



Framework Document between Transport Scotland and the Scottish Road Works Commissioner

Introduction

1. This Framework Document has been drawn up by Transport Scotland (“TS”), an Executive Agency of the Scottish Government (“SG”), in consultation with the Scottish Road Works Commissioner (“the Commissioner”). It sets out the broad framework within which the Commissioner will operate and defines key roles and responsibilities which underpin the relationship between the Commissioner and TS. The office of the Scottish Road Works Commissioner (“the Body”) is listed as an “Other Significant National Body” in the list of Public Bodies¹. While this document does not confer any legal powers or responsibilities, it forms a key part of the accountability and governance framework applicable to the Commissioner and the Body and should be reviewed and updated as necessary. Any proposals to amend the Framework Document either by TS or the Commissioner will be taken forward in consultation and in the light of SG and TS priorities and policy aims. Any question regarding the interpretation of this document shall be determined by TS after consultation with the Commissioner. Legislative provisions shall take precedence over any part of this document.
2. References to the Body or the Commissioner include any subsidiaries and joint ventures owned or controlled by the Body or the Commissioner. Neither the Body nor the Commissioner shall establish subsidiaries or enter into joint ventures without the express approval of the Transport Strategy and Analysis Directorate (“the TS Sponsor Unit”).
3. Copies of the Framework Document shall be placed in the Scottish Parliament Information Centre (SPICe) and also published on the TS and the Body’s websites.

Purpose

4. The Commissioner is to contribute to the achievement of the SG’s primary purpose, namely to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth, the Commissioner and Body will achieve this by aligning its aims and objectives with the Programme for Government (PfG)², SG’s published Economic Strategy³ and the National Performance Framework (NPF)⁴. The Commissioner will also contribute, working as a partner, to the National Transport Strategy’s (NTS2)⁵ vision and priorities.

The Functions and Powers of the Commissioner

5. The main functions (including powers and duties) of the Commissioner are those set out in Part 9 of the Transport (Scotland) Act 2019 (“the 2019 Act”); Part 2 (and in particular section 17 and schedule 2 of) the Transport (Scotland) Act 2005 (“the 2005 Act”); Part IV of the New Roads and Street Works Act 1991 (“the 1991 Act”); and the Scottish Road Works Commissioner (Imposition of Penalties) Regulations 2007 (“the 2007 Regulations”). The Commissioner’s primary functions, as established through the legislative regime as outlined, include:

¹ Other Significant National Bodies - <https://www.gov.scot/publications/national-public-bodies-directory/pages/other-significant-national-bodies/>

² Programme for Government - <https://www.gov.scot/programme-for-government/>

³ Scotland’s Economic Strategy - <https://www.gov.scot/publications/scotlands-economic-strategy/>

⁴ National Performance - <https://nationalperformance.gov.scot/>

⁵ National Transport Strategy - <https://www.transport.gov.scot/our-approach/national-transport-strategy/>

- Monitoring the carrying out of works on roads in Scotland undertaken by both roadworks authorities (local councils being the Roads Authority for local roads and TS being the Roads Authority⁶ for trunk roads) and statutory undertakers (utilities providers);
- Promoting compliance with the 1991 Act (as amended by the Transport (Scotland) Acts 2005 and 2019) and the obligations imposed under it;
- Promoting the pursuit of good practice by those persons who have functions conferred upon them or permissions granted to them by or under the 1991 Act;
- Acting as Accountable Officer for the Body and having responsibility for the propriety and regularity of the public finances of the Body for which the Commissioner is answerable to the Scottish Parliament;
- Acting as keeper for the Scottish Road Works Register in accordance with section 112A of the 1991 Act (as amended by section 113 of the 2019 Act, upon commencement), ensuring it is maintained regularly;
- Preparing for, and establishing an inspection function within the Body in accordance with section 110 of the 2019 Act (once brought into force through commencement regulations and after appropriate additional funding has been agreed) ; and
- All other functions imposed upon the post of Commissioner by the 2019 Act, the 2005 Act, the 1991 Act and the 2007 Regulations.

6. In addition to the functions noted at paragraph 5 above, as Commissioner, you will:

- Provide effective leadership and direction to the Body, including in relation to staff members of the Body;
- Establish good partnership working with key partner organisations, including the Roads Authorities and Utilities Committee (Scotland), the Scottish Road Works Register Steering Group, statutory undertakers, Roads Authorities and trunk road operators⁷. You may be invited to attend meetings of these bodies and it will be within your discretion whether to attend or permit members of the Body`s staff to attend for the purpose of fostering good working relations;
- Use effectively the powers available to you under legislation to investigate and direct roads authorities, statutory undertakers and any others who are failing to comply with the legislative obligations incumbent upon them and take appropriate measures or actions to address this;
- Take an independent view and make succinct, transparent and well-reasoned judgements;
- Assist, where possible, in the resolution of disputes between the roads authorities and statutory undertakers;
- Routinely review the operation of Regulations and Codes of Practice⁸ and make recommendations on the efficacy of the Regulations and Codes to the TS Sponsor Unit with a view to ensuring they remain fit for purpose;
- Ensure high standards of propriety within the Body and the efficient and effective use of staff and resources;
- Undertake regular reviews of the terms of employment of the Body`s staff, including to ensure that they comply with all relevant employment law;
- Act as accountable officer for the Body and comply with the requirements of the Scottish Public Finance Manual⁹ and
- Carry out other tasks that may reasonably be required.

⁶ Roads Scotland Act 1984 - <https://www.legislation.gov.uk/ukpga/1984/54/section/151>

⁷ SRWC RAUCs and Community - <https://roadworks.scot/raucs-and-community/community>

⁸ SRWC Legislation and Guidance - <https://roadworks.scot/legislationguidance>

⁹ Scottish Public Finance Manual - <https://www.gov.scot/publications/scottish-public-finance-manual/>

Powers

7. The powers of the Commissioner include:
- Requiring a Roads Authority or a statutory undertaker to provide such information relevant to their respective functions and activities as the Commissioner reasonably requests, in accordance with section 18 of the 2005 Act.
 - The imposition of a penalty of up to £50,000 if satisfied that a Roads Authority or statutory undertaker has failed to comply with the duties imposed on them by sections 118 and 119 respectively of the 1991 Act, in accordance with regulations 3 and 4 of the 2007 Regulations.
 - Such other powers as they are commenced under the 2019 Act.

Relationship between Transport Scotland and the Commissioner

8. Effective strategic engagement between TS and the Commissioner is essential in order that effective working practices are established for the purposes of maintaining and improving public services and the delivery of improved outcomes. Both TS and the Commissioner will take all necessary steps to ensure that their relationship is developed and supported in line with the jointly agreed principles set out in the statement on 'Strategic Engagement between the Scottish Government and Scotland's Non-Departmental Public Bodies (NDPB's)¹⁰.

9. The TS Sponsor Unit will meet at least once a month with the Commissioner to discuss matters arising, including staffing budgets. The TS Sponsor Unit also meets with the staff of the Body not less than twice a year.

Governance and accountability

Legal basis of powers and duties

10. The Commissioner is an independent statutory office holder established under section 16 of the 2005 Act and is accountable to the Scottish Ministers. Neither the Body nor the Commissioner carries out its functions on behalf of the Crown.

Ministerial responsibilities

11. Scottish Ministers' overarching responsibilities relevant to the Commissioner and the Body include:
- considering and agreeing the Body's strategic aims and objectives and key targets as part of the corporate planning process;
 - considering and agreeing the budget and the associated grant in aid requirement to be paid to the Body through securing the necessary Parliamentary approval; and
 - other matters including giving consent to lay the annual accounts (together with the annual report) before the Parliament.

¹⁰ SG NDPB's Strategic Engagement <https://www.gov.scot/publications/strategic-engagement-between-the-scottish-government-and-ndpbs/>

The TS Sponsor Unit will support the Commissioner in normal day to day business

Commissioner Accountable Officer responsibilities

12. The Principal Accountable Officer for the Scottish Administration (the Permanent Secretary of the SG) will designate the Commissioner as the Accountable Officer for the Body. 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.¹¹ The functions of the Commissioner as the Accountable Officer include:

- ensuring the propriety and regularity of the Body's finances and that there are sound and effective arrangements for internal control and risk management;
- ensuring that the resources of the Body are used economically, efficiently and effectively and that appropriate arrangements are in place to secure Best Value¹²;
- ensuring compliance with relevant guidance issued by the Scottish Ministers, in particular the Scottish Public Finance Manual (SPFM)¹³ and SG Pay Policy¹⁴;
- signing the annual accounts and associated governance statements.

Portfolio Accountable Officer responsibilities

13. The Principal Accountable Officer for the Scottish Administration will designate the Chief Executive of TS as the [Portfolio] Accountable Officer for the SG budget for the Commissioner and the Body. Withdrawal of the Accountable Officer designation would also be a matter for the Principal Accountable Officer. The responsibilities of a Portfolio Accountable Officer are set out in detail in the Memorandum to Accountable Officers for Parts of the Scottish Administration. The Portfolio Accountable Officer is personally answerable to the Scottish Parliament for ensuring that:

- the financial and other management controls applied by the SG are appropriate and sufficient to safeguard public funds and, more generally that those being applied by the Commissioner conform to the requirements both of propriety and of good financial management;
- the key roles and responsibilities which underpin the relationship between TS and the Body are set out in a framework document - and that this document is regularly reviewed; and
- effective relationships are in place at official level between TS and the Commissioner in accordance with the strategic engagement principles.

¹¹ SPFM Accountability -

<http://www.scotland.gov.uk/Topics/Government/Finance/spfm/Accountability/aomemooother>

¹² SPFM Glossary - <https://www.gov.scot/publications/scottish-public-finance-manual/glossary/glossary/#a2>

¹³ SPFM - <https://www.gov.scot/publications/scottish-public-finance-manual/>

¹⁴ Public Sector Pay Policy - <https://www.gov.scot/publications/scottish-public-sector-pay-policy-2020-21/>

Scottish Government Director and Deputy Director (TS Equivalents)

14. The Chief Executive of TS and Director for Transport Strategy and Analysis for TS have responsibility for overseeing and ensuring effective relationships between the SG, TS and the Commissioner. This relationship will support alignment of the Body's aims and objectives to the achievement of the SG's primary purpose of increasing sustainable economic growth through the PfG¹⁵, SG's published Economic Strategy¹⁶ and the NPF¹⁷. TS will work closely with the Commissioner and will be answerable to the Portfolio Accountable Officer for maintaining and developing positive relationships with the Commissioner and the Body underpinned by openness, trust, respect and mutual support. TS directors will be supported by the TS Sponsor Unit in discharging these functions, and will meet directly with the commissioner at least once each calendar year.

Sponsor Unit responsibilities

15. The TS Sponsor Unit for the Commissioner and Body is the Transport Strategy and Analysis Directorate. The TS Sponsor Unit will be the day-to-day point of contact for the Commissioner in dealing with TS and the SG. The TS Sponsor Unit, under the direction of the Director, will advise the Scottish Ministers on the discharge of their responsibilities in respect of the Commissioner and the Body Specific responsibilities of the TS Sponsor Unit include:

- discharging sponsorship responsibilities in line with the principles and framework set out in the 'Strategic Engagement between the Scottish Government and Scotland's NDPBs'¹⁸, and ensuring that sponsorship is suitably flexible, proportionate and responsive to the needs of the Scottish Ministers and the Commissioner.
- proportionate monitoring of the Commissioner's and the Body's activities through an adequate and timely flow of appropriate information provided by the Commissioner and Body on performance, budgeting, control and risk management;
- addressing in a timely manner any significant problems arising in the Body, alerting the Portfolio Accountable Officer and the responsible Minister(s) where considered appropriate;
- ensuring that the objectives of the Body and the risks to them are properly and appropriately taken into account in TS's risk assessment and management systems; and
- informing the Commissioner of relevant TS and SG policy in a timely manner.
- both parties will respond to any request for information, documentation, advice or authorisation by the date requested, or within 10 working days, unless otherwise mutually agreed'

¹⁵ Programme for Government - <https://www.gov.scot/publications/protecting-scotland-renewing-scotland-governments-programme-scotland-2020-2021/>

¹⁶ Scotland's Economic Strategy - <https://www.gov.scot/publications/scotlands-economic-strategy/>

¹⁷ National Performance Framework - <https://nationalperformance.gov.scot/>

¹⁸ SG NDPB's Strategic Engagement - <https://www.gov.scot/publications/strategic-engagement-between-the-scottish-government-and-ndpbs/>

Internal audit

16. The internal audit service is provided on a risk assessed basis by the Scottish Government's Internal Audit Division in accordance with the Public Sector Internal Audit Standards¹⁹ and the Internal Audit²⁰ section of the SPFM.

17. The Commissioner shall keep records of, and prepare and forward timeously to the TS Sponsor Unit an annual report on fraud and theft suffered by the Body and notify the TS Sponsor Unit at the earliest opportunity of any unusual or major incidents.

External audit

18. The Auditor General for Scotland (AGS) audits, or appoints auditors to audit, the Body's annual accounts and thereafter provides a report to TS Sponsor Unit on behalf of the Scottish Ministers for consideration by the Scottish Parliament, together with any accompanying documents and any report prepared by the AGS.

19. The AGS, or examiners appointed by the AGS, may carry out examinations into the economy, efficiency and effectiveness with which the Body has used its resources in discharging its functions. The AGS may also carry out examinations into the arrangements made by the Body 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 Body 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

20. The Body must publish an annual report of its activities together with 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 Body. The Body must comply with the Government Financial Reporting Manual (FReM)²¹ and outline in the annual report the Body's main activities and performance against agreed objectives and targets for the previous financial year.

21. The accounts must be prepared in accordance with relevant statutes and the specific accounts direction (including compliance with the Finance Reporting Manual 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 Body or the Commissioner shall be consolidated in its accounts in accordance with International Financial Reporting Standards as adapted and interpreted for the public sector context.

¹⁹ Public Sector Internal Audit Standards - <http://www.cipfa.org//media/Files/Publications/Standards/Public%20Sector%20Internal%20Audit%20Standards.pdf>

²⁰ SPFM Internal Audit - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/internaud>

²¹ UK Financial Reporting Manual - <https://www.gov.uk/government/publications/government-financial-reporting-manual-2019-20>

22. The draft report and accounts, should be submitted to the TS Sponsor Unit for comment and consideration by 30 September following the end of the relevant financial year. The final version should be available for laying before the Scottish Parliament by the Scottish Ministers by 31 October of the relevant financial year. 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 Auditor General for Scotland (AGS) to the Scottish Ministers and must not be published before they have been laid. The Commissioner shall be responsible for the publication of the report and accounts e.g. on the Body's website.

Management responsibilities

Corporate and business plans

23. The Commissioner must ensure that a corporate plan, agreed with the Scottish Ministers, is in place and published on the Body's website. The Commissioner shall agree with the TS Sponsor Unit the issues to be addressed in the plan and the timetable for its preparation and review. The finalised plan shall reflect the Body'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 Body contributes to the achievement of the SG's primary purpose to focus Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth'. in alignment with the PfG²², and SG's NPF²³. The corporate plan for the Body must include:

- the purpose and principal aims of the Body;
- an analysis of the environment in which the Body 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 SG's primary purpose and alignment with the NPF;
- indicators against which performance can be judged;
- details of planned efficiencies, describing how the Body proposes to achieve better value for money, including through collaboration and shared services; and
- other matters as agreed between TS and the Commissioner.

The Commissioner may also wish to reference NTS2. The Commissioner may contribute relevant actions to the delivery of the National Transport Strategy's vision and priorities. The actions being taken forward by the Scottish Government will be set out in annual Delivery Plans and the actions being led by external partners will be collated in a separate Working with Partners document.

24. The corporate plan should inform the development of a separate business plan for each financial year. The business plan for the Body 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

²² Programme for Government - <https://www.gov.scot/publications/protecting-scotland-renewing-scotland-governments-programme-scotland-2020-2021/>

²³ National Performance Framework - <https://nationalperformance.gov.scot/>

copy of the Body's business plan should be provided to the sponsor unit prior to the start of the each financial year.

Budget management

25. In the light of decisions by the Scottish Ministers on the allocation of budgets for the forthcoming financial year or spending review period, the TS Sponsor Unit will engage with the Commissioner on budgetary requirements. At the commencement of the financial year a formal statement of the annual budgetary provision and a note of any related matters and details of the budget monitoring information required by the TS Sponsor Unit will be provided to the Commissioner.

Cash management

26. Any grant in aid²⁴ (i.e. finance provided to the Commissioner by TS 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 quarterly instalments on the basis of updated profiles and information on unrestricted cash reserves. The payment profile can be amended during the financial year at any time to respond to the business needs of the Body. 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 Body - 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 Body.

27. The banking arrangements adopted by the Body must comply with the Banking²⁵ section of the SPFM.

Risk management

28. The Commissioner shall ensure that the risks that the Body faces are dealt with in an appropriate manner, in accordance with relevant aspects of generally recognised best practice in corporate governance, and develop a risk management strategy, consistent with the Risk Management²⁶ section of the SPFM. Reporting arrangements should ensure that the TS Sponsor Unit is made aware of relevant risks and how they are being managed. The TS Sponsor Unit may ask specifically to view the risk register for the body, and may request information on any specific risks highlighted

Fraud management

29. The Body should adopt and implement policies and practices to safeguard itself against fraud and theft, in accordance with the Fraud²⁷ section of the SPFM. Application of these processes must be monitored actively, supported by a fraud response plan and robust reporting arrangements. This includes the establishment of avenues to report any suspicions of fraud. In addition, the Body should take risk-based and proportionate steps to appraise the

²⁴ SPFM Grants - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/grants>

²⁵ SPFM Banking - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/banking>

²⁶ SPFM Risk - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/risk>

²⁷ SPFM Fraud - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/fraud>

financial standing of any supplier or other body with which it intends to enter into a contract or to provide funding.

Performance management

30. The Body 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 Body's corporate and business plans. The results of such reviews should be reported on a regular basis and copied to the TS Sponsor Unit. The TS Sponsor Unit shall assess the Body's performance, proportionately, on a continuous basis and hold a formal review meeting at least once a year, with a further informal review to take place in the same 12 month period.

The TS Sponsor Unit will seek to assure itself that the Commissioner's own conduct, practices and performance remains appropriate and conducive to the discharge of the powers conferred by the 2005 Act. As per the terms and conditions of the Commissioner's post, the post holder is expected to:

- Provide information as requested by the TS Sponsor Unit;
- Cooperate with the process of undertaking reasonable checks; and
- Be advised that a yearly review will take place on a schedule to be determined locally- this process will involve seeking views and opinions from the stakeholder community and comment from the Body itself, alongside the observations of the direct sponsor team with a further informal review in the same year.

The Body staff management

31. The Commissioner will have responsibility for the recruitment, retention and motivation of his staff. The Commissioner's staff will have access to TS's Human Resources (HR) Team. The following points apply broadly to all other significant bodies, TS/SG support this being achieved by the body adopting TS/SG H.R. policies

- personnel policies, practices and systems comply with employment and equalities legislation, and the 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 SG Pay Policy for Staff Pay Remits²⁸);
- the performance of its staff at all levels is satisfactorily appraised and the Body'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 Body's objectives;
- proper consultation with staff takes place on key issues affecting them;
- adequate grievance and disciplinary procedures are in place;

²⁸ Public Sector Pay Policy - <https://www.gov.scot/publications/scottish-public-sector-pay-policy-2020-21/>

- whistle-blowing procedures consistent with the Public Interest Disclosure Act 1998 are in place; and
- a code of conduct for staff is in place based on the Model Code for Staff of Executive NDPBs – see chapter 5 of Public Bodies: A Guide for Departments²⁹.
- facilitate direct meetings between the TS Sponsor Unit and the Body staff, which will happen no less than twice a year.

Pay and conditions of service

32. The Commissioner shall submit to the SG for approval (normally annually) a pay remit in line with the SG Pay Policy for Staff Pay Remits and negotiate a pay settlement within the terms of the approved remit.

- Proposals on non-salary rewards must comply with the guidance in the Non-Salary Rewards section of the SPFM³⁰.
- The Commissioner shall comply with employment and equalities legislation.
- Any direct instruction given to SG Payroll by the Commissioner or the Body must be sent to the TS sponsor unit for their prior consideration.

Pensions, redundancy and compensation

33. Superannuation arrangements for staff are subject to the approval of the TS Sponsor Unit/SG. The Body's staff shall normally be eligible for a pension provided by PCSPS.

34. Any proposal by the Commissioner to move from existing pension arrangements, or to pay any redundancy or compensation for loss of office, requires the prior approval of the TS Sponsor Unit. Proposals on compensation payments must comply with the Severance, Early Retirement and Redundancy Terms³¹ section of the SPFM. This includes referral to the TS Sponsor Unit of any proposed compensation payment being considered for an individual out with any existing approved scheme and *before* the individual is approached and any offer made either orally or in writing.

Asset and property management

35. The Body shall maintain an accurate and up-to-date record of its current and non-current assets consistent with the Management of Assets³² section of the SPFM. "Fixed" assets should be disposed of in accordance with the Disposal of Property, Plant & Equipment³³ section of the SPFM. The SG's Property Advice Division should be notified of relevant proposed disposals of property 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 Property³⁴ section of the SPFM. The Body is also subject to the SG Asset Management Policy³⁵, including the requirement for any new

²⁹ Public Bodies - <http://www.civilservice.gov.uk/about/resources/public-bodies.aspx>

³⁰ SPFM Non Salary Rewards - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/nonsalrewards>

³¹ SPFM Severance Terms - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/severanceetcterms>

³² SPFM Asset Management - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/assetmanage>

³³ SPFM Disposal of Assets - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/disposalassets>

³⁴ SPFM Property - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/property>

³⁵ <http://www.scotland.gov.uk/Publications/2009/02/26142659/1>

commitments to be signed off by the Scottish Ministers. Information concerning the Body should be accurately recorded and updated as necessary by the Body on the Office of Government Commerce electronic Property Information Mapping System (e-PIMS).³⁶

Specific financial provisions

Delegated authorities

36. The Commissioner's specific delegated financial authorities, as agreed in consultation between the Commissioner and TS are set out in the attached **Appendix A**. The Commissioner shall obtain the TS Sponsor Unit's prior written approval before entering into any undertaking to incur any expenditure that falls outside these delegations. The Commissioner shall also comply with any requirements for prior approval from the TS Sponsor Unit included in the SPFM and/or this document.

Prior TS Sponsor Unit approval must always be obtained before incurring expenditure for any purpose that is or might be considered :

- novel - novel transactions are those of which the Body has no experience, or are outside its range of normal business
- contentious - contentious transactions are those that might cause criticism of the Body by Parliament, the public or the media.
- repercussive - repercussive transactions are those likely to cause pressure on other Bodies' to take a similar approach and hence have wider financial implications.
- or which has or could have significant future cost implications.

Income generation

37. The Body shall seek to optimise income (grant in aid does not qualify as income) from all sources and ensure that the TS Sponsor Unit is kept informed. Novel or contentious proposals for new sources of income or methods of fundraising must be approved by the TS Sponsor Unit. Fees or charges for any services supplied by the Body shall be determined in accordance with the Fees & Charges³⁷ section of the SPFM.

38. Gifts, bequests or donations received by the Body score as income and should be provided for in the agreed resource DEL (Departmental Expenditure Limit) and capital DEL budgets, updated as necessary in consultation with the TS Sponsor Unit. However, the Body should be able to demonstrate that expenditure funded by gifts is additional to expenditure normally supported by grant in aid (i.e. SG core funding) or by trading and other income. Before accepting such gifts the Body shall consider if there are any associated costs in doing so or any conflicts of interests arising. The Body shall keep a written record of any such gifts and what happened to them.

Financial investments

39. Unless covered by a specific delegated financial authority, the Body shall not make any financial investments without the prior approval of the TS Sponsor Unit. That would include

³⁶ Information Mapping System - http://www.ogc.gov.uk/electronic_property_information_mapping_service.asp

³⁷ SPFM Fees and Charges - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/feescharges>

equity shares in ventures which further the objectives of the Body. The Body shall not invest in any venture of a speculative nature.

Borrowing

40. Borrowing cannot be used to increase the Body's spending power. All borrowing by the Body (excluding agreed overdrafts) shall be from the Scottish Ministers in accordance with guidance in the Borrowing, Lending & Investment³⁸ section of the SPFM.

Lease arrangements

41. Unless covered by a specific delegated financial authority, the Body 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 TS Sponsor Unit's prior approval. Before entering/continuing such arrangements the Body 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 financial authority. The Body must have capital DEL provision for finance leases and other transactions which are in substance borrowing.

Tax arrangements

42. Non-standard tax management arrangements should always be regarded as novel and/or contentious and must therefore be approved in advance by the TS Sponsor Unit. Relevant guidance is provided in the Tax Planning and Tax Avoidance³⁹ section of the SPFM. The Body 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 Body to observe VAT legislation and recover input tax where it is entitled to do so. The Body must also ensure that it accounts properly for any output tax on sales or disposals.

Lending and guarantees

43. Any lending by the Body must adhere to the guidance in the Borrowing, Lending & Investment⁴⁰ section of the SPFM on undertaking due diligence and seeking to establish a security. Unless covered by a specific delegated financial authority the Body shall not, without the TS Sponsor Unit'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 Liabilities⁴¹ section of the SPFM or in International Financial Reporting Standards), 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.

³⁸ SPFM Borrowing - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/borrowingetc>

³⁹ SPFM Tax Avoidance - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/taxavoidance>

⁴⁰ SPFM Lending and Guarantees - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/borrowingetc>

⁴¹ SPFM Contingent Liabilities - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/contingentliabs>

Third party grants

44. Unless covered by a specific delegated financial authority the Body shall not, without the TS Sponsor Unit's prior agreement, provide grant funding to a third party. Such funding is subject to the guidance in the State Aid⁴² section of the SPFM. Guidance on a framework for the control of third party grants is provided as an Annex⁴³ to the Grant & Grant in Aid section of the SPFM.

Impairments, provisions and write-offs

45. Assets should be recorded on the balance sheet at the appropriate valuation basis in accordance with the FReM.⁴⁴ Where an asset (including investments) suffers impairment it is important that the prospective impairment and background is communicated to the TS Sponsor Unit at the earliest possible point in the financial year to determine the implications for the Body's budget. Similarly, any significant movement in existing provisions or the creation of new provisions should be discussed in advance with the TS Sponsor Unit. Write-off of bad debt and/or losses scores against the Body's resource DEL budget classification and is subject to a specific delegated financial authority.

Insurance

46. The Body is subject to the SG policy of self-insurance⁴⁵. 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 Insurance⁴⁶ section of the SPFM - and with the prior approval of the TS Sponsor Unit. In the event of uninsured losses being incurred, the TS Sponsor Unit shall consider, on a case by case basis, whether or not it should make any additional resources available to the Body. The TS Sponsor Unit will provide the Body with a Certificate of Exemption for Employer's Liability Insurance.

Procurement and payment

47. The Body's procurement policies shall reflect relevant guidance in the Procurement⁴⁷ section of the SPFM and relevant guidance issued by the SG's Procurement and Commercial Directorate. Procurement should be undertaken by appropriately trained and authorised staff and treated as a key component of achieving the Body's objectives consistent with the principles of Value for Money⁴⁸, the highest professional standards and any legal requirements. All external consultancy contracts over the value of £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 Scottish Ministers.

48. Any major investment programmes or projects undertaken by the Body shall be subject to the guidance in the Major Investment Projects⁴⁹ section of the SPFM and is also subject to a

⁴² SPFM State Aid Rules - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/stateaidrules>

⁴³ SPFM Grants - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/grantsannex#top>

⁴⁴ UK Financial Reporting Manual - <https://www.gov.uk/government/publications/government-financial-reporting-manual-2019-20>

⁴⁵ SPFM Insurance - <https://www.gov.scot/publications/scottish-public-finance-manual/insurance/insurance/>

⁴⁶ SPFM Insurance - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/insurance>

⁴⁷ SPFM Procurement - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/procure>

⁴⁸ SPFM Best Value - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/BestValue>

⁴⁹ SPFM Major Investment - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/majinvest>

specific delegated authority. The TS Sponsor Unit must be kept informed of progress on such programmes and projects, which will include keeping the Scottish Ministers 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.

49. The Body shall pay all matured and properly authorised invoices relating to transactions with suppliers in accordance with the Expenditure and Payments⁵⁰ section of the SPFM, and in doing so shall seek wherever possible and appropriate to meet the SG's target for the payment of invoices within 10 working days of their receipt⁵¹.

Gifts made, special payments and losses

50. Unless covered by a specific delegated financial authority the Body shall not, without the TS Sponsor Unit's prior approval, make gifts or special payments or write-off of losses. Special payments and losses are subject the guidance in the Losses and Special Payments⁵² section of the SPFM. Gifts by management to staff are subject to the guidance in the Non-Salary Rewards⁵³ section of the SPFM.

Clawback

51. Where the Body has financed expenditure on assets by a third party, the Body shall make appropriate arrangements to ensure that any such assets above an agreed value are not disposed of by the third party without the Body's prior consent. The Body 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 Body contributed less than the whole cost of acquisition or improvement. The Body shall also ensure that if assets financed by the Body 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 Body.

⁵⁰ SPFM Payments - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/payments>

⁵¹ SPFM Timing of Payments - <https://www.gov.scot/publications/scottish-public-finance-manual/expenditure-and-payments/annex-1-timing-of-payments/>

⁵² SPFM Losses - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/lossesetcc>

⁵³ SPFM Non salary rewards - <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/nonsalrewards>

SPECIFIC DELEGATED FINANCIAL AUTHORITIES

		Delegated Limit
External business and management consultancies		The Commissioner shall consult with the TS Sponsor Unit prior to awarding any contract which is anticipated to cost more than 10% of the commissioner's annual budget.
Non-competitive action		The Commissioner shall consult the TS Sponsor Unit before taking a non-competitive action
Operating leases – other than property/ accommodation related leases		The Commissioner shall consult the TS Sponsor Unit before securing property of finance leases.
Gifts		SG policy on gifts and hospitality shall apply here. ⁵⁴
Special payments e.g. donation to charity, or paying a guest speaker's travel expenses		£100
Claims waived or abandoned e.g. office decides not to pursue a valid legal claim		£100
Write-off of bad debt and/or losses e.g. an unpaid invoice		£100
Others as appropriate e.g. Guarantees etc. out with normal course of business Charges on assets Loans Grants Financial investments and equity shares Major investment programmes/ projects		The Commissioner shall consult the TS Sponsor Unit on all other finance decisions outwith the delegated limits.

⁵⁴ SPFM Gifts - <https://www.gov.scot/publications/scottish-public-finance-manual/gifts/gifts/>