



Framework document agreed between the
Scottish Government Directorate for Mental
Health and the
Mental Welfare Commission for Scotland
5 September 2023

Mental Welfare Commission for Scotland - Model Framework Document

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Approved	Version	Next Review	Signed by
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Introduction

1. This framework document is agreed between the Mental Welfare Commission for Scotland (the Commission) and the Scottish Ministers. It summarises how the Commission and Scottish Government (SG) will work together, and the key roles and responsibilities of:

- the Board
- the Chief Executive and Accountable Officer of the Commission
- the Scottish Ministers; and
- the Portfolio Accountable Officer within the SG whose remit includes the Commission.

While this document does not confer any legal powers or responsibilities, it forms a key part of the accountability and governance framework and as a live document it should be reviewed by SG and the Commission regularly, and at least every 3 years. Any significant changes will be agreed between the Board and the Scottish Ministers.

2. Any question regarding the interpretation of the document will be determined by the SG after consultation with the Commission. Legislative provisions take precedence over any part of the document.

3. The Commission is not permitted to establish any subsidiaries or enter into joint ventures without express approval from Scottish Ministers.

4. Copies of the document will be published on the Commission's website.

Purpose

5. The Commission is established as an independent body corporate under Part 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (referred to as the 2003 Act). The constitution of the Commission is set in schedule 1 of the 2003 Act. The Commission does not carry out its functions on behalf of the Crown. The Commission's mission is:

'To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to choose how they live.'

The Commission's purpose is:

To protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

The Commission's legislative duties and functions are set out in the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act") (as amended by the Public Services Reform (Scotland) Act 2010 and by the Mental Health (Scotland) Act 2015) and the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act"). Duties include monitoring and promoting best practice, to investigate, report and bring specific matters to the attention of the Scottish Ministers. The Commission's duties set out in the above legislation are implemented by:

- checking if individual care and treatment is lawful and in line with good practice;
- empowering individuals and their carers through advice, guidance and information;
- promoting best practice in applying mental health and incapacity law; and
- influencing legislation, policy and service development.

6. The National Confidential Forum, (the NCF) was established as a Committee of the Commission in 2014 under the Victims and Witnesses (Scotland) Act 2014 and came to an end on the 28 June 2021 under the terms of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. During its lifespan, the NCF was a committee of the Commission and did not exist as a separate legal entity. The NCF's core function was to receive and listen to testimony from those who were in institutional care as children. The Commission remains the data controller of the records produced by the NCF.

7. In discharging its statutory functions, the Commission is accountable to Scottish Ministers but at the same time it carries out its work and produces reports independently.

Classification

8. For administrative purposes, the Commission is classified as an independent NHS body.

9. However, for the purposes of staff remuneration, the Commission is not classed as an NHS body. It is therefore required to comply with the Scottish Government policy for public sector pay and gain approval from Scottish Ministers on its pay proposals. This is with the exception of medical consultants whose pay and conditions are similar to that of NHS Scotland under the Consultant Contract. The Commission is defined as an employing authority for the NHS pension scheme under Scottish Statutory Instrument 2003 No 55. For national accounts purposes the Commission is classified to the central government sector.

10. The Commission's accounts are consolidated into those of the NHS in Scotland and it follows procedures outlined in the Health Board Manual.

Governance and Accountability

11. This section summarises the specific responsibilities and accountabilities of the key people involved in governance of the Commission.

The Board

12. Members of the Board of the Commission, including the Chair, are non-executives appointed by the Scottish Ministers in line with the [Code of Practice for Ministerial Public Appointments in Scotland](#). The Chair and other Board Members are accountable to the Scottish Ministers and also to the Scottish Parliament and may be required to give evidence to Parliamentary Committees.

13. The Board has overall responsibility for the delivery of the functions of the Commission, as set out at paragraph 5 above, in accordance with the aims, policies and priorities of the Scottish Ministers and as determined by mental health and

incapacity legislation. It [the Board] has corporate responsibility, under the leadership of the Chair, will:

- a. set strategic plans to deliver the functions of the Commission in terms of its duties under its governing legislation and, wherever relevant to those functions and duties, effectively contributing to achievement of the outcomes in the National Performance Framework, the Programme for Government and Scotland's Economic Strategy in collaboration with the SG and other public bodies;
- b. regularly scrutinise current and projected performance against the aims, objectives and targets set out in the Commission's plans, determine the steps needed to deal with any changes which are likely to impact on the strategic aims and objectives of the Commission or on the attainability of its operational targets and take decisions on remedial action where required;
- c. ensure that effective governance is established and maintained, including ensuring that decision-taking is open and transparent and, with support from the Accountable Officer and the Audit, Performance and Risk Committee, ensure that key risks are identified and managed;
- d. approve and submit the Commission's annual report to Scottish Ministers under and in terms of section 18 of the 2003 Act;
- e. promote the efficient, economic and effective use of resources consistent with the principles of Best Value, and regularly scrutinise financial performance and compliance with financial guidance issued by the SG;
- f. promote the wellbeing, learning and development of staff, provide support and challenge to the Chief Executive on staffing matters and while the Commission is not an NDPB, ensure insofar as relevant to its statutory functions and duties, that the Commission meets the Commission's staff management responsibilities described in the section below. e.g. appointing, with the approval of the Scottish Ministers, the Commission's Chief Executive and following appropriate approval of the Chief Executive's pay remuneration package in line with Scottish Government [policy for Senior Appointments in the public sector](#).
- g. approving the annual accounts and ensuring Scottish Ministers are provided with the annual report and accounts to be laid before the Scottish Parliament.

14. The Chair will:

- a. lead the Board, ensuring that all Board members have suitable induction to understand the role and their responsibilities, that the skills and experience of all Board Members are used effectively and that the Board undertakes regular self-assessment of its performance;
- b. ensure that the performance of each Board member is reviewed at least once per year and that the Board and/or individual Board members undertake development activity when required to ensure the effectiveness of the Board;
- c. ensure that the Board reviews its effectiveness annually;

- d. ensure that a Code of Conduct (aligned to the Model Code of Conduct for Board Members) is in place, that corporate actions are taken to implement it as required and that Members understand their responsibilities, using the guidance provided by the Standards Commission;
- e. work with the Portfolio Accountable Officer or their delegate(s) and the Public Appointments Team in SG on succession planning for the Board, action necessary to fill vacancies as they arise, skills requirements and promoting diversity by encouraging applications from less represented groups, including younger people, people from minority ethnic backgrounds and people with disabilities.

Individual Board Members' Responsibilities

15. 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.)

16. Specific guidance on how the Chair and other Board Members should discharge their duties will be provided in their appointment letters and in [On Board – A Guide for Members of Statutory Boards](#). Guidance on governance good practice is available in the Scottish Public Finance Manual and from the sponsor team, who may consult the SG Governance and Risk Team. A list of key aspects of governance to consider is included in the section on Governance and Risk below.

The Chief Executive

17. The Chief Executive is employed and appointed by the Board with the approval of the Scottish Ministers and is the principal adviser to the Board on the discharge of its functions and is accountable to the Board. The Chief Executive role is to provide operational leadership to staff working for the Commission and to ensure that its aims and objectives are met, its functions are delivered, and its targets are met through effective and properly controlled executive action.

18. The specific duties of the Chief Executive will be set out in a job description, and annual objectives will be agreed with the Chair and used in appraisal of the Chief Executive's performance.

19. In addition to any other specific duties, the Chief Executive will:

- a. advise the Board on the discharge of its responsibilities – as set out in this Framework Document, in the founding legislation and in any other relevant instructions and guidance issued by or on behalf of the Scottish Ministers;
- b. implement or oversee implementation of the decisions of the Board;
- c. work with the Board on preparation of the Strategic Plan, including liaising with the Senior Sponsor and/or Sponsor Team on key points which need to be addressed and the timetable for preparation and review, and work with the Board to ensure that business plans are put in place to meet the Strategic Plan aims, objectives and performance measures;

- d. lead and manage the staff of the Commission, ensuring their wellbeing, learning and development are prioritised, and ensures that the Commission aligns itself with the Commission's staff management responsibilities set out in the section below;
- e. manage the budget for the Commission in line with Scottish Government Finance guidance, policies and procedures, including the Scottish Public Finance Manual, and advise the Board on financial implications of all Board decisions, ensuring that appropriate financial appraisal and evaluation techniques are followed (see the Appraisal and Evaluation section of the SPFM);
- f. agree with the Board and the Portfolio AO or Senior Sponsor what information is required to enable the Board and SG to scrutinise the performance of the Commission and progress against overall strategic and business plan aims and objectives, and ensure that the agreed information is provided and that is both accurate and timely;
- g. the Chief Executive's Executive Team will manage the day-to-day relationship with the Senior Sponsor and/or Sponsor Team, with other SG officials who have an interest in the work of the Commission and other key stakeholders, including staff of other public bodies.

20. In advising the Board, the Chief Executive will ensure that the key governance issues highlighted in the section on Governance and Risk below are addressed.

The Accountable Officer

21. The Principal Accountable Officer for the Scottish Administration will designate a senior official in the Commission, usually this will be the Chief Executive unless there are specific reasons not to, as the Accountable Officer. The Accountable Officer is personally responsible for the propriety and regularity of the public finances of the Commission and ensuring that its resources are used economically, efficiently and effectively, as required by section 15 of the Public Finance and Accountability (Scotland) Act 2000 and may be called to give evidence to the Public Audit Committee of the Scottish Parliament. The responsibilities of the Accountable Officer are set out in full in the [Memorandum to Accountable Officers for Other Public Bodies](#) in the Scottish Public Finance Manual. 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 and deliver value for money for the public sector as a whole;
- ensuring compliance with relevant guidance issued by the Scottish Ministers, in particular the SPFM and Scottish Government policy for [public sector pay](#);
- signing the annual accounts and associated governance statements;

22. It is important for the Chair and other Board members to recognise that one aspect of these duties is the requirement under section 15(8) of the Public Finance

and Accountability (Scotland) Act 2000, where the Accountable Officer considers that any action they are required to take is not consistent with their Accountable Officer responsibilities, they must obtain written authority from the Board and send a copy of the written authority to the Auditor General for Scotland as soon as possible and sent to the Clerk of the Public Audit Committee. The Accountable Officer should consult the Portfolio Accountable Officer before seeking written authority from the Board in these circumstances and should always notify the Portfolio Accountable Officer when such a written authority has been issued.

23. Where the duties of the Accountable Officer and the Chief Executive are not combined in one person, the Accountable Officer will work closely with the Chief Executive on governance, and in particular to ensure that the key governance issues highlighted in the section on Governance and Risk below are addressed. 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 Scottish Ministers

24. The Scottish Ministers appoint the Chair and other Board Members and hold the Board to account for the performance of the Commission and its use of resources. Ministers are ultimately accountable to the Scottish Parliament for ensuring that the Board is discharging its duties effectively, although the Parliament will scrutinise the performance of the Commission directly as it does with all public sector bodies. The Scottish Ministers are not directly responsible for the operation of the Commission.

25. The Scottish Ministers will:

- appoint and remove the Chair and other members of the Commission;
- determine remuneration and allowances of the Chair and other Board members;
- approve the appointment of a Chief Executive by the Commission;
- Determine pensions, allowances and gratuities to or in respect of Commission staff and former staff;
- approval of the Commission's location of its office premises; and
- ensuring 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 Board's business, and in terms of protected characteristics under the Equality Act 2010.
- agree the strategic aims, objectives and key targets of the Commission in light of its statutory duties set out in the 2003 and 2000 Acts as part of the strategic planning process;
- agree the budget for the Commission and secure the necessary Parliamentary approval;
- approve the Code of Conduct of the Commission Board;
- Lay the Annual Report and the accounts of the Commission before the Scottish Parliament;

SG Portfolio Accountable Officer

26. The Principal Accountable Officer for the Scottish Administration (the Permanent Secretary of the SG) has designated the Director General for Health and Social Care as the Portfolio Accountable Officer (AO) for the SG portfolio budget which will provide funding for the Commission.

27. The Portfolio AO's duties are to establish a framework for the relationship between SG and a public body, oversee the operation of that framework, ensure the public appointments to the body are made appropriately and ensure that appropriate assurance is provided on the performance and governance of the body. These activities are known collectively as 'sponsorship'. In practice, the Portfolio AO is likely to delegate some or all sponsorship duties to a Director or Deputy Director as Senior Sponsor and/or to other SG officials in a 'Sponsor Team'. The responsibilities of a Portfolio Accountable Officer are set out in detail in the [Memorandum to Accountable Officers for Parts of the Scottish Administration](#).

28. The Portfolio AO will:

- a. make sure the framework document is agreed between the Scottish Ministers and the Board of the Commission, reviewed regularly and oversee the operation of the roles and responsibilities set out;
- b. ensure that financial and other management controls being applied by the Commission are appropriate and sufficient to safeguard public funds and conform to the requirements both of propriety and of good financial management;
- c. in line with [Code of Practice for Ministerial Appointments](#), ensure that public appointments are made in good time and secure appropriate skills, experience and diversity amongst Board members, working with the Chair on succession planning; that there is effective induction for new appointees; and ensure that there is regular review and a formal annual appraisal of the performance of the Chair;
- d. support regular and effective engagement between the Commission and the relevant Scottish Minister(s); and
- e. make sure there is clear, documented delegation of responsibilities to a Senior Sponsor and/or Sponsor Team and that the Board and senior officials of the Commission are aware of these delegated responsibilities.

29. The Portfolio AO remains personally answerable to the Scottish Parliament for the effectiveness of sponsorship activity.

Relationship between Scottish Government and the Commission

30. Strategic engagement between the Scottish Government 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. Specific governance and accountability roles are described in the section above. The Commission is an independent statutory body and is not a NDPB. As such the Commission Board sets the strategic direction of the organisation within its statutory remit. The Commission works with the Scottish Government to promote relevant public policy but also has duties to bring to Scottish Ministers attention where it believes public policy is not working to promote and protect the rights of individuals under its statutory remit.

31. This emphasises the need for cooperation and good communication, and particularly early warning from either side about any emerging risk or issue with significant implications for the operation or governance of the Commission.

32. The Sponsor Team's primary function is to carry out the responsibilities delegated to it by the Portfolio AO, directly or via the Senior Sponsor, as described above. In addition to ensuring that the arrangements in this framework document operate effectively, managing public appointments and providing assurance to the Portfolio AO, the Sponsor Team will usually be the first point of contact for the body on any issue with SG. As part of the assurance, they provide to the Portfolio AO, they must ensure that key actions and decisions agreed are documented and implemented. This includes ensuring that SG teams implement any agreed actions.

Commission's staff management responsibilities

Board responsibilities for the Commission's staff

33. The Chief Executive, challenged and supported by the Board, has responsibility for the recruitment, retention and motivation of its staff. The Board responsibilities toward 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 staffing, including grading and staff numbers, are appropriate to its functions and the requirements of economy, efficiency and effectiveness (subject to the SG policy on [public sector pay](#)) and performance of staff at all levels is regularly appraised and performance management systems are reviewed from time to time;
- staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the body's objectives;
- proper consultation with staff takes place on key issues affecting them, as appropriate, including working in partnership with trade unions;
- effective grievance and disciplinary procedures are in place and ensures that staff know where to access and how to use;
- effective whistle-blowing policy and procedures consistent with the Public Interest Disclosure Act 1998 are in place and ensures that staff know where to access and how to use; and
- a code of conduct for staff is in place.

Pay and conditions of service

34. The Commission will comply with policy on [public sector pay](#) in relation to staff and the Chief Executive. The Chief Executive will ensure that a pay remit, in line with the SG [public sector pay guidance](#), is submitted to the SG for approval in line with the timetable notified and a pay settlement is negotiated within the terms of the approved remit. This should normally be done annually, unless a multi-year deal has been agreed. Payment of salaries should also comply with the [Tax Planning and Tax Avoidance](#) section of the SPFM. Proposals on non-salary rewards will comply with the guidance in the [Non-Salary Rewards](#) section of the SPFM.

35. The Commission will also seek appropriate approval under the SG [public sector pay guidance](#) for the Chief Executive's remuneration package prior to appointment,

annually or when a new appointment or change to the remuneration package is being proposed.

Pensions, redundancy and compensation

36. Superannuation arrangements for staff are subject to the approval of the Scottish Ministers. Commission staff will normally be eligible for a pension provided by membership of the NHS Superannuation Scheme and all new staff will be offered membership to this scheme. Staff may opt out of the occupational pension scheme provided, but the employers' contribution to any personal pension arrangement, including stakeholder pension, will normally be limited to the national insurance rebate level.

37. 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 Scottish Ministers. Proposals on compensation payments will comply with the [Settlement Agreements, Severance, Early Retirement and Redundancy Terms](#) section of the SPFM. This includes referral to the Scottish Ministers of any proposed severance scheme (for example, a scheme for voluntary exit), business case for a settlement agreement being considered for an individual, or proposal to make any other compensation payment. In all instances, the Commission should engage with the Sponsor Team prior to proceeding with proposed severance options, and prior to making any offer either orally or in writing.

Strategic and business plans

38. The Commission will prepare a draft strategic plan every 3 years setting out its strategic aims, objectives and targets over that period, for consideration by the Scottish Ministers. When a new plan is to be prepared, the Chief Executive or their delegate will liaise with the Sponsor Team to agree the key points to be addressed and the timetable for preparation and review. The final, agreed version of the strategic plan will be published on the Commission's website.

39. The strategic plan will include the Commission's:

- purpose and principal aims;
- contribution to the national outcomes set out in the [National Performance Framework](#), the Programme for Government and Scotland's Economic Strategy in collaboration with the SG and other public bodies;
- analysis of the environment in which it operates;
- key objectives and associated key performance targets for the period of the plan, and the strategy for achieving those objectives;
- indicators against which its performance can be judged;
- details of planned efficiencies, describing how better value for money will be achieved, including through collaboration and use of shared services; and
- other key points agreed with the Sponsor Team as described above.

40. The strategic plan will inform the development of a separate annual business plan for each financial year, which will 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 business plan will be provided to the sponsor unit prior to the start of the relevant financial year.

Annual Report and Accounts

41. The Commission will publish an Annual Report of the discharge of its functions as required under section 18 of the 2003 Act.

42. The Commission will prepare annual audited accounts after the end of each financial year in accordance with relevant statutes and the specific accounts direction (including compliance with the FReM) 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.

43. The annual accounts must be submitted to the Scottish Government in accordance with the deadlines set annually by the Scottish Government. The accounts are then consolidated into NHS accounts and laid before the Scottish Parliament. The draft report should be submitted to the Scottish Government. 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 before Parliament 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 annual accounts and report.

44. The draft Annual Report should be submitted to the Scottish Government for information. The report is laid before the Scottish Parliament by Scottish Ministers after which it is published by the Commission. This is usually around October each year but could be completed at any time.

External audit

45. The Auditor General for Scotland (AGS) audits, or appoints auditors to audit, the Commission's annual accounts and passes them to the Scottish Ministers who then lay them before the Scottish Parliament, together with the auditor's report and any report prepared by the AGS. The AGS, or examiners appointed by the AGS, may also carry out examinations into the economy, efficiency and effectiveness with which the body has used its resources in discharging its functions and/or carry out examinations into the arrangements made by the Commission to secure Best Value.

46. The AGS, or the AGS's appointed auditors or examiners, have a statutory right of access to documents and information held by relevant persons, including any contractors to or recipients of grants from the Commission. The Commission will ensure that this right of access to documents and information is made clear in the terms of any contracts issued or conditions of any grants awarded and will also use its best endeavours to secure access to any other information or documents required which are held by other bodies.

Internal audit

47. The Commission will:

- establish and maintain arrangements for internal audit in accordance with the [Public Sector Internal Audit Standards](#) 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 Accountable Officer;
- ensure that the Sponsor Team and the Portfolio AO/Senior Sponsor receive promptly after they are produced or updated: the audit charter, strategy, periodic audit plans and annual audit assurance report, including the Head of Internal Audit opinion on risk management, control and governance – and provide any other relevant audit reports as requested by sponsors;
- keep records of and prepare and forward promptly to the SG an annual report on fraud and theft suffered by the Commission and notify the Portfolio AO or Senior Sponsor immediately of any unusual or major incidents.

48. The SG's Internal Audit and Assurance Directorate has an expectation of cooperation and access to relevant material when required, where there is a legal basis for doing so and unless the records contain personal, sensitive data as described under data protection legislation or where other relevant, legal exemptions apply. The parameters for sharing would be set out in an engagement document before information was shared. The Commission should make it clear on their own Privacy Notice that material may be shared with SG's Internal Audit and Assurance Directorate in certain circumstances

Budget management and delegated authority

49. Each year the Sponsor Team will send the Board a Budget Allocation and Monitoring letter, notifying the Commission of the budget provision, any related matters and details of the budget monitoring information required. The Commission will comply with the format and timing of the monitoring information requested and with any requests for further information.

50. The statement of budgetary provision will set out the budget within the classifications of resource Departmental Expenditure Limits (RDEL), capital DEL (CDEL) and Ring-fenced (non-cash) (RfDEL) – and, where applicable, Annually Managed Expenditure (AME). These categories are explained in [Annual Budget Processing](#) in the SPFM, and the Commission will not transfer budgetary provision between the categories without the prior approval of the SG Finance Directorate, which should be sought via the Sponsor Team. Transfers within the categories are at the discretion of the Board or, subject to delegated authority, the Chief Executive or relevant senior manager, if these do not breach any other constraints, for instance the approved pay remit.

51. Where budgetary provision includes projected income, including any income from disposal of non-current assets, the Chief Executive will ensure that the SG Finance Directorate and Sponsor Team are made aware promptly of any forecast changes in income – usually via the monthly budget monitoring statement. The Scottish Ministers expectation is that any shortfall in income will be offset by a matching reduction in gross expenditure, and prior approval from the SG Finance Directorate and the Sponsor Team must be sought for any alternative arrangement. Similarly, if income is higher than originally projected, this may only be used for

additional spending or to meet pressures with the prior approval of the SG Finance Directorate and Sponsor Team. Failure to obtain prior approval for the use of excess income to fund additional expenditure may result in corresponding reductions in budgets for the following financial year. The only exception is where the income is from gifts, bequests and donations but this must be spent within the same financial year as the receipt.

52. The Commission's specific delegated financial authorities - as agreed in consultation between the Board and the Scottish Ministers - are set out in Annex A. The Board will obtain the prior written approval from sponsors and SG Finance before entering into any undertaking to incur any expenditure that falls outside these delegations, and 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.

Governance and Risk

53. Guidance on governance requirements is available in several documents referred to earlier in this framework document:

- [the Scottish Public Finance Manual](#) (SPFM)
- [the Audit and Assurance Committee Handbook](#)
- [On Board – A Guide for Members of Statutory Boards](#)

54. If in any doubt about a governance issue, the Chair or Chief Executive should consult the Senior Sponsor or Sponsor Team in the first instance, and sponsors may in turn consult the SG Public Bodies Unit, the SG Governance and Risk Branch and/or other teams with relevant expertise.

55. The Board and Chief Executive are advised to pay particular attention to guidance on the following issues.

Risk management

56. The Commission must develop an approach to risk management consistent with the Risk Management section of the Scottish Public Finance Manual and establish reporting and escalation arrangements with the Portfolio AO or Senior Sponsor.

57. The Board should have a clear understanding of the key risks, threats and hazards it may face in the personnel, accommodation and cyber domains, and take action to ensure appropriate organisational resilience, in line with the guidance in: [Having and Promoting Business Resilience](#) (part of the Preparing Scotland suite of guidance) and the [Public Sector Cyber Resilience Framework](#).

Internal control

58. The Board should establish clear internal [delegated authorities](#) with the Chief Executive, who may in turn delegate responsibilities to other members of staff and establish an assurance framework consistent with the [internal control framework](#) in the SPFM.

59. Counter-fraud policies and practices should be adopted to safeguard against fraud, theft, bribery and corruption - see the [Fraud](#) section of the SPFM.

60. Any major investment programmes or projects undertaken should be subject to the guidance in the [Major Investment Projects](#) section of the SPFM and in line with

delegated authorities. The Sponsor Team 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 Office of the Chief Information Officer.

61. The Commission must comply with the requirements of the Freedom of Information (Scotland) Act 2002 and ensure that information is provided to members of the public in a spirit of openness and transparency. The Commission must also register with [Information Commissioners Office](#) and ensure that it complies with the Data Protection Act 2018 and the UK General Data Protection Regulations, commonly known as UK GDPR.

Budget and finance

62. Unless covered by a specific delegated authority, financial investments are not permitted without the prior approval of sponsors and SG Finance. This includes equity shares in ventures which further a body's objectives. Public bodies should not invest in any venture of a speculative nature.

63. Non-standard tax management arrangements should always be regarded as novel and/or contentious and must therefore be approved in advance by the Portfolio AO and SG Finance. 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, recover input tax where it is entitled to do so.

64. Optimising income (not including grant-in-aid) from all sources should be a priority, and sponsors should be kept informed about any significant projected changes in income. Novel or contentious proposals for new sources of income or methods of fundraising must be approved by sponsors and SG Finance. Fees or charges for any services supplied must be determined in accordance with the [Fees & Charges](#) section of the SPFM.

65. Gifts, bequests or donations received score as income and should be provided for in the agreed resource DEL and capital DEL budgets, but should not fund activities or assets normally covered by SG grant-in-aid, trading or fee income, and conflicts of interest must be considered – see the principles in the [Gifts](#) section of the SPFM. Note that this relates to gifts to the body - gifts to individuals are covered in the Model Code of Conduct.

66. Borrowing cannot be used to increase the Commission's spending power. All borrowing - excluding agreed overdrafts - must be from the Scottish Ministers in accordance with guidance in the [Borrowing, Lending & Investment](#) section of the SPFM.

67. Any lending must be in line with 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 must not 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), whether or not in a legally binding form, without the prior approval of sponsors, SG Finance and where necessary the relevant committee of the Scottish Parliament. Guarantees, indemnities and letters of comfort of a standard type given in the normal course of business are excluded from this requirement.

68. An accurate and up-to-date record of current and non-current assets should be maintained, consistent with the [Property: Acquisition, Disposal & Management](#) section of the SPFM. The Commission is also subject to the [SG Asset Management Policy](#), including the requirement for acquisition of a new lease, continuation of an existing lease, decision not to exercise a break option in a lease or purchase of property for accommodation / operational purposes, to be approved in advance by Scottish Ministers. The Property Controls Team should be consulted as early as possible in this process.

69. Assets should be recorded on the balance sheet at the appropriate valuation basis in accordance with the FReM. When an asset (including any investment) suffers impairment, when there is significant movement in existing provisions and/or where a new provision needs to be created, this should be communicated to sponsors and SG Finance as soon as possible to determine the implications for the Commission's budget.

70. Any funding for expenditure on assets by a third party should be subject to appropriate arrangements to ensure that they are not disposed of without prior consent and that a due share of the proceeds can be secured on disposal or when they cease to be used by the third party for the intended purpose, in line with the [Clawback](#) guidance in the SPFM.

71. Unless covered by a specific delegated authority, prior approval from sponsors and SG Finance is required before making gifts or special payments or writing off losses. Special payments and losses are subject to 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.

72. Unless covered by a specific delegated authority the Commission must 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 prior approval from sponsors. 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. on-property / accommodation related operating leases are subject to a specific delegated authority. There must be capital DEL provision in the budget allocation for finance leases and other transactions which are in substance borrowing.

73. Procurement policies should reflect relevant guidance in the [Procurement](#) section of the SPFM and any other relevant guidance issued by the SG's Procurement and Property Directorate. The SG's directory of [SG Framework Agreements](#), is available to support organisations but they should check the Framework Agreement's 'buyer's guide' before proceeding to ensure they are eligible to use the Framework

74. All matured and properly authorised invoices relating to transactions with suppliers should be paid in accordance with the [Expenditure and Payments](#) section of the SPFM wherever possible and appropriate within Scottish Ministers' target of payment within 10 working days of their receipt.

75. 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 sponsors and their finance business

partner subject to the level of inherent financial risk. 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 Commission. The relevant sponsor team will provide a Certificate of Exemption for Employer's Liability Insurance.

76. Unless covered by a specific delegated authority the Commission must not provide grant funding to a third party without prior agreement from sponsors and SG Finance. 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. Subsidy control requirements for any such funding are discussed below.

77. The EU State aid regime was effectively revoked from UK law from 1 January 2021 and subsidy control provisions are now covered by the UK-EU Trade and Cooperation Agreement (TCA). They are also covered by the UK's international obligations, including various Free Trade Agreements and those arising as a consequence of World Trade Organisation membership. Currently, any activity that the Commission undertakes itself, or funds other bodies to undertake, that can be offered on a commercial market for goods and services, is subject to the TCA subsidy rules. A full assessment is required prior to disbursing any funding, subject to the guidance in the subsidy regime section of the SPFM. The UK Subsidy Control Act 2022 received Royal Assent in April 2022 and the current position will be subject to change when the new regime comes into force.

Remuneration

78. Remuneration, allowances and any expenses paid to the Chair and Board Members must comply with the relevant section in the latest SG [public sector pay guidance](#) and any specific guidance on such matters issued by the Scottish Ministers.

79. Staff pay, pensions and any severance payments must be in line with the requirements of SG policy on public sector pay and the SPFM and the responsibilities described in the section on the Commission's Staff Management Responsibilities.

80. All individuals who would qualify as employees for tax purposes should be paid through the payroll system with tax deducted at source.

Banking and cash management

81. Banking arrangements must comply with the [Banking](#) section of the SPFM.

82. Cash management arrangements need to be addressed as well as overall budget management. 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 will be authorised by the Scottish Parliament in the annual Budget Act. The Commission will normally receive monthly instalments based on updated profiles and information on unrestricted cash reserves and will not seek any payment in advance of need. The Commission will keep its unrestricted cash reserves held during the year to the minimum level needed for efficient operation and any relevant liabilities which have to be met at the year-end. Grant in aid not drawn down by the end of the financial year will lapse. The Commission will not pay Grant-in-Aid into any restricted reserve it holds.

Helpful information

83. The Public Bodies Support Unit has produced a register of reporting requirements for devolved public bodies which will help in regard to compliance with certain legislative asks. Copies of the register can be obtained from the [PBSU mailbox](#).

Annex A

Annex A: Specific Delegated Financial Authorities

	Delegated Limit
Special payments	£5,000
Claims waived or abandoned	£5,000
Write-off of bad debt and/or losses	Cash losses £5,000 Stores and damage losses £20,000 Furniture and equipment £10,000
Others as appropriate e.g. Acquisition assets	All projects (other than IM&T projects) with a capital value of more than £2m (inclusive of VAT) require approval from Scottish Government All IM&T projects with a capital cost of £1m (inclusive of VAT) or greater require approval from Scottish Government These limits were set in HDL (2005) 16 and any changes will be announced in a similar manner.