I refer to the Committee’s call for evidence on the Public Services Reform (Scotland) Bill (“the PSR Bill”) and am writing to provide the Committee with my views on those clauses in the Bill that directly affect the office of Auditor General for Scotland.

I do not consider there is any conflict of interest affecting me personally in this matter, since the provisions of the Bill, if enacted, would affect the office held by future postholders rather than myself.

I welcome the proposal that future Auditor General will hold office for a fixed period of 8 years. This will help to ensure the independence of the post and stability and continuity in the audit arrangements.

I also welcome the explicit power to publish the results of examinations under section 23 of the Public Finance & Accountability (Scotland) Act 2000 (“the PFA Act”) and that reports under sections 22(4) and 23 of the PFA Act will attract absolute privilege.

There are three important issues relating to the independence of the Auditor General and Audit Scotland on which I would like to offer comments

**Auditor General’s terms of appointment**

The first issue relates to the arrangements under which the terms and conditions and remuneration of future holders of the post of Auditor General are to be determined. This issue is not addressed in the Bill and I strongly recommend that it be given further consideration to safeguard the independence of the Auditor General.

The PFA Act currently provides, at section 13(1), that the Auditor General is entitled to a salary of such amount and such allowances as the Parliamentary Corporation may determine. Section 13(4) also states that a person appointed to be Auditor General holds office on such terms and conditions as the Parliamentary Corporation may determine.

It is a fundamental principle of audit that the auditor is completely independent of bodies being audited. The Auditor General is required by the PFA Act to audit the accounts of the Parliamentary Corporation. The audit work is currently carried out by the staff of Audit Scotland with the audit opinion being formally signed by the Auditor General. The Auditor General carries personal responsibility for deciding whether there should be a report attached to the accounts under section 22 of the PFA Act and for determining whether an examination under section 23 should be carried out.
The current position is incompatible with the principles regarding independence of auditors which are set out in the Ethical Standards for Auditors issued by the UK Auditing Practices Board and which have been adopted by all auditors in the UK, in both the public and the private sectors.

The Scottish Commission for Public Audit (the SCPA) made the case for greater transparency and openness in the appointment of some members of the Audit Scotland Board and for one of the non executive members with no connection to either the Auditor General or the Accounts Commission to be appointed by the SCPA as Chair of the Audit Scotland Board. I support these recommendations which have been provided for in the Bill, not least because they will build Parliamentary and public confidence in the independence of the Board. The same principles of transparency, openness and independence should equally be applied in future to the arrangements for determining the terms and conditions of the post of Auditor General.

The PSR Bill provides an opportunity to remove any perception that the Auditor General's independence could be compromised by the terms of appointment and remuneration being determined by an audited body. Parliament accepted a recommendation of the Financial Issues Advisory Group that the Scottish Commission for Public Audit should be created to scrutinise the funding and audit of the Auditor General. With the creation of Audit Scotland as the service provider to the Auditor General under section 12 of the PFA Act, this in effect involved the scrutiny of the funding and audit of Audit Scotland. This arrangement has worked well over recent years and has ensured that matters relating to the funding and audit of Audit Scotland are independent of all audited bodies, including the Parliamentary Corporation.

I therefore recommend that the SCPA should be given responsibility for deciding on the terms and conditions of future holders of the post of Auditor General. This would achieve a similar degree of independence for matters relating to the terms and conditions of the Auditor General as is the case for the budget and audit arrangements that currently apply to Audit Scotland.

This arrangement would provide for Parliament to maintain its interest and role in everything pertaining to the resourcing of the Auditor General and Audit Scotland, but it would remove any perceived conflict of interest on the part of members and officers involved in the Parliamentary corporation which is an audited body.

New powers for Ministers

The second issue on which I would like to comment relates to safeguarding the independence of Audit Scotland in relation to the powers being proposed in the Bill for the Scottish Ministers. Section 10(1) of the Bill, taken with 10 (2), gives power to the Scottish Ministers to make any provision by order which they consider would improve the exercise of "public functions" having regard to efficiency, effectiveness and economy.

"Public functions" are functions of the persons, bodies and office holders listed in Schedule 3 of the Bill.
Schedule 3 (Improvement of Public Functions: Listed Bodies) includes both the Accounts Commission and Audit Scotland in the list of Scottish public authorities with mixed functions or no reserved functions.

I recognise that the provisions are designed to provide an efficient way of making future changes to the public sector landscape and it would be unfortunate if changes were not able to be made simply because either the Accounts Commission or Audit Scotland were not included in the list of bodies to which the provisions can apply. I would however like to emphasise the independence of these bodies in the way in which they conduct their activities and it will be important to ensure that the provisions are not used in any way which undermines that independence.

**Appointments to the Audit Scotland Board**

A final area that I would like to offer a thought on is the process for the appointment of future members of the Audit Scotland Board. The Public Appointments and Public Bodies etc (Scotland) Act 2003 provides for the creation of the Office of the Commissioner for Public Appointments in Scotland (OCPAS) and its oversight of public appointments made by Scottish Ministers. It might be appropriate to consider whether the scope of the legislation and of OCPAS’s remit could be extended to cover other public appointments including those of the Audit Scotland Board.

I trust that the Committee will find this contribution of some assistance in its deliberations. I and the Director of Audit Strategy in Audit Scotland, Russell Frith, would be very pleased to provide further information. Russell Frith is a member of the UK Auditing Practices Board which sets the Ethical Standards for Auditors across the United Kingdom in both the public and the private sectors.

Robert W Black  
Auditor General for Scotland