

# **PUBLIC AUDIT COMMITTEE**

**1st Meeting, 2021 (Session 6), Wednesday  
23 June 2021**

## **Legacy Paper**

### **Purpose**

1. The Committee is asked to note consider the Session 5 Public Audit and Post Legislative Scrutiny Committee's Legacy Paper.

### **Legacy Papers**

2. At the end of a Parliamentary session Committees usually publish a Legacy Paper to pass on the knowledge and experience, both in terms of policy and Committee working practices. The Public Audit and Post-legislative Scrutiny Committee's [Legacy Paper](#) can be found online and is included as an annexe to this paper.

### **Action**

3. **The Committee is invited to thank the members of the Public Audit and Post-legislative Scrutiny Committee for their legacy paper, to note it for now and agree to consider the report as part of its work programme discussion.**

**Clerks to the Committee  
18 June 2021**

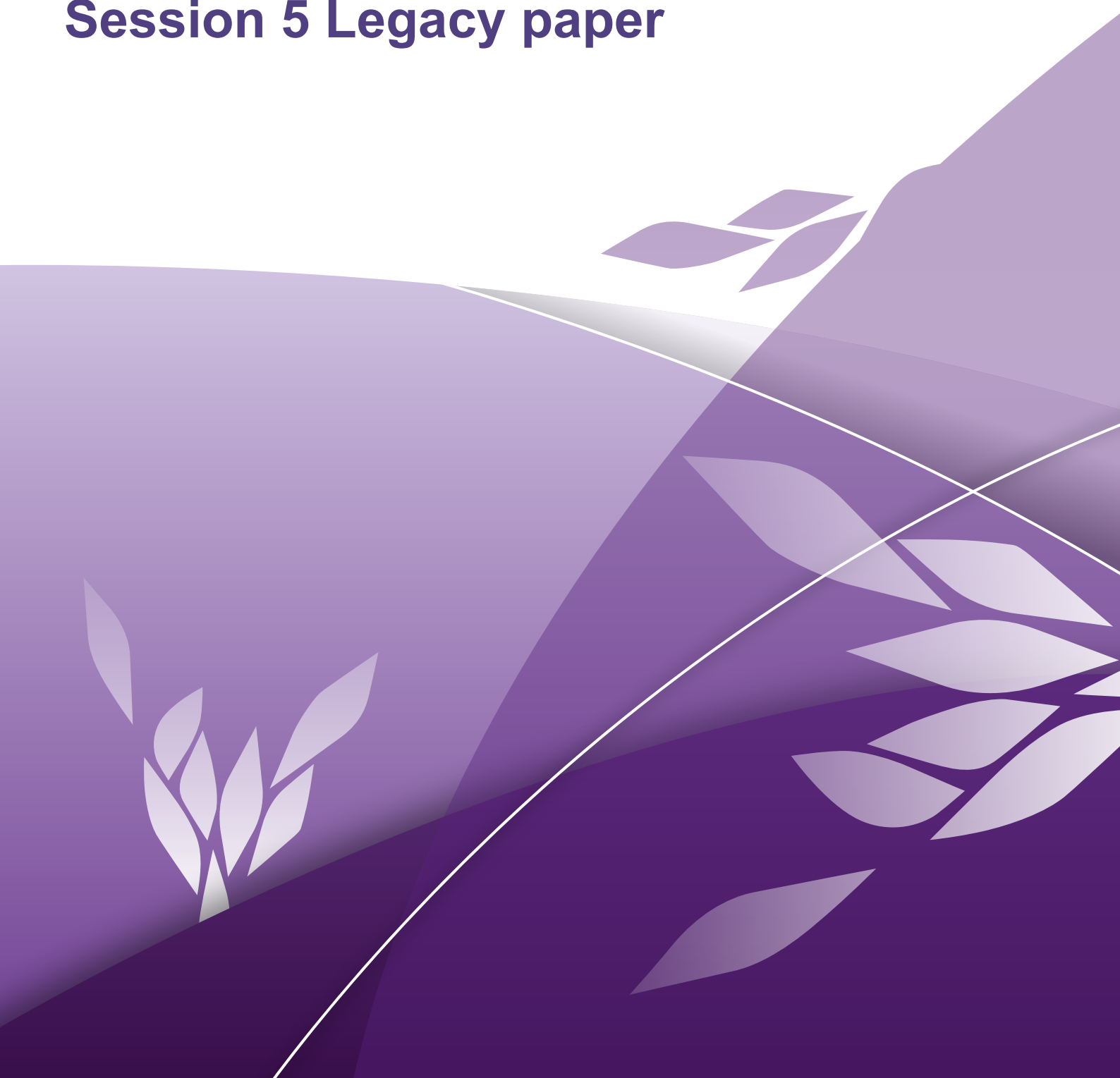


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Pàrlamaid na h-Alba

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# Public Audit and Post-legislative Scrutiny Committee Comataidh Sgrùdadh Poblach agus Iar-reachdail

## Session 5 Legacy paper



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# Public Audit and Post-legislative Scrutiny Committee

Remit: To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) any accounts laid before the Parliament;
- (b) any report laid before or made to the Parliament by the Auditor General for Scotland; and
- (c) any other document laid before the Parliament, or referred to it by the Parliamentary Bureau or by the Auditor General for Scotland, concerning financial control, accounting and auditing in relation to public expenditure.
- (d) post-legislative scrutiny.



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# Committee Membership



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# Foreword by the Convener

1. Public bodies have faced significant challenges this session, including financial pressures, public expectations and demographic changes. I believe it is no coincidence that the number of reports from the Auditor General raising concerns on annual accounts doubled this session – rising from the 18 of such reports considered by our predecessor committee to 37.
2. Two bodies dominated the Committee’s scrutiny – the Scottish Police Authority (SPA) and NHS Tayside. As we end this session, it is heartening to see that issues raised through the Committee’s audit scrutiny are apparently starting to be addressed. But it will be for our successor committee to look for strong and clear evidence that improvements are indeed having an impact and delivering long-term financial sustainability.
3. The Committee’s robust scrutiny was one of the factors that brought about changes in these bodies and the others that it scrutinised. The Committee was able to ask the questions that members of the public wanted answers to - how public funds had been used; how decisions were made; who made them and why.
4. However, it became clear to the Committee that focusing solely on individual bodies would not bring about the change that is clearly required. We kept seeing the same issues again and again across the public sector - leadership challenges, poor workforce planning, weak governance arrangements, failed ICT projects and an absence of key data making it impossible to determine whether policies and initiatives were actually making a difference to people’s lives.
5. The frontline public sector response to Covid-19 was nothing short of incredible, but the pandemic also served to shine a light on the pre-existing fractures in public services and exacerbate many of the issues that the Committee had continued to highlight in its audit scrutiny.
6. The Committee has pursued an improvement agenda this session. The focus of this report, therefore, is not only about what the Committee did and issues for its successor committee, but to underline that fundamental action needs to be taken to ensure that public sector bodies use our money wisely and that public services are sustainable in the long term.
7. These issues cannot be resolved easily but it is vital that they are tackled. Any successful approach must recognise that, just as the problems cut across sectors, solutions must be collaborative and avoid siloed working. Solutions to these systemic challenges need to be part of a long-term strategy and forward planning. This report is therefore not just for our successor committee, it is directed at the Scottish Government and leaders across the public sector.
8. The addition of post-legislative scrutiny to the Committee’s remit in autumn 2016 led it to examine, among other things, legislation relating to the control of dogs and freedom of information. Real action by the public sector is still required on both of these areas; in particular, it is simply not acceptable that almost 7,000 individuals are annually attending A&E departments, a likely underestimate of the true figure of dog attacks in Scotland. The Committee was concerned by the lack of response to our strong report on this issue and remains concerned that this issue is not being

taken seriously by the Scottish Government.

9. Nonetheless, the Committee believes that to do its work properly in the wake of new taxation powers and pressures on public spending, the post-legislative scrutiny element should be removed from the Committee's remit. The Committee also believes that it should have the power to freely initiate its own inquiries so it can investigate public spending concerns, a power that most MSPs believe the Committee already has.



# Background

10. This report covers the work of the Public Audit and Post-legislative Scrutiny Committee during parliamentary session 5.
11. The Committee's audit work is focused on the scrutiny of reports produced by the Auditor General for Scotland. The Auditor General is responsible for scrutinising the expenditure and performance of directorates of the Scottish Government and most other public spending bodies (with the exception of local authorities).
12. From September 2016, the Committee's remit also included post-legislative scrutiny of Acts of the Scottish Parliament.
13. During this session, the Committee considered 86 reports from the Auditor General, 37 of which were reports on the accounts of individual public bodies (section 22 reports). The remaining reports, including seven briefing papers, examined the economy, efficiency and effectiveness of the public sector.<sup>1</sup> The Committee also undertook six pieces of post-legislative scrutiny.

# Session 5 Statistics

## 14. Audit Scotland Reports

The Committee scrutinised 86 Audit Scotland reports

- 42 Section 23 reports
- 37 Section 22 reports
- 7 briefing papers

### Post-legislative Scrutiny

The Committee conducted 6 post-legislative scrutiny inquiries.



Source:

\*Note - Figures at time of reporting

## Impact and improvement

15. The Committee acts as an impetus for change and improvement in the public sector. During this session, the Committee gained a reputation for robust scrutiny and tenacity, holding public bodies to account for their spending decisions. The Committee's work shone a spotlight on the concerns identified in audit reports, looking at why things went wrong and challenging senior figures to explain the lessons that had been learned and the improvements that would be put in place.
16. Frustration that the same issues and concerns continued to arise in the audit reports that it considered prompted the Committee to pursue a broader "improvement" agenda. There were two key strands to this work:

## Focus on cross-cutting challenges and themes

17. In September 2019, the Committee published its report on Key audit themes,<sup>1</sup> which provided a clear and comprehensive overview of the key themes emerging from its audit scrutiny: leadership and workforce challenges; governance and accountability; data collection and outcomes and managing ICT projects:

### Leadership and workforce challenges

- Audit reports and the Committee's scrutiny during the session demonstrated how weak leadership can be a key factor in allowing a culture of poor practice and a lack of transparency in decision making to persist (see, for example, leadership issues raised during the Committee's scrutiny of the 2016/17 audit of the Scottish Police Authority<sup>2</sup> and the 2016/17 audit of NHS Tayside<sup>3</sup>). Challenges in recruitment and workforce planning were highlighted in a series of health-related audit reports (NHS in Scotland 2018;<sup>4</sup> NHS in Scotland 2019;<sup>5</sup> 2018/19 audit of NHS Tayside;<sup>6</sup> 2018/19 audit of NHS Highland<sup>7</sup>), impacting critically on the reform agenda, financial sustainability and long-term decision making.

### Governance and accountability

- Concerns about transparency, the quality of scrutiny by public boards and audit committees and the general effectiveness of governance arrangements featured in audit reports on Community Justice Scotland,<sup>8</sup> the SPA<sup>2</sup> and NHS Tayside.<sup>3</sup> The impact of weak scrutiny by boards was also a theme in reports on the college sector.<sup>9</sup>

### Data collection and planning for outcomes

- Audit reports on early learning and childcare,<sup>10</sup> self-directed support<sup>11</sup> and children and young people's mental health<sup>12</sup> highlighted concerns about incomplete and poor quality data and the impact that this has both on decision making in respect of public funds and on the ability to demonstrate whether, and the extent to which, Government policies and initiatives are delivering improved outcomes.

## Managing IT projects

- Finally, the Committee considered a series of audit reports which raised fundamental concerns about the management of public sector ICT projects, resulting in significant wasted public funds (see reports on IT projects at NHS24,<sup>13</sup> the SPA,<sup>14</sup> Disclosure Scotland<sup>15</sup> and the Scottish Public Pensions Agency (SPPA)<sup>16</sup>). These reports highlighted examples of poor planning, inconsistent leadership, digital recruitment issues and the impact of confused governance arrangements.
18. The Committee's report recognised that many of the issues that had prompted the Auditor General to report had, at their root cause, broader systemic challenges and problems which were present in, and being experienced by, bodies across the public sector. The Committee emphasised that cross-sector, collaborative and long-term solutions were required.
  19. The Committee used the report as a basis for its subsequent audit scrutiny, holding roundtable sessions with key stakeholders to explore the causes underpinning many of the challenges and to identify action that was needed to bring about change and improvement.

## Implementing recommendations and learning lessons

20. The Committee was also frustrated at the lack of evidence that audit report recommendations were being acted on. In some cases, despite repeated section 22 reports, there was little evidence of bodies addressing the fundamental issues identified by the Auditor General. The Committee recognises that there is a need for a more formalised approach through which to follow up previous recommendations.

**21. The Committee considers there needs to be fundamental shift in the way in which public bodies and the Scottish Government view and respond to audit reports. On one level, audit reports reveal the flaws and weaknesses in public service delivery – the absent data about spending and outcomes; the weak or inconsistent leadership impacting on reform and long-term decision making; the lack of robust scrutiny by boards enabling weak financial management to occur without detection. However, more importantly, audit reports underline what needs to change and the improvements that must be made.**

**22. The Committee finds it unacceptable that, in the face of a critical audit report, the reaction of the public body is, all too often, to react defensively. Rather than tackle the concerns raised head on and focus on improvement and learning, in too many cases public bodies focus on defending or downplaying failings.**

- 23. Public bodies and the Scottish Government must be required to respond formally and then act on the recommendations of the Auditor General or provide justification as to why they are not doing so and there should be consequences if they fail to do so. The Committee expects responses from public bodies to include: an acknowledgement that things have gone wrong; identification of any consequential impact on service users/ members of the public; the process by which lessons are to be learned and shared and the action that will be taken (along with a clear timescale).**
- 24. The Committee considers that there needs to be a formal process in place to implement these requirements, including a mechanism by which the Auditor General can update the Committee in cases where the Auditor General decides not to prepare a further section 22 report. The Committee recommends that its successor committee explores options for such a framework with the Auditor General in the first instance.**
- 25. The incoming Committee may also wish to consider inviting SPICE to prepare a briefing on mechanisms used in other jurisdictions to follow-up audit report recommendations.**
- 26. However, the Committee recognises that action by individual bodies alone will not, of itself, prevent many of the same issues continuing to feature in audit reports. The Committee has highlighted a number of key cross-cutting themes which have at their root systemic challenges across the public sector. These challenges risk the financial sustainability and effectiveness of public services if they are not addressed.**
- 27. The Committee recognises that these issues cannot be resolved easily but it is vital that they are tackled. Any successful approach must recognise that, just as the problems cut across sectors, solutions must be collaborative and avoid siloed working. Solutions to these systemic challenges need to be part of a long-term strategy and forward planning.**
- 28. In September 2019, the Committee called on the Scottish Government to lead a debate across the public sector to address the key challenges that the Committee had identified in its report. It is disappointing that this debate has not taken place. It will be essential for this to be taken forward by the incoming administration to show a clear commitment to improvement.**

# Financial and performance reporting

29. The Committee highlights below a number of specific bodies that have been subject to repeated reports from the Auditor General. There is little evidence that the underlying issues threatening their respective financial sustainability are being comprehensively addressed.

## Scottish Police Authority

30. The Committee recently considered the section 22 report on the 2019/20 accounts of Scottish Police Authority.<sup>17</sup> The Auditor General has raised concerns about the SPA through section 22 reports for seven consecutive years. While the serious governance and financial management concerns highlighted in audit reports earlier in the session appear to have been addressed, the financial sustainability of the SPA continues to be a matter of real concern particularly given the critical nature of its services. While the Cabinet Secretary for Justice has established a roundtable of stakeholders to review the governance and financial sustainability issues raised by the former Auditor General, the Committee remains concerned that the review is too limited in scope.

- 31. The Committee is strongly of the view that there needs to be a full and comprehensive review of police governance and accountability arrangements with a view to breaking the pattern of section 22 reports that it has considered throughout this session and to ensure the financial sustainability of the SPA in the long term. The Committee recommends that its successor committee continues to pursue this issue in the next session.**

## NHS Tayside and NHS Highland

32. In May 2019, the Committee published a detailed report on the serious financial management and governance issues which came to light during its scrutiny of the 2016/17 and 2017/18 audits of NHS Tayside.<sup>18</sup>
33. In December 2020, the Committee took evidence on the 2019/20 audit of NHS Tayside (the sixth consecutive report).<sup>19</sup> The report noted that NHS Tayside had made progress, but still needed financial support from the Scottish Government to break even, the eighth year in a row that it has required financial assistance. The report noted that the Board continues to have an expensive operating model, spending more on staffing, in-patient costs and prescriptions than the Scottish average.
34. The Committee recently took evidence on the fourth section 22 report on NHS Highland in six years and second consecutive report.<sup>7</sup> The report continued to highlight concerns over the Board's financial sustainability, noting that overspends on drugs and adult social care contributed to NHS Highland's failure to meet its financial targets and questioning the board's ability to reach financial balance in

2021/22. The Committee has continued to raise the issue of vacancies and use of locums at NHS Highland, which at one point involved paying two locum doctors total fees of £400,000.

- 35. The Committee considers that the financial sustainability of both NHS Tayside and NHS Highland is a significant cause of concern given that underlying issues relating to operating models, service provision, workforce and governance remain. The Committee recommends that its successor committee continues to closely monitor both boards in its scrutiny of the annual overview report on the NHS.**

## Scottish Government

36. The Committee has continued to scrutinise the Scottish Government Consolidated Accounts on an annual basis. There are a number of issues which remain outstanding despite being raised by the Committee throughout the session.

### Investment in and support for private companies

37. In recent years, the Scottish Government has provided high level financial support to a number of companies such as Ferguson Marine Engineering Limited, Prestwick Airport and Burntisland Fabrications Limited, where that investment has substantially devalued or been reduced to nil in subsequent years. The Auditor General has recommended in a series of reports the need for a clear framework to outline the Scottish Government's approach to financial interventions in private companies.
38. While the report on the 2019/20 accounts indicates that some progress has been made on this issue,<sup>20</sup> the Auditor General has emphasised that the developments do not amount to a "framework" and that the Scottish Government needs to outline its approach to risk tolerance, financial capacity and expected outcomes for each case considered.<sup>21</sup>

### Whole public sector accounts

39. There are number of companies in which the Scottish Government has made a substantial investment or are wholly owned by the Scottish Government which remain outside the "accounting boundary" of the consolidated accounts meaning that their accounts are not audited by the Auditor General. Examples of such companies are Prestwick Airport and Caledonian Maritime Assets Limited.
40. The Auditor General has consistently reported on the importance of consolidated accounts for the whole of the Scottish public sector. Despite commitments by the Scottish Government throughout the session that this work is in progress, consolidated accounts for the whole public sector in Scotland have not yet been prepared.

## Government sponsorship

41. A series of audit reports that the Committee has scrutinised this session on the Scottish Social Services Council,<sup>22</sup> Community Justice Scotland,<sup>8</sup> the SPPA,<sup>23</sup> Disclosure Scotland<sup>15</sup> and Bòrd na Gàidhlig<sup>24</sup> have raised significant concerns about the quality and adequacy of oversight and assurance provided by the Scottish Government sponsoring team.

42. **Given the impact of the Covid-19 pandemic on businesses, it is more important than ever that there is transparency about the financial support provided by the Scottish Government to private companies and the value of public funds committed. The Scottish Government must set out its plans without delay for future investment in private companies in the terms recommended by the Auditor General. The Committee recommends that its successor committee continues to pursue this issue.**

43. **The Scottish Government has been promising for a number of years that it will prepare whole public sector consolidated accounts. It is disappointing to the Committee that it has yet to deliver on this commitment. It is essential that there is a public sector consolidated account to provide a comprehensive and transparent assessment of the state of Scotland's public finances. The Scottish Government should now finalise the format and produce a draft public consolidated account for audit. The Committee recommends that its successor committee continues to pursue this issue.**

44. **Audit reports have revealed worrying examples concerning the level and extent of support provided by Scottish Government sponsoring teams to other public bodies. Given the level of resources to which the Scottish Government has access, it is simply unacceptable that there continue to be examples of weak and inconsistent challenge being provided by Scottish Government officials and of problems not being identified or acted upon until it is too late. The Committee is aware that specific directorates have taken some steps to try to address this issue. However, there needs to be one senior individual in the Scottish Government ultimately responsible for sponsoring arrangements across the Government to ensure a consistent and a standardised approach and, crucially, to be held to account when things go wrong.**

## Bòrd na Gàidhlig

45. The audit of the 2018/19 accounts of Bòrd na Gàidhlig highlighted serious concerns including “ineffective leadership, inadequate workforce planning, a lack of clarity over roles and responsibilities and poor relationships and organisational culture.”<sup>24</sup> During the Committee's evidence session with the Auditor General, the auditor said



that he could “not think of another report that has raised such serious issues during my time in this role.”<sup>25</sup> In subsequent evidence sessions with the Scottish Government and the Bòrd, both bodies sought to reassure the Committee that lessons have been learned and improvement plans are in place.

46. The Auditor General has indicated that he plans to prepare a further section 22 report on the accounts for 2020/21.

**47. The Committee was deeply concerned by the report on Bòrd na Gàidhlig, which raised multiple issues in relation to leadership and workforce planning and engagement and, as a consequence, the use of resources. It is clear that improvements must be made and engagement undertaken by the Bòrd with the Gaelic-speaking community to rebuild trust in its ability to deliver the important outcomes for which the organisation was established. The Committee notes that its successor committee will have an opportunity to scrutinise the actions that have been taken by the Bòrd and the Scottish Government when the Auditor General next reports.**

## Management of public sector ICT projects

48. The Committee has highlighted the management of public sector ICT projects as one of its key cross-cutting themes. The Committee has just reported on this specific issue.<sup>26</sup> Audit reports have emphasised the need for good and comprehensive planning when public bodies are considering digital projects. IT security is also an issue that public bodies will need to tackle.

## Outstanding audit reports

49. In October 2020, the Committee took evidence from the Auditor General on the report, Highlands and Islands Enterprise: Management of Cairngorm mountain and funicular railway<sup>27</sup>. The report examined the events leading up to Cairngorm Mountain Ltd entering administration and the decision-making and actions of Highlands and Islands Enterprise. Due to ongoing legal proceedings, the Committee was restricted in the evidence that it was able to take at that point.

50. In January 2020, the Committee took evidence from the Auditor General on the report on the 2018/19 audit of NHS Lothian: Delay to the opening of the Royal Hospital for Children and Young People.<sup>28</sup> Following the evidence session, the Committee agreed to await the outcome of the public inquiry before considering its next steps.

**51. The successor committee may wish to continue the scrutiny of these reports once the relevant legal proceedings and public inquiry, respectively, have completed.**

# New challenges

## Impact of Covid-19

52. The Covid-19 pandemic has clearly had an unprecedented impact on public services and underlined the importance of many long-standing issues featured in audit reports such as the need for good governance, openness and transparency, financial controls and management.
53. The Committee has continued to scrutinise the impact of Covid-19 in its consideration of individual audit reports. The Committee also took evidence from the Permanent Secretary on the assurance and control frameworks that the Scottish Government has put in place to govern the distribution of funding to address the impact of the pandemic.<sup>29</sup>

**54. The Committee considers that Covid-19 has highlighted and exacerbated many of the pre-existing risks and challenges raised in the Committee's key audit themes work. The Committee recognises that its successor committee will have a key role in examining the impact of the pandemic on public services and public spending and that this scrutiny will likely comprise a significant part of the work of the Committee.**

**55. The Committee considers that there will be two important elements to this work: to examine the extent to which Covid-19 has impacted on existing challenges being faced by public bodies and, secondly, to scrutinise the way in which public funds to address the impact of Covid-19 were allocated; how that money was then spent and what the outcomes were.**

**56. The Committee considers that it will also be important that scrutiny of how public money is being used to support the economy and its recovery from COVID-19 examines the impact on inequalities, including regional inequality.**

## Impact of EU withdrawal

57. To date, the Committee has raised issues around the impact of EU withdrawal in its scrutiny of specific audit reports. However, the Committee recognises that, as the impact of EU withdrawal on public services emerges, specific audit work may be required. The Committee notes that the Auditor General's draft future work programme recognises this and anticipates audit work in this area.

## Scotland's new financial powers

58. The Committee has played an active role in scrutinising the Scottish Government's implementation of Scotland's new financial powers and the operation of the fiscal framework. In particular, the Committee has continued to raise directly with HM Revenue and Customs (HMRC) issues around the methodology used to estimate Scottish income tax and outturn and the accurate identification of Scottish taxpayers.

**59. The Committee has taken evidence from HMRC as part of its scrutiny of the administration of Scottish income tax and found this to be a useful session particularly while these powers continue to bed in. This is a session that its successor committee may wish to continue.**

## Audit remit and beyond

60. The impact of Covid-19 has accelerated change and innovation across the public sector and major decisions have had to be made at unprecedented pace, often with high degrees of uncertainty and risk. It has also had implications for the way in which audit needs to be planned and delivered in the future. The Auditor General has highlighted to the Committee the fact that his future work programme may need to change at short notice as new issues emerge, or current risks reduce or increase in significance.
61. Covid-19 has also underlined the need for Parliamentary scrutiny to be agile, responsive and topical and has brought to the fore an issue concerning the remit of the Public Audit Committee. The Committee's current remit, in terms of its audit work, is limited to scrutinising the accounts and audit reports laid before the Parliament and any other document of a similar nature which is referred to it by the Parliamentary bureau or matter added by motion.<sup>2</sup>
62. The Committee finds invaluable the reports of the Auditor General and Audit Scotland which provide a forensic and thorough analysis of public spending and outcomes. Nonetheless, the Committee has, at times, felt constricted by its current remit and its inability to respond of its own initiative to new and fast-paced developments and initiatives and to examine how public funds are being used.
63. Health and social care integration has brought to light the potential difficulties in scrutinising the use of public funds when accountability and audit arrangements ultimately fall to two different bodies – the Auditor General for Scotland and the Accounts Commission. The distribution of funding as a consequence of Covid-19 has further underlined issues around the effectiveness of current scrutiny arrangements given that much of the funding distributed to local government has come from central government.

**64. The Committee recommends that the remit of the public audit committee in session 6 is reviewed with a view to enabling its successor committee to freely initiate its own inquiries.**

**65. The Committee recommends that its successor committee explore whether the separation of current audit and accountability arrangements relating to central and local government continues to be justified and the most effective way of scrutinising public funds.**

**66. Finally, there are now a whole series of mechanisms designed to improve the transparency and openness of Government decision making, policy development and the spending of public funds, as well as parliamentary scrutiny of those activities. This framework includes the Freedom of Information (Scotland) Act 2002; the Scottish Ministerial Code; the Civil Service Code; the Public Records (Scotland) Act 2011; the Interests of**

**Members of the Scottish Parliament Act 2006; the Code of Conduct for Members of the Scottish Parliament and the Lobbying (Scotland) Act 2016. The Committee considers that consideration should be given to establishing a Public Administration Committee with responsibility for oversight and scrutiny of the way in which Government exercises its overall functions.**

## Post-legislative scrutiny

67. In September 2016, the Committee's remit was extended to include post-legislative scrutiny. The Committee has carried out six pieces of post-legislative scrutiny during this session, which were selected on the basis of topicality and as a result of a public consultation exercise that the Committee undertook in 2017. The Committee highlights two specific areas below:

### Control of Dogs (Scotland) Act 2010

68. Concerns about the continuing high incidence of dog attacks and numbers of victims requiring treatment in accident and emergency departments led the Committee to undertake an extensive inquiry into the effectiveness of the Control of Dogs (Scotland) Act 2010. The Committee's subsequent report,<sup>30</sup> which was widely covered in the media, concluded that current dog control law was not fit for its purpose and called on the Scottish Government to undertake a comprehensive review of all dog control legislation as a matter of urgency. The Committee has continued to scrutinise the Government's response to its report with further evidence sessions being held in August 2020 and in February 2021.

- 69. The Committee remains frustrated by the pace with which the Scottish Government is responding to this extremely serious issue. Given the high level of dog attacks that continue to be reported, and the probability that a significant number of attacks remain unreported, it is imperative that the work started by the Committee is followed through by the Scottish Government as a matter of urgency. The Committee recommends that the next Parliament continues to place pressure on the Scottish Government to legislate to update current dog control legislation, to ensure it is fit for purpose, at the first available opportunity.**

### Freedom of Information (Scotland) Act 2002

70. Following a series of debates and questions in the Parliament which raised concerns about the Scottish Government's handling of requests for information, the Committee agreed to undertake post-legislative scrutiny of the Freedom of Information (Scotland) Act 2002. Its subsequent report found that, while there was general consensus that the Act had improved openness and transparency, the Act needed to be modernised to reflect public service delivery, use of social media and the way in which members of the public access information. The Committee made a number of recommendations to the Scottish Government and to other public bodies.  
31

- 71. The Committee's report on Freedom of Information laws demonstrated that there are clear weaknesses with the current legislative framework. The**

**Committee is strongly of the view that a significant shift is required in public bodies to move to proactive publication, with a focus on making accessible the information that members of public want to see (without having to request it). Public services are now delivered through a wide variety of entities, some of which still remain outside the scope of FOI legislation. This needs to change. The Committee recommends that the next Parliament robustly pursues the Committee's recommendations to ensure that the Scottish Government makes the necessary changes.**

## Other post-legislative scrutiny

72. In addition to the above Acts, the Committee undertook post-legislative scrutiny of the Social Care (Self-directed Support) (Scotland) Act 2013; the Nature Conservation (Scotland) Act 2004 and Wildlife and Natural Environment (Scotland) Act 2011 and legislation underpinning the National Fraud Initiative. At the time of reporting, the Committee was undertaking post-legislative scrutiny of the Lobbying (Scotland) Act 2016.
73. As result of its public consultation, the Committee had also shortlisted for post-legislative the following Acts:
- The Land Registration etc. (Scotland) Act 2012 (2012 Act)
  - The Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014 (2014 regulations)
74. Petition PE1676 <sup>32</sup> was referred to the Committee in May 2018 on the basis of the Committee's shortlisting of the 2012 Act in its post-legislative scrutiny work programme. At its meeting on 14 June 2018, the Committee agreed to include the issues raised in the petition as part its post-legislative scrutiny of the 2012 Act.
75. Due to its workload, the Committee has, unfortunately, not had time to undertake post-legislative scrutiny of the 2012 Act or the 2014 Regulations. The Petition has been referred back to the Public Petitions Committee for it to take forward in session 6.

## Approach to post-legislative scrutiny

76. The Committee has carried out its post-legislative function during this session thoroughly and well, alongside a very busy programme of audit reports. However, it has reflected on the addition of this area to its audit remit and makes the following comments.
77. The Consultative Steering Group recommended that the Scottish Parliament should have all-purpose Committees, combining the Westminster Select and Standing Committee role on the basis it would enable Members to develop an expertise in particular areas and to bring an informed view to the consideration of legislation and

scrutiny of the Executive.<sup>33</sup>

78. The same approach does not appear to have informed the decision to add post-legislative scrutiny as a discrete area to the remit of one committee. The Committee's audit scrutiny focuses on those areas where it can best add value to the work of the subject committees, such as financial management and governance and other cross-cutting issues. It was difficult for the Committee to select items for post-legislative scrutiny where it was better placed to undertake such scrutiny than the relevant subject committee, given the latter's subject knowledge and expertise. There was also a lack of clarity as to whether the Committee could introduce legislation to give effect to its recommendations (in the way that a subject committee could) in the event that the Scottish Government chose not to legislate.
79. While the Committee considered more audit reports than its predecessor committee this session,<sup>3</sup> its post-legislative scrutiny inquiries inevitably impacted on the Committee's ability to carry out more detailed scrutiny of individual audit reports and its broader key audit themes work and improvement agenda. This was an unfortunate consequence of the remit change, particularly given continued pressures on public services and public funding.

**80. The Committee recommends that post-legislative scrutiny is removed from the remit of the Public Audit Committee in session 6.**

**81. The Committee recognises that post-legislative scrutiny is an important element of parliamentary scrutiny. However, before adding this aspect to another committee's remit, the Committee strongly recommends that the Standards, Procedures and Public Appointments Committee be invited to undertake a thorough examination of post-legislative scrutiny, including considering what it means; expected outcomes and how it is best and most effectively undertaken in the parliamentary setting.**



## Ways of working

### Handling enquiries from whistleblowers

82. During this session, Committee Members were contacted from time to time by employees of Scottish public bodies raising serious concerns about the financial management and governance of such bodies. However, Committee Members were limited in how they could respond in such cases on the basis that individuals who “blow the whistle” to MSPs are not protected under current employment legislation (unlike MPs).
83. The Committee wrote to the Scottish Parliamentary Corporate Body to highlight this issue and the need to publicise the current legal position among MSPs more widely and to seek clarification on why the Act did not currently extend to MSPs.<sup>34</sup> As a result of this intervention, the Committee understands that MSPs are expected to be added to the relevant legislation in Spring 2021.<sup>35</sup>

### Co-ordination with other committees

84. The Committee recognises that its role is to add value to, rather than duplicate, the work of subject committees. It therefore made a conscious effort to co-ordinate its scrutiny with that of other committees, focussing on cross-cutting areas such as governance and public spending outcomes, rather than areas of policy, and highlighting issues of concern to relevant subject committees. From the Committee’s perspective, this co-ordination appeared to work well and undoubtedly gave greater impact to parliamentary scrutiny.

### Working with other PACs

85. In September 2017, Members of the Committee attended the first public accounts committee (PAC) networking event in Cardiff. The one-day event brought together Members, clerks and audit colleagues from parliaments, assemblies and auditing bodies across the United Kingdom and Channel Islands to share and exchange knowledge and best working practice. A follow-up event took place in the Isle of Man in 2018. In 2019, the Committee hosted the event at the Scottish Parliament. Members found such events to be useful vehicles for exchanging information and good practice, particularly given the unique role that PACs undertake and the very specific relationship that they have with an Auditor General.

- 86. The Committee recommends that its successor committee may wish to continue to participate in PAC networking events.**

## Frequency of meetings

87. The session 4 Committee highlighted in its Legacy paper that, up until the final six months of the session, the Committee generally met fortnightly with additional meetings as required. This session, the Committee has met on a weekly basis.

**88. The successor committee may wish to expect to continue to meet on a weekly basis.**

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- 1 Section 22 reports are prepared by the Auditor General if any specific concerns or issues have been raised in the audit of one of the public bodies for which he is responsible (under section 22 of the Public Finance and Accountability (Scotland) Act 2000. The Auditor General for Scotland may also prepare reports to examine the economy, efficiency and effectiveness of public bodies (under section 23 of the 2000 Act).
- 2 The remit of the Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—(a) any accounts laid before the Parliament; (b) any report laid before or made to the Parliament by the Auditor General for Scotland; (c) any other document laid before the Parliament, or referred to it by the Parliamentary Bureau or by the Auditor General for Scotland, concerning financial control, accounting and auditing in relation to public expenditure; and (d) post-legislative scrutiny.
- 3 The session 4 Committee considered 68 reports

