Finance Committee

Public Services Reform (Scotland) Bill

Submission from the Scottish Commission for Public Audit

Thank you for your invitation to the Scottish Commission for Public Audit (SCPA) to provide comments on the provisions in the Public Services Reform (Scotland) Bill. The role of the SCPA is to scrutinise the budget of Audit Scotland, and our comments concentrate on issues related directly to that role.

We note that the Finance Committee has received written and oral evidence from the Auditor General, the Audit Scotland Board and the Accounts Commission. The issues covered by that evidence include matters which the SCPA has previously considered in some depth during our review of the corporate governance arrangements of Audit Scotland, published in October 2008.

We welcome the provisions in section 98 of the Bill, namely:

- 98(2) – to provide that it will be the SCPA which in future appoints three members of the five-person Audit Scotland board rather than them being appointed by the other two members (the Auditor General and the Chair of the Accounts Commission).
- 98(8) – to provide that the SCPA will determine the terms and conditions of those three members, that their term of appointment will be for three years with the possibility of this being renewed once and that the SCPA will appoint one of those three to chair the board.
- 98(4) – to provide for future holders of the post of Auditor General to be appointed on a single non-renewable eight-year term.
- 98(7) and 98(9)(b) – to provide for the defence of privilege against defamation proceedings to be extended to the reports of the Auditor General and to the proceedings of the SCPA.

All of those provisions accord with recommendations made by the SCPA in its 2008 report.

We are aware that some evidence to the Finance Committee has suggested that the SCPA should take over responsibility for determining the Auditor General’s salary and terms and conditions from the SPCB. It is suggested that this responsibility currently raises at least a perceived conflict of interest for the SPCB in that it is a body audited by the Auditor General.

The SCPA considered this issue in 2008. We were, and remain, concerned that taking on this role would potentially change the nature of the SCPA and its relationship with Audit Scotland. We do not believe that such a responsibility would fit with our role of holding Audit Scotland (and by extension the Auditor General as accountable officer for Audit Scotland) to account. We are not persuaded that, given the mechanisms it has put in place for deciding issues of salary and terms and conditions, there is a credible concern about the ability of the SPCB to undertake its responsibilities in this area without conflict of interest. Any advantage that might be perceived by passing the responsibility to the SCPA would appear to
be illusory as the SCPA would need to rely on advice from the same sources as does the SPCB. The SCPA, therefore, favours no change being made to the SPCB’s responsibilities in respect of the Auditor General. For clarification, I should point out that we also recommend no change in the process by which the Auditor General is selected and appointed.

We are also aware that it has been suggested that the Office of the Commissioner for Public Appointments in Scotland (OCPAS) should be given a formal role in the recruitment of independent non-executive members of the Audit Scotland board, by amending the Act establishing OCPAS to make Audit Scotland subject to its jurisdiction. Such a role for OCPAS would not change the proposed future responsibility of the SCPA to appoint three members of Audit Scotland’s board. It would simply mean that the process would need to follow OCPAS guidance and involve an OCPAS assessor to verify the process. We note that involvement of OCPAS would have a cost implication that should be clearly understood before such a provision is agreed. However, the SCPA would welcome an amendment to the Public Services Reform Bill to involve OCPAS in its proposed responsibilities under section 98. We are not aware of whether OCPAS has been consulted on this possibility.

Finally, we are aware that Part 2 of the Bill proposes to grant significant powers to the Scottish Ministers to bring forward in subordinate legislation proposals to make “further necessary and proportionate changes to the landscape of public bodies and public functions .... and to remove or reduce unnecessary burdens throughout the Scottish economy in devolved areas”. The Scottish Government has suggested that this allows rapid changes without the need for primary legislation, and that the powers would be subject to a number of limitations and safeguards. All public bodies listed in Schedule 3 of the Bill would be subject to having their constitution or functions modified under these powers.

The SCPA makes no comment on the proposed powers themselves. However, we note that the SCPA is included in the list of public bodies in Schedule 3. We note that a number of witnesses to the Finance Committee have argued that it is inappropriate for bodies which are responsible to the Parliament rather than the Scottish Government (or whose primary role is to give some kind of scrutiny assurance to the Parliament) to be subject to modification by subordinate legislation in this way. We believe that the SCPA falls squarely into this category and that the form and functions of the SCPA as set out in primary legislation are fundamental to its nature and independence. The role of the SCPA is to provide assurance directly to the Parliament that Audit Scotland (whose budget is top-sliced from the Scottish Consolidated Fund specifically so that it is seen to be independent of Government) is using its resources in an efficient manner. We believe that it would be inappropriate for the Scottish Government to be perceived as able potentially to undermine the SCPA’s independence by modifying its operation and so we are opposed to the SCPA being included in Schedule 3.

We note that similar concerns are raised by the inclusion of Audit Scotland itself in Schedule 3, and are aware that other witnesses have already raised this issue with the Finance Committee. The SCPA’s role already allows it sufficient means to provide assurance that Audit Scotland is using resources in a way that is as
economic, efficient and effective as possible and that any changes to improve efficiency can be readily achieved without the need for legislation.

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Convener