1. Audit Scotland supports the consensus that post-legislative scrutiny would be a valuable additional element of the Scottish Parliament’s work.

3. We assume post-legislative scrutiny to be an assessment of whether legislation has achieved its intended policy objectives and how efficiently, effectively and economically it has been implemented. Given this definition, aspects of Audit Scotland’s work could inform post-legislative scrutiny by the Parliament and its committees. In particular, Audit Scotland’s central focus on the use of public money could readily contribute to the scrutiny of the costs of implementing legislation. Some of our existing performance audit work has examined the impact of particular pieces of legislation. Our responses to the Committee’s specific questions below provide examples of where we have done this.

4. If the Parliament indicated a wish to expand its focus on post-legislative scrutiny then Audit Scotland could consider this when developing proposals for performance audits for the Auditor General and the Accounts Commission. Current major policy initiatives that might lend themselves to this type of approach over the next 3-4 years include reform of police and fire services and the ongoing programme of mergers within the college sector.

Responses to the Committee’s specific questions

5. **What is the most appropriate format for post-legislative scrutiny in the Scottish Parliament and, in particular, its committees?**

   This is an issue for the Committee and the Parliament to consider and decide rather than for Audit Scotland.

6. **What are some of the barriers to undertaking post-legislative scrutiny and how can they be overcome?**

   Ideally, for post-legislative scrutiny to be effective, there should be certain foundations in place:
• **good quality baseline data on quality, performance and cost** for a particular public service against which the impact of legislation can be assessed. The absence of good quality information about public services has been a recurrent feature of Audit Scotland reports. Ensuring that good quality baseline data are available at the point at which legislation is passed would strengthen any subsequent post-legislative scrutiny.

• legislation should be accompanied by **clear objectives, action plans and performance measures** (including SMART targets) for the implementation of legislation, together with clear lines of accountability for implementation.

7. **Are there examples of good practice in carrying out post-legislative scrutiny inside and outside the Parliament which could be shared?**

We are not aware of examples of good practice outside of the public audit sphere but would point to the examples of Audit Scotland work noted below.

8. **What information and support is required by MSPs in order to carry out effective post-legislative scrutiny?**

This is dependent on the scope and depth of the scrutiny undertaken. The approach taken by committees of the Scottish Parliament to inquiries and stage 1 scrutiny of primary legislation has tended to be a widely framed call for written evidence, followed by a programme of oral evidence sessions culminating with the Cabinet Secretary or Minister. This is a well understood and proven method of highlighting the key issues associated with a particular policy area or piece of legislation and could be adopted for post-legislative scrutiny. If a more detailed forensic examination of the financial and economic impact of a piece of legislation was required then the Parliament and its committees may wish to:

• use information and support from the Scottish Parliament Information Centre

• commission external support and advice

• draw on information contained in Audit Scotland reports.

The financial memoranda that accompany bills should be a key source of baseline financial information. One element of post-legislative scrutiny could be assessment of whether the actual costs of implementing a bill match the costs presented to the Parliament at the time the legislation was passed. We reviewed the financial memorandum in our audit of free personal and nursing care published in February 2008.\(^1\) Our report concluded that: “*The financial memorandum set out in the Community Care and Health (Scotland) Act 2002 does not provide a robust and comprehensive assessment of the financial implications and risks of introducing FPNC. This was also raised by the Scottish Parliament’s Health and Community Care Committee when it scrutinised the initial Bill*.”

---

9. **What type of legislation should be the subject of post-legislative scrutiny?**

We consider that both primary and secondary legislation should be within the scope of post-legislative scrutiny. This is because major policy initiatives may be introduced through secondary legislation. For example, the then Scottish Executive implemented the national concessionary travel scheme through two Scottish statutory instruments. Subsequently, Audit Scotland’s report on the implementation of the scheme noted that the costs of the scheme were rising and that there had been: “… limited financial information provided in support of the draft SSIs”.2

10. **When should post-legislative scrutiny be carried out following the passage of legislation?**

There is no single answer to this question. Firstly, it is important to assess whether a particular piece of legislation should be the focus of post-legislative scrutiny. It is may be beyond the capacity of the Parliament and its committees to commit to scrutinising all pieces of legislation given the competing demands on their time. Therefore some criteria for prioritisation may be helpful. Secondly, if the Parliament decides that a piece of legislation should be reviewed then a meaningful timescale for that review should be set at the time when the legislation is passed. This timescale may be very short for some pieces of legislation and very long for others depending on its nature and the timescale for its implementation.

11. **Are changes needed to Standing Orders or other parliamentary procedures to facilitate improved post-legislative scrutiny?**

This is an issue for the Committee and the Parliament to consider and decide rather than for Audit Scotland.

**AUDIT SCOTLAND**
**25 JANUARY 2013**

---