

Framework document agreed between the
Scottish Government Directorate for
Population Health and the
Mental Welfare Commission for Scotland,
February 2018

Introduction

1. This framework document has been drawn up by the Scottish Government Directorate for Population Health (SGDPH) in consultation with the Mental Welfare Commission for Scotland (“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 SGDPH.

2. 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 SGDPH or the Commission will be taken forward in consultation and in the light of SGDPH priorities and policy aims. Any question regarding the interpretation of the document shall be determined by the SGDPH after consultation with the Commission.

3. Legislative provisions shall take precedence over any part of the document. This document supersedes the Management Statement and Financial memorandum agreed between the Scottish Government and the Commission in April 2011.

4. 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 SGDPH.

5. Copies of the document shall be placed in the Scottish Parliament Reference Centre (SPICe). It shall also be published on the and the Commission websites.

The functions, duties and powers of the Commission.

6. The Commission’s statutory duties are set out in the Mental Health (Care and Treatment) (Scotland) Act 2003 (as amended by the Public Services Reform (Scotland) Act 2010), the Adults with Incapacity (Scotland) Act 2000 as amended by the Victims and Witnesses Act 2014 and the Mental Health (Scotland) Act 2015.

The Commission implements these duties 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.

7. The Commission also has duties under the Victims and Witnesses (Scotland) Act 2014 for the governance of the National Confidential Forum. The responsibilities of the Scottish Government and the Commission in relation to this are set out in a separate memorandum of understanding.

8. 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

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

10. 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 pay policy and gain approval from Scottish Ministers on its pay policy. This is with the exception of medical consultants whose pay and conditions is 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](#)

11. For national accounts purposes the Commission is classified to the central government sector. The Commission's accounts are consolidated into those of the NHS in Scotland and it follows procedures outlined in the Health Board Manual.

The Commission's mission is:

12. 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

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

Objectives and key targets

14. The Commission will develop a set of strategic objectives which will be reproduced in the organisation's strategic and business plans. The strategic plan is approved by Scottish Ministers as set out below.

15. The Commission will also develop specific performance measures which are appropriate for assessing how successfully it is meeting its aims and objectives each year.

Relationship between Scottish Government and the Commission

16. Effective strategic engagement between the SGDPH 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 SGDPH and the Commission will take all necessary steps to ensure that their relationship is developed and supported in line with the majority of the jointly agreed principles set out in the statement on 'Strategic Engagement between the Scottish Government and Scotland's NDPBs' The Commission as an independent statutory body is not an NDPB as defined in this document. 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.

Governance and accountability

Legal origins of powers and duties

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

Ministerial responsibilities

18. The Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities and performance 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 objectives in light of its statutory duties and the policy and performance framework within which the Commission will operate (as set out in this framework document).
- providing information to the Scottish Parliament about the Commission as required.
- agreeing the budget and associated grant-in-aid requirement to be paid to the Commission and securing the necessary Parliamentary approval.
- carrying out responsibilities and exercising powers specified in the 2003 Act. These include:
 - appointments and any removal of the Chair and other members of the Commission;
 - power to determine remuneration and allowances of the Chair and other Board members;
 - prior approval of appointment of a Chief Executive by the Commission;
 - power to approve terms and conditions, and to determine remuneration and allowances, of Commission staff (including the Chief Executive) and Commission visitors in line with Scottish Government Pay Policy;
 - power to 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
 - laying of annual report and accounts before the Scottish Parliament.
 - 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.

Commission Board responsibilities

19. The Commission board, including the Chair, normally consists of 8 non-executive members (including the chair) appointed by the Scottish Ministers in line with the [Code of Practice for Ministerial Public Appointments in Scotland](#)

20. The role of the Board is to set the strategic direction, provide leadership, support and guidance to ensure the Commission delivers and is committed to delivering its statutory functions effectively and efficiently. It has corporate responsibility, under the leadership of the Chair, for the following:

- taking forward the strategic aims and objectives for the Commission agreed by Scottish Ministers and as determined by mental health and incapacity legislation;
- 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;
- approving the annual accounts and ensuring Scottish Ministers are provided with the annual report and accounts to be laid before the Scottish Parliament. The Chief Executive as the Accountable Officer of the public body is responsible for signing the accounts and ultimately responsible to the Scottish Parliament for their actions;
- 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, following appropriate approval of the Chief Executive's pay remuneration package in line with Scottish Government Pay Policy for Senior Appointments and in consultation with the Scottish Government, setting appropriate performance 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.

Further guidance on how the Board should discharge its duties is provided in appointment letters and in [‘On Board - A guide for Members of Statutory Boards’](#).

The Chair’s responsibilities

21. The Chair is accountable to the Scottish Ministers and, may also be held to account by the Scottish Parliament. Communications between the Commission Board and the Scottish Ministers should normally be through the Chair. The Chair 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.

22. In leading the Board the Chair must ensure that:

- the work of the Board is subject to regular self-assessment and that the Board is working effectively;
- 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, including on 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, based on the Scottish Government Model Code of Conduct approved by Scottish Ministers.

23. The Chair assesses the performance of individual Board members on a continuous basis and undertakes a formal appraisal at least annually. The Chair, 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

24. 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 – A Guide for members of Statutory Boards](#).

Commission Chief Executive responsibilities

25. The Chief Executive of the Commission is employed and appointed by the Commission with the approval of the Scottish Ministers. The Chief Executive is the Board's principal adviser on the discharge of its functions and is accountable to the Board. Their 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. Their 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 – a Guide for members of Statutory Boards'](#).

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 \(PPM\) 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;
- 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 compared with its aims and objectives;
- preparing the Commission's strategic and business plans;
- ensuring effective relationships with Scottish Government officials; and
- ensuring that timely forecasts and monitoring information on performance and finance are provided to the Scottish Government; that the Scottish Government 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 Scottish Government in a timely fashion.

Commission Accountable Officer responsibilities

26. The Principal Accountable Officer for the Scottish Administration (the Permanent Secretary of the Scottish Government) 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 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 Pay Policy;
- signing the annual accounts and associated governance statements; and
- a statutory duty to obtain written authority from the Board /Chair before taking any action which he/she considered would be inconsistent with the proper performance of the Accountable Officer functions. The Accountable Officer should also notify the relevant Portfolio Accountable Officer.

27. 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/Chair 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

28. The Principal Accountable Officer for the Scottish Administration (the Permanent Secretary of the Scottish Government) will designate the Director-General for Health and Social Care as the Accountable Officer for the Scottish Government portfolio budget for the Commission. 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 Scottish Government 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 Scottish Government 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 Scottish Government and the Commission in accordance with the strategic engagement principles; and
- there is effective continuous assessment and appraisal of the performance of the Chair 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

29. The Director for Population Health and Deputy Director for Mental Health and Protection of Rights have responsibility for overseeing and ensuring effective relationships between the Scottish Government and the Commission which support alignment of the Commission's business to the [Scottish Government'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 Population Health shall be responsible for assessing the performance of the Commission Chair, at least annually.

Sponsor unit responsibilities

30. The Scottish Government sponsor unit for the Commission is the Mental Health and Protection of Rights Division, Protection of Rights Unit (Legal Protections Team). It is the normal point of contact for the Commission in dealing with the Scottish Government. 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 Scottish Government and Scotland's Commissions](#)' 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 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 Scottish Government's risk assessment and management systems; and
- informing the Commission of relevant Scottish Government policy in a timely manner.

Internal audit

31. The Commission shall:

- 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 Chief Executive in his/her capacity as the Commission Accountable Officer.
- as requested forward timeously to the Scottish Government the audit charter, strategy, periodic audit plans and annual audit assurance report, including the Commission Head of Internal Audit opinion on risk management, control and governance and other relevant reports; and
- keep records of, and prepare and forward timeously to the Scottish Government an annual report on fraud and theft suffered by the Commission and notify the Scottish Government at the earliest opportunity of any unusual or major incidents.

32. The Scottish Government's Internal Audit Directorate has a right to access all relevant documents held by the Commission's internal auditor, including where the service is contracted out unless this would constitute an actionable breach of confidence, whereby the information was obtained in circumstances which imposed an obligation on it to maintain confidence. The Scottish Government has a right of access to all the Commission's records 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 Scottish Government has a right of access to all personnel for any purpose.

External audit

33. 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 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 send copies of all audit management reports (and correspondence relating to those reports) and responses to the Scottish Government.

34. 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, in contracts and any conditions to grants, for 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

35. The Commission must publish an annual report of its activities as well as 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.

36. The accounts must be prepared 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.

37. The annual accounts must be submitted to the Scottish Government by 31 May each year. The accounts are then consolidated into NHS accounts and laid before the Scottish Parliament. 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 annual accounts and report.

38. 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.

Management responsibilities

Strategic and business plans

39. The Commission must ensure that a strategic plan, approved by the Scottish Ministers, is in place and published on the Commission's website. The Commission shall agree with the Scottish Government 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 Scottish Government's primary purpose of increasing sustainable economic growth and alignment with the Scottish Government's [National Performance Framework](#) (NPF). The strategic 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 Scottish Government'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 Scottish Government and the Commission.

40. The strategic 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

41. Each year, in the light of decisions by the Scottish Ministers on the allocation of budgets for the forthcoming financial year, the Government will send to the Accountable Officer of the Commission a formal statement of its budgetary provision, a note of any related matters and details of the budget monitoring information required by the Government. The monthly monitoring is the primary means of in-year budgetary control across the Scottish Government. As such the bodies must comply with the format and timing of the monitoring together with any requests for further information. 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). The Commission will also inform the sponsor unit at the earliest opportunity if a requirement for Annually Managed Expenditure (AME) budget is identified. Transfers of budgetary provision between the different summary classifications as advised would require the prior approval of the Government Finance Directorate. Any proposals for such transfers should therefore be submitted to the sponsor unit. The Scottish Government should also be advised in the event that budget provision is forecast to be higher than estimated net expenditure. Subject to the above, transfers of provision within the summary classifications may be undertaken without reference to the Government, subject to any constraints on specific areas of expenditure e.g. the approved pay remit.

42. If the trading and other resource income realised (including profit or loss on disposal of non-current assets) – scored as negative RDEL, or the net book value of disposals of non-current assets – scored as negative CDEL - is less than included in the agreed budget the Commission shall, unless otherwise agreed with the Government, 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 agreed budgets the Commission must consult and obtain the prior approval of the Government before using any excess to fund additional expenditure or to meet existing pressures. (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, otherwise additional budget allocation will be required. In any event, income from all sources and all planned expenditure should be reflected in the monthly budget monitoring statement.

Cash management

43. Any [grant in aid](#) (i.e. the cash provided to the Commission by the Scottish Government 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 monthly 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.

44. The banking arrangements adopted by the Commission must comply with the [Banking](#) section of the SPFM.

Risk management

45. 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 an approach to risk management 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 audit committee is also required, at the earliest opportunity, to notify the relevant Scottish Government Audit and Risk Committee if it considers that it has identified a significant problem which may have wider implications.

Counter fraud arrangements

46. The Commission shall 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 action plan and robust reporting arrangements. This includes the establishment of avenues to report any suspicions of fraud.

Performance management

47. 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 board and copied to the Scottish Government. The Scottish Government shall assess the Commission's performance on a continuous basis and hold a formal internal review meeting at least twice a year. The responsible Cabinet Secretary / Scottish Minister shall meet the Commission chair at least once a year.

Commission staff management

Broad responsibilities for Commission staff

48. 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 Scottish Government Pay Policy for Staff Pay Remits);
- 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 professional, management and other expertise 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 policy and procedures consistent with the Public Interest Disclosure Act 1998 are in place; and
- a code of conduct for staff is in place

Pay and conditions of service

The Commission will comply with the Scottish Government Pay Policy in relation to staff and the Chief Executive. The Commission shall submit to the Scottish Government for approval (normally annually unless a multi-year deal has been agreed) a pay remit in line with the Scottish Government Pay Policy for Staff Pay

Remits and negotiate a pay settlement within the terms of the approved remit. Payment of salaries should also comply with the [Tax Planning and Tax avoidance](#) section of the SPFM. Proposals on non-salary rewards must comply with the guidance in the [Non-Salary Rewards](#) section of the SPFM.

Pensions, redundancy and compensation

49. Superannuation arrangements for the Commission Staff are subject to the approval of the Scottish Government. Commission staff shall normally be eligible for a pension provided by membership of the NHS Superannuation Scheme and all new staff will be offered membership of this scheme. 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.

50. 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 Government. Proposals on compensation payments must comply with the [Severance, Early Retirement and Redundancy Terms](#) section of the SPFM. This includes referral to the Scottish Government of any proposed severance schemes (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, a body should engage with the Scottish Government prior to proceeding with proposed severance options, and prior to making any offer either orally or in writing.

Asset and property management

51. The Commission shall maintain an accurate and up-to-date record of its current and non-current assets consistent with the ["Property: Acquisition, Disposal & Management"](#) section of the SPFM. "Non-current" assets should be disposed of in accordance with the SPFM. The Scottish Government's Property Division should be consulted about proposed disposals of property that the Commission holds for operational purposes (rather than investment) 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](#).

All assets (property, plant and equipment) are to be properly recorded and updated as necessary by the Commission.

Specific financial provisions

Delegated authorities

52. The Commission's specific delegated financial authorities - as agreed in consultation between the Commission and the Scottish Government - are set out in the attached Appendix. The Commission shall obtain the Scottish Government'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 Scottish Government approval included in the SPFM and/or this document. Prior Scottish Government 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

53. The Commission shall seek to optimise income - grant in aid does not qualify as income - from all sources, including from the European Union, and ensure that the Scottish Government is kept informed. Novel or contentious proposals for new sources of income or methods of fundraising must be approved by the Scottish Government. Fees or charges for any services supplied by the NDPB shall be determined in accordance with the [Fees & Charges](#) section of the SPFM.

54. Gifts, bequests or donations received by the Commission score as income and should be provided for in the agreed resource DEL and capital DEL budgets, updated as necessary in consultation with the Scottish Government. 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. Scottish Government 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

55. Unless covered by a specific delegated authority the Commission shall not make any financial investments without the prior approval of the Scottish Government. 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

56. 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

57. 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 Scottish Government'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

58. Non-standard tax management arrangements should always be regarded as novel and/or contentious and must therefore be approved in advance by the Scottish Government. 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 implications of VAT in relation to procurement and shared services should be considered at an early stage to ensure that financial efficiency is achieved. The Commission must also ensure that it accounts properly for any output tax on sales or disposals.

Lending and guarantees

59. 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 Scottish Government'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, 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

60. Unless covered by a specific delegated authority the Commission shall not, without the Scottish Government's prior agreement, provide grant funding to a third party. Such funding would be subject to the guidance in the [State Aid](#) 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

61. 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 Scottish Government 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 Scottish Government. 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

62. The Commission is subject to the Scottish Government 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 Scottish Government shall consider, on a case by case basis, whether or not it should make any additional resources available to the Commission. The Scottish Government will provide the Commission with a Certificate of Exemption for Employer's Liability Insurance.

Employers' liability insurance is provided through membership of the NHS in [Scotland Clinical Negligence and Other Risks Scheme \(CNORIS\)](#)

Procurement and payment

63. The Commission's procurement policies shall reflect relevant guidance in the [Procurement](#) section of the SPFM and relevant guidance issued by the Scottish Government'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 [Best Value](#), the highest professional standards and any legal requirements. All consultancy contracts over £100,000 or any proposal to award a contract without competition (non-competitive action) over the value of £100,000 must be endorsed in advance by the Chief Executive.

64. 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 is 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 Scottish Government's Office of the Chief Information Officer.

65. 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 Scottish Government's target for the payment of invoices within 10 working days of their receipt.

Gifts made, special payments and losses

66. Unless covered by a specific delegated authority the Commission shall not, without the Scottish Government's prior approval, make gifts or special payments or write-off of 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.

Clawback

67. 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.

State Aid

68. State Aid is a European Commission term which refers to forms of public assistance, given to undertakings on a discretionary basis, which has the potential to distort competition and affect trade between Member States of the European Union. 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 state aid rules. A state aid assessment is therefore required prior to disbursing any funding and would be subject to the guidance in the state aid section of the SPFM.

Board expenses

69. Remuneration (daily fees), allowances and expenses paid to board members [and any pension arrangements] must comply with the Scottish Government Pay Policy for Senior Appointments and any specific guidance on such matters issued by the Scottish Ministers.

**EXECUTIVE COMMISSION MODEL FRAMEWORK DOCUMENT: APPENDIX
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 |
| Acquisition of assets | <p>All projects (other than IM&T projects) with a capital value of more than £2m (inclusive of VAT) require approval from SGDPH</p> <p>All IM&T projects with a capital cost of £1m (inclusive of VAT) or greater require approval from SGDPH.</p> <p>These limits were set in HDL (2005) 16 and any changes will be announced in a similar manner.</p> <p>All PPP schemes are subject to Departmental approval.</p> |