers.

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## SPECIFIC DELEGATED FINANCIAL AUTHORITIES

	Delegated Limit
Operating leases – other than property/ accommodation related leases	£25,000
Single-tender Contracts	£25,000
Contracts for Goods & Services	£25,000
External business and management consultancies	£15,000
Acquisition of Assets	£15,000
Claims for Damage or Loss of Property	£2,000
Gifts	£1,000
Special payments	£1,000
Write-off of bad debt and/or losses	£1,000