1. The Bill raises many questions of administrative law about the relation between government and other public bodies that call for detailed legal analysis; I would echo points made by my colleague Prof Chris Himsworth (PSR 7). My purpose here is to provide a perspective from politics and public management on what the Scottish Government (SG) is seeking to do in its proposed legislation.

2. The Bill is a product of two areas of current concern in public policy:
   i) the fascination of governments with public sector organisational forms that are not direct ministerial or local authority departments but have other accountability structures, typically boards – these 'quangos' are frequently called into being to meet political problems, but then often 'culled' to appear to be cutting the size of government;
   ii) the interest in getting better value from government spending by improving the processes that convert resource inputs into delivered services.

3. The approach in the present Bill is to rationalize quangos in some areas and give the SG full rights to intervene in the business of those that remain in the name of efficiency. Sections of the Bill take Scotland in the direction of a single care agency (Social Care and Social Work Improvement Scotland) and a single health quality agency (Healthcare Improvement Scotland). These changes demand consideration on their merits by those with expertise in health and social care. Similarly, the statutory basis proposed here for Creative Scotland is the perhaps unnecessary outcome of what has turned out to be an illustration of all the things that can go wrong when bodies are 'simplified'. These proposals are not part of public services reform in the generic sense and might have deserved separate bills.

4. The backdrop to this in the Scottish Government’s policy on Simplifying Public Services; on 30 January 2008 Alex Salmond announced a reduction of 52 in the 199 previously-identified national organisations. The arguments presented for this were on the desirability of a ‘leaner, more strategic’ landscape able to promote value for money and user focus. Accountability issues, traditionally the most prominent considerations in justifying particular organisational forms, were much less prominent and were presented in the context of ‘effective sponsorship arrangements’, which sounds reasonable but is really about giving government the means of control it seeks. This policy has been pursued since and its results can be seen on http://www.scotland.gov.uk/Topics/Government/public-bodies/News under the title Simplification News. Progress in cutting the quangos is charted on a ‘simplification tracker’ on the SG website.
5. The concept of ‘simplification’ poses many analytical problems. If simpler means fewer it can be a numbers game. In 2001 the Labour-Liberal Democrat Executive proposed to shed 43 out of 113 bodies it studied, with accountability arguments strong. Counting public organisations large and small in an aggregate total is a crude approach that does not aid the discernment of the best arrangements for each service. If simpler means a more coherent conceptual pattern of public authorities it is not taken very far in the present exercise – and indeed the various forms (public corporation, executive agency, company limited by guarantee etc) are inherited from before devolution.

6. Despite its title the present bill is more like a miscellaneous provisions bill, an umbrella for a number of things that the SG needs or wants to do. Parts of the Bill deal with particular organisations. If they are set up by statute, their powers and existence can only be amended by statute and the opportunity is being taken here to do this. It makes sense that if a body is set up, usually for a political purpose, by primary legislation – and full parliamentary accountability – it should only be changed by primary legislation.

7. Under the Bill, the SG would be less inconvenienced by any such constraints. Section 10 (3) (b) allows quangos (as listed in schedule 3) to be abolished by order. The great majority of bodies in the baseline of 199 bodies are covered by this – the main exceptions being National Parks Authorities, NHS Bodies, Executive Agency and fire, prisons and police inspectorates. Ombudsmen appointed by parliament are included, but not the Parliamentary Standards Commissioner.

8. These powers would be part of a wider ‘catch-all’ provision (section 10 (1)) allowing ministers, in respect of bodies listed in schedule 3, to ‘by order make any provisions which they consider would improve the exercise of public functions’, having regard to efficiency, effectiveness and economy. These famous 3 Es have a precise definition in economic theory – efficiency is improving the conversion mechanisms between inputs and outputs so that more outputs can be produced with the same or fewer inputs (or cash and/or time released); effectiveness is the relation between inputs, outputs and outcomes (the desired end-states such as better health, education or environment); economy is doing the same things more cheaply. All public policy should ‘have regard’ to these considerations and it is difficult to see how ministers would be held to account about the propriety of their interventions under this clause. Section 11(3)(e) allows any persons exercising ‘functions of a public nature’ (presumably contracted service providers) to be subject to the order-making powers of 10(1). Neither the explanatory memorandum of the bill nor the SG’s Public Services Reform: Simplification and Improvement Update Document (May 2009. Para 4.6) leave us much clearer about how and why these powers might be used. Safeguards in section 12, including that the use of powers must be ‘proportionate to the policy objective’, would be hard to evaluate and apply.

9. The previous administration’s line was to favour direct accountability of ministers to Parliament without any arm’s length organisational form. This approach was taken furthest by the Welsh Assembly Government when they absorbed, among other bodies, the Welsh Development Agency, Wales Tourist Board and Education
and Learning Wales. The present SG went down this route when Communities Scotland was taken within the government as an executive agency and then lost that status also, and it has also followed it on some fisheries and fire functions. Experience has suggested that this kind of ‘simplifying’ may actually be very complex as terms and conditions of staff and the business systems of the organisations have to be reconciled and integrated.

10. The present Scottish Government’s policy seems somewhat different from it predecessor. It is based less on democratic theory than on a pragmatic search for delivery mechanisms that are ‘fit for purpose’ in particular contexts, within a framework of government’s having its way when it needs to. The mechanisms used are basically derived from pre-devolution models.

11. This seems to me to be a little worrying, because it echoes the approach of the last two Scottish administrations to efficiency savings. When they are applied to non-ministerial bodies they are generalised and assumed to be feasible; inside the civil service tent they are applied with caution and qualification. It is easy to fall into a mentality of questioning other public bodies and issuing them with instructions that are not based upon a deep understanding of the business they have to do.

12. Therefore I would hope that the Committee focus in particular on the section 10 catch-all powers – how will they be used and how the consideration of the ‘three Es’ will be tested. In general I hope the committee can take forward our thinking on the right architecture of the devolved system, in place of the present jumble of legal and political forms of ‘Scottish public authority’ inherited from the UK system. The ‘simplification’ strategy claims to do this, but is in practice taking the form of reducing numbers within the present landscape. The present strategy may or may not be simplifying government, but the Bill would certainly simplify the task of the executive branch when it wishes to reconstruct or direct public bodies in Scotland, a process that should be of concern to the Parliament.

2 September 2009