

Finance and Public Administration Committee

19th Meeting, 2024 (Session 6), Tuesday, 28 May 2024

Scotland's Commissioner Landscape – Background Information on the New Zealand Performance Measurement Framework and Wales Commissioners Accountable to Government Model

Introduction

Both New Zealand and Wales provide insight into different commissioner models including their accountability and scrutiny.

In New Zealand, commissioners which are Crown entities must provide a statement of intent which covers the current year and at least three additional years and a statement of performance which includes what the commissioner intends to achieve, how performance will be assessed, as well as the expected revenue and proposed expenses.

In Wales, the Welsh Government predominantly oversees commissioners, ensuring they function within their established mandates, adhere to relevant legislation, and efficiently manage their allocated budgets. Oversight can also be provided by specific government departments or agencies related to the commissioners' respective areas. Furthermore, the Welsh Parliament may conduct scrutiny and oversight through committees and inquiries to guarantee accountability and transparency in the activities of the commissioners.

Examining international commissioner systems is complicated due to the diverse political structures and governance models, alongside varying definitions. The term "commissioner" lacks a universal definition, as countries use different nomenclature and often fail to distinctly separate commissioners from other autonomous bodies. Furthermore, the words "commissioner" and "commission" encompass a wide array of roles internationally, from regulatory authorities to entities established for public investigations. Although analysing these systems is valuable, it is crucial to recognise that their models may not be directly transferable or suitable for Scotland's commissioner framework.

New Zealand

Independent Crown entities and Officers of Parliament

New Zealand has both Officers of Parliament and Independent Crown entities. Although they both have bodies consistent with Commissioners in Scotland the two designations function differently.

Independent Crown entities

In New Zealand, most commissioners are classified as Independent Crown entities. The 'independence' of a statutory Crown entity pertains to the independently defined functions in their founding legislation. They are accountable both to their responsible ministers and to Parliament for their performance and use of funds. These entities are not autonomous from the Crown's ownership interest and may need to adhere to various directives and policies, including overarching government directives.

Statutory Crown entities are expected to align with the priorities and expectations outlined by their responsible minister. They are also subject to a broad array of policies, standards, requirements, and expectations that apply to core government departments. This encompasses areas such as integrity, employment relations, and collaboration across organisational boundaries for service delivery. These requirements and expectations can differ slightly based on the specific type of statutory Crown entity. Most statutory Crown entities are overseen by boards appointed by a responsible minister.

A limited number of 'corporation sole' Crown entities exist, where a single individual acts both as the board and the chief executive.

They are required by legislation to submit annual reports, Statements of Intent, and Statements of Performance as they are governed by the [Crown Entities Act 2004](#).

More information can be found in the SPICe Briefing: [Scotland's Commissioner Landscape - A Strategic Approach | Scottish Parliament](#)

Officers of Parliament

New Zealand also has three [Officers of Parliament](#) who carry out non-political scrutiny on behalf of the House of Representatives. They are the Ombudsman, Controller and Auditor-General and Parliamentary Commissioner for the Environment.

All Officers of Parliament are appointed by the Governor General and are accountable to the House. The House has also established the Officers of Parliament Committee, chaired by the Speaker of the House, which is responsible for the following functions:

- Making recommendations for the appointment of Parliament officers in case of vacancies
- Approving and suggesting budgets for the officers

- Recommending the House's appointment of auditors for the officers
- Reviewing any proposals for creating new types of Parliament officers
- Developing or revising codes of practice for the officers

Furthermore, the [Officers of Parliament Committee](#) recommends their appointments, approves their budgets, and ensures they have the necessary resources to fulfil their duties. Their reports are examined by the Auditor-General and presented to the House of Representatives, contributing to transparency and public accountability in governance. They are only required by legislation to submit an annual report as they are not governed by the [Crown Entities Act 2004](#).

More information can be found in the SPICe Briefing: [Scotland's Commissioner Landscape - A Strategic Approach | Scottish Parliament](#)

Overview of Statements of Intent and Statements of Performance

Performance reporting by Crown entities is crucial for public accountability to Parliament. It is an integral part of the public finance system and the public sector management system. Crown entities are responsible for setting strategic objectives and reporting annually on their progress. This information is made available to Parliament through publications such as the Statement of Intent (SOI), Statement of Performance Expectations, and Annual Reports. Examples of these are listed in following sections.

The purpose of performance reporting is to provide transparency about the planned and actual use of public money. It allows Parliament to scrutinise how Crown entities are fulfilling their mandate and ensures trust and confidence in the public sector.

The SOI serves as a framework for understanding Crown entity performance and organisational health in the medium term. It provides context for accountability information provided in Statements of Performance Expectations, Estimates, and Annual Reports. The SOI demonstrates the differences and benefits that New Zealand will gain from the actions and use of resources by Crown entities.

The medium-term timeframe of the SOI is important because most Crown entities operate over many years, and their intended achievements are rarely completed within a year. Therefore, assessing performance requires considering the Crown entity's stated intentions over a longer period.

The SOI forms the foundation for Statements of Performance Expectations and Annual Reports. It ensures connections between strategic objectives, functions, intended operations, and reportable classes of outputs. The narratives and performance frameworks used in the SOI provide context to the proposed use of resources in Statements of Performance Expectations, Estimates, and Annual Reports.

Strategic Performance Expectations (SPEs) link a Crown entity's strategic goals, outlined functions, defined output categories, and budget allocations. These documents are part of the broader accountability framework that Crown Entities must

produce. Although SPEs should stand alone as comprehensive documents, they must also be consistent with the Crown entity's strategic direction as detailed in its Statement of Intent, as well as with the Estimates of Appropriations and accompanying information.

SPEs represent one facet of an entity's performance reporting, which aids in accountability and oversight. They complement other reports that Crown Entities might submit to Ministers and monitoring departments, including programme updates, quarterly reviews, and annual reports.

Overall, performance reporting plays a vital role in maintaining accountability, transparency, and trust in the public sector by allowing Parliament and the public to assess how Crown entities are fulfilling their mandate and utilising public money.

Legislation

Statement of Intent

The legal basis for the operations of independent Crown entities is outlined in the [Crown Entities Act 2004](#).

As set out in the SPICe Briefing [Scotland's Commissioner Landscape - A Strategic Approach | Scottish Parliament](#):

“[Section 138](#) of The Act mandates that a Crown entity must provide a statement of intent to promote the public accountability by:

- Enabling the Crown to participate in the process of setting the Crown entity's strategic intentions and medium-term undertakings,
- Setting out for the House of Representatives those intentions and undertakings,
- Providing a base against which the Crown entity's actual performance can later be assessed.

This statement of intent is required to cover the forthcoming financial year and at least the subsequent three financial years. It is also necessary for the Crown entity to provide a statement of intent at least once within every three-year period, unless exempted from this requirement by the Act or another legislation. Furthermore, the Act specifies the content that the statement of intent should encompass, including strategic objectives, the entity's functions and intended operations, management of functions and operations to meet strategic intentions, organisational health and capability management, performance assessment, and other relevant matters.”

Statement of Performance

Additionally, [Section 153 of the Crown Entities Act](#) requires Crown entities to produce a statement of performance which “must, in relation to a Crown entity and a financial year, —

- (a) be prepared in accordance with generally accepted accounting practice; and
- (b) describe each reportable class of outputs for the financial year; and
- (c) include, for each reportable class of outputs identified in the entity’s statement of performance expectations for the financial year,—
 - i) **the standards of delivery performance achieved by the entity, as compared with the forecast standards** included in the entity’s statement of performance expectations for the financial year; and
 - ii) **the actual revenue earned and output expenses incurred, as compared with the expected revenues and proposed output expenses** included in the entity’s statement of performance expectations for the financial year.”

These requirements allow for standardised reporting from Crown entities as well as necessitating scrutiny of their own performance over the previous year, including against their forecasted outcomes. These statements require Crown entities produce both strategic intentions and medium-term undertakings with measurable outcomes, and report on their progress against these specific outcomes on a yearly basis.

Guidance

Crown entities produce their Statements of Intent and Statements of Performance in line with legislation and [guidance provided by the Treasury](#).

Statement of Intent

The [Treasury guidance](#) contains the following:

- Why a Crown entity required to publish a SOI
- When the SOI need to be developed
- The required content in the SOI
- How departments should keep users in mind when selecting, developing, structuring, and presenting information for intentions
- How and when Crown entities should publish their SOI and present to the House

The Statement of Intent is required to include:

Objectives, functions and intended operations

“set out the strategic objectives that the entity intends to achieve or contribute to” s141(1) CEA

“explain the nature and scope of the entity’s functions and intended operations” s141(2)(a) CEA

How the Crown entity intends to manage its functions and operations, and its organisational health and capability

“explain how the entity intends to manage its functions and operations to meet its strategic intentions” s141(2)(b) CEA

“explain how the entity proposes to manage its organisational health and capability” s141(2)(c) CEA

Performance Assessment

“explain how the Crown entity proposes to assess its performance” s141(2)(d) CEA

The guidance provided by the New Zealand Treasury describes the importance of being able to track performance is essential for Crown entities:

“Having a reliable basis for tracking and reporting performance over time is a key component of successful strategy development, organisational planning and fulfilling accountability obligations. One way of viewing this in the context of public sector performance is:

- *establishing clear pathways towards the agency’s strategic objectives, and*
- *assessing the degree to which the agency is progressing towards these strategic objectives.*

Performance assessment supports leaders and staff inside the agency to:

- *understand to what extent they are on track to achieve the agency’s strategic objectives*
- *follow up on the delivery of agreed plans and activities*
- *make adjustments based on actual performance and changes to the operating environment, and*
- *demonstrate achievement of results and value for money to Ministers, Parliament and the public.”*

Additionally, according to the guidance provided by the New Zealand Treasury, a SOI done correctly should:

“Enable a strong connection to the Statement of Performance Expectations and annual reports by showing how the Crown entity will assess performance over the medium-term as well as the short-term. This information should show at a high level the connections between the different elements of an entity’s performance such as resource use, delivery, and achievement.”

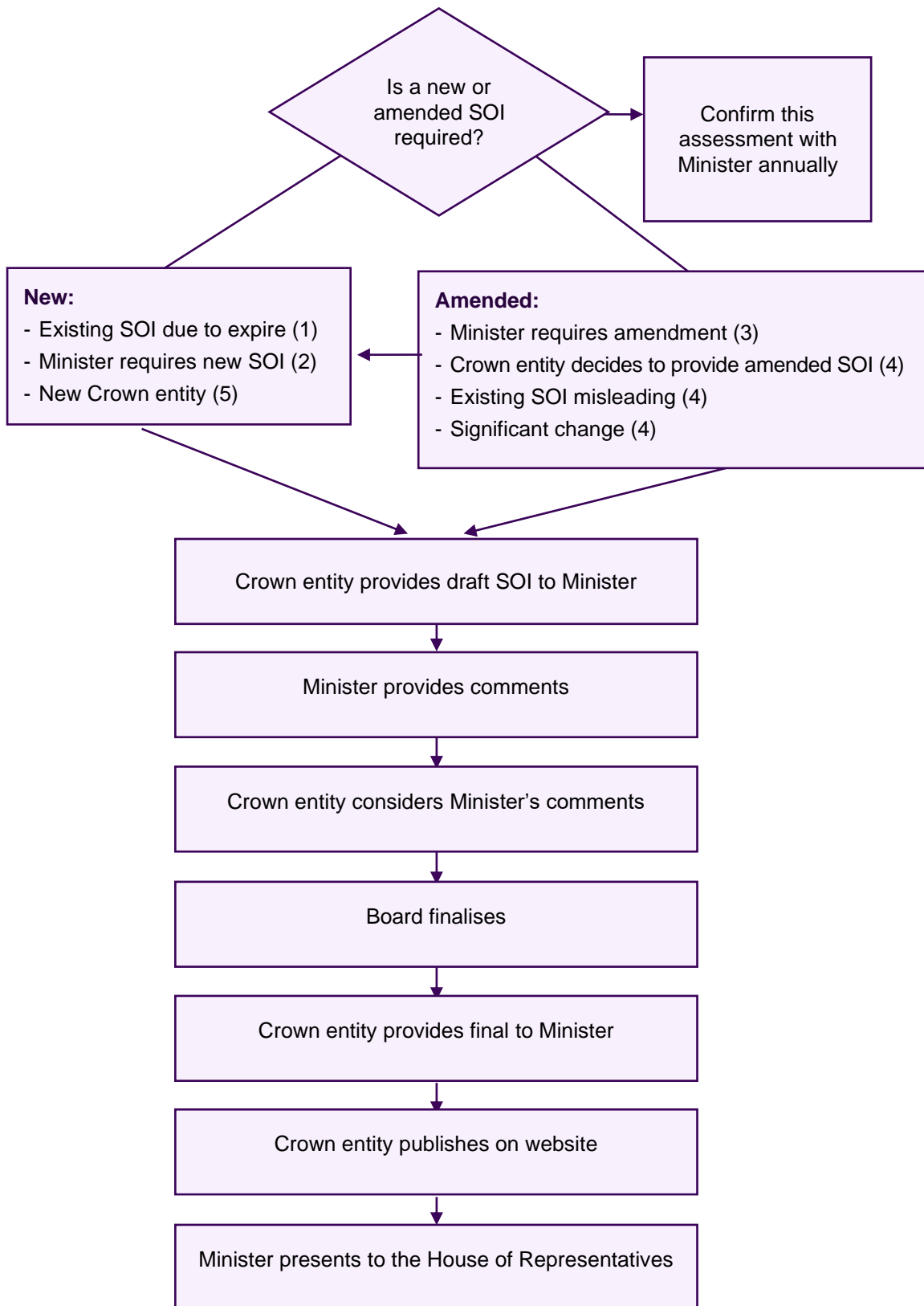
The guidance also suggests that:

“SPEs should draw on SOI content. SPEs also provide a base against which actual performance can be assessed with a shorter-term focus. It should be clear how performance in the short-term is contributing towards performance over the medium to longer term.”

And that:

“Annual report development will become more straightforward when Crown entities think and plan for how they will report on progress in relation to their strategic intentions when developing their SOI. Relevant information from the SOI and SPE should ‘flow through’ to the annual report.”

The diagram below produced by the New Zealand Treasury demonstrates the process for preparing a Statement of Intent.



Source: [New Zealand Treasury: Crown Entities Act – Statement of Intent Guidance: April 2024](#)

Examples of Statements of Intent:

[Health & Disability Commissioner](#)

[Climate Change Commission](#)

[Mental Health and Wellbeing Commission](#)

Statement of Performance

In 2022 the New Zealand Treasury produced [Guidance for Creating a Statement of Performance Expectations \(SPE\) under the Crown Entities Act \(CEA\)](#). It details what an SPE is, what it should contain, and the timetables for completing an SPE or an amendment.

An SPE should contain *“information on each reportable class of outputs for the financial year. This information covers what the class is intended to achieve and how performance will be assessed, as well as the expected revenue and proposed expenses for this class.”* As well as annual forecast financial statements.

An SPE is not required to have a specific format however entities are recommended to create their SPE in a way that will be most useful and usable, paying particular note to Ministers and Members of Parliament.

There are several timetables for producing an SPE dependent on whether it is a standard SPE, an amendment, or being produced for the first time by a new Crown entity.

Example of Statements of Performance:

[Health and Disability Commissioner](#)

[Climate Change Commission](#)

[Mental Health and Wellbeing Commission](#)

Performance Measuring Case Study– Human Rights Commission

The New Zealand Te Kāhui Tika Tangata (Human Rights Commission) published its [most recent Statement of Intent](#) to cover the period of 2021/22-2024/25. This report contains several sections relating to strategic planning and performance measurement.

In the performance measurement framework section of the report, it sets out four outcomes as well as the associated performance expectation and performance standard.

1. Knowledge of human rights
2. Inclusive communities
3. Accountable duty-bearers
4. Effective remedies

These outcomes are carried through in the [Statement of Performance Expectation 2022/23](#) where they are further broken down by interventions and measures. Each measure has an indicator and states a current baseline the 2022/23 target.

Below is an excerpt from a table in the [Statement of Performance Expectation 2022/23](#).

Outcome 1: Knowledge of Te Tiriti and human rights

Intervention 1: Communicate and promote te Tiriti o Waitangi and human rights

Measure	Baseline	Indicator	2022/23 Target
1.1 Commission publications consistently demonstrate link between Te Tiriti and human rights	80%	Sample of published reports/publications on our website	90%
1.2 Published documents meet the accessibility needs of targeted communities	New Measure	Sample of published reports/publications on our website	90%
1.3 Te reo Māori (Māori language) and tikanga Māori (Māori practices) approaches are provided	30%	Sample of published reports and documents	60%
1.4 Co-design projects with Tiriti partners	New Measure	Number of co-designed projects underway in the financial year	1

The performance framework is carried through to the Annual Report. The [2023 Annual Report](#) published by the New Zealand Te Kāhui Tika Tangata (Human Rights Commission) shows the actual 2022/23 Outcome results as compared to the baseline and target set in the Statement of Performance Expectation.

Outcome 1: Knowledge of Te Tiriti and human rights

Intervention 1: Communicate and promote te Tiriti o Waitangi and human rights

Measure	Baseline	2022/23 Target	Actual 2022/23 Results	Variance Explanation	2021/22 Result
1.1 Commission publications consistently demonstrate link between Te Tiriti and human rights	80%	90%	88% Not achieved	Tiriti framework applied to this measure for the first time this year. Over time, we anticipate a consistent achievement of future targets as the framework becomes more deeply embedded in our work.	100%
1.2 Published documents meet the accessibility needs of targeted communities	New Measure	90%	91% Achieved	-	80%
1.3 Te reo Māori (Māori language) and tikanga Māori (Māori practices) approaches are provided	30%	60%	31% Not achieved	This year's tikanga application criteria have been more sophisticated, reflecting a lower outcome. For future targets, greater emphasis will be placed on the application of tikanga and the use of Te reo Māori.	64%
1.4 Co-design projects with Tiriti partners	New Measure	1	One Achieved	-	One

Following the publication of the 2023 Annual Report, the Justice Committee conducted its [annual review of the Human Rights Commission](#) as part of its financial scrutiny role. It sought and obtained responses from the Human Rights Commission to annual review questions for 2022/23. The [2022/23 Annual review of the Human Rights Commission - Human Rights Commission \(Responses to written questions and appendices\)](#) contains 146 questions and responses on topic including restructuring, budget initiatives, reporting and evaluation, and matters related to staffing.

As of March 2024, the Justice Committee had not held a hearing with the Human Rights Commission in the current round of annual reviews but stated it may hold a review briefing later in 2024. Select committees are required to hold at least one hearing of evidence during the parliamentary term with each organisation allocated to them ([Standing Order 338B\(3\)\(a\)](#)).

Wales – Commissioners Responsible to Government

The [SPICe Briefing Scotland's Commissioner Landscape - A Strategic Approach](#) states the following:

“In Wales, oversight of commissioners is primarily provided by the Welsh Government. The Welsh Government ensures that commissioners operate within their defined mandates, adhere to relevant legislation, and effectively utilise allocated budgets. Additionally, oversight may come from specific government departments or bodies responsible for the respective areas covered by the commissioners, such as the Ministry for Children, Young People and Families for the Children's Commissioner or the Welsh Language Board for the Language Commissioner. Furthermore, the Welsh Parliament may provide scrutiny and oversight through committees and inquiries to ensure accountability and transparency in the commissioners' activities.”

The Welsh Ministers are responsible for the majority of accountability and scrutiny for commissioners. In the case of the Future Generation's Commissioner, [Schedule 2 of the Well-being of Future Generations \(Wales\) Act 2015](#) sets out the Minister's responsibility for remuneration and payments to the commissioner. Schedule 1 also sets out that the Commissioner is responsible for making the reports, estimates of income and expenses, and annual accounts.

Parliamentary Scrutiny of the Commissioners is as follows:

[The Equality and Social Justice Committee was responsible for the annual scrutiny of the Well-being of Future Generations Act 2015](#) in the sixth Senedd. It published an [update in 2022](#) and has since completed this work.

[Scrutiny of the Children's Commissioner for Wales](#) has been undertaken by the Children, Young People, and Education Committee. The most recent related agenda item was 17 January 2024.

[Scrutiny of the Older People's Commissioner for Wales](#) was undertaken by the Fifth Senedd with the most recent agenda item 01 December 2016.

Commissioner Budgets

The Public Accounts and Public Administration Committee published a [Review of the Welsh Commissioners](#) in July 2023. This review was undertaken on recommendation by the Senedd Equality and Social Justice Committee recommended that the Public Accounts and Public Administration Committee following its annual scrutiny of the Future Generations Commissioner for Wales (April 2022). The following summarises the budget process laid out in the review:

The financial oversight for the four Commissioners in Wales is governed by [HM Treasury's Consolidated Budgeting Guidance](#) and [Financial Reporting Manual](#) along with the [Welsh Government's Managing Welsh Public Money](#). The budget determination process adheres to the stipulations of the Government of Wales Act 2006 and the Senedd's Standing Orders.

Under governing legislation, the Commissioners are required to present their estimates of income and expenses, known as 'budgets', to the Welsh Ministers no later than five months prior to the start of the relevant financial year. This means they must be submitted by 31 October each year.

The Commissioners are required to cooperate with their partnership teams and provide necessary assistance and information for the Welsh Government's budget planning decisions. The relevant Minister confirms the net revenue and capital resource budgets and grant-in-aid funding for the next financial year, including the level of income that can be retained by the body for funding activities. This confirmation is usually done one month after the final budget has been agreed upon by the Senedd. Any funding for the year must be authorised by the Senedd in the Annual Budget Motion.

The Minister may also provide indicative budgets for future years, which can change based on government priorities, ministerial portfolios, budget fluctuations, or concerns about the effectiveness of the funded body. Commissioners may be required to model different activity options based on available funding. When setting budgets and grant-in-aid requirements, consideration is given to the body's reserves and expected income from other sources.

In the case of 5% budget reduction for all four statutory Commissioners in Wales in the 2024/25 Budget: A Budget to Protect the Services which Matter Most to You, the [Ministers' written evidence to Senedd scrutiny committees on allocations within each MEG December 2023](#) states:

“The stark reality of the extraordinary financial circumstances we are facing has necessitated a more fundamental approach. We have re-shaped the indicative spending allocations within our budget to provide extra funding and protection for the 6 services which matter most to people and communities across Wales – the NHS and the core local government settlement, which funds schools, social services and social care and other everyday services. We have done so in line with our principles to:

- *Protect core, frontline public services as far as possible.*

- *Deliver the greatest benefit to households which are hardest hit.*
- *Prioritise jobs, wherever possible.*
- *Work in partnership with other public sector bodies to face this financial storm together.*
- *Re-focus funding away from non-devolved areas, which the UK Government should be funding.*

We have taken this approach to ensure we continue to focus funding where it can have the most positive impact in the circumstances, and taking action to ensure we mitigate direct impacts to people and places, as far as possible. Spending more in some areas means there is less to spend in other areas. Where hard decisions have been required, we have sought to identify those areas where the relative impacts are lesser than their alternatives, and we have sought to take action to mitigate impacts as far as possible. Given the circumstances, it has not been possible to avoid negative impacts in all cases.”

Budget scrutiny undertaken by the [Finance Committee](#) and [Climate Change, Environment, and Infrastructure Committee](#), as well as [the Health and Social Care Committee](#), [Economy, Trade and Rural Affairs Committee](#), [Children, Young People and Education Committee](#), [Culture, Communications, Welsh Language, Sport and International Relations Committee](#) focused on [concerns](#) as to whether the Welsh Government’s Draft Budget for the next financial year would protect frontline services, the impact of cuts to farming and business support, the need for in year monitoring, and the impact of cuts to education budgets. Several committees also expressed a lack of confidence in the First Minister and the evidence provided by the Government. The reduction in annual budgets to the statutory Commissioner does not appear to be a primary concern in Committee’s budget scrutiny. The reduction in annual budgets to the statutory Commissioner does not appear to be a primary concern in Committee’s budget scrutiny.

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28 May 2024

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