The Committee will meet at 10.00 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.

2. **Governance of public bodies:** The Committee will take evidence from—

   Bill Thomson, Commissioner for Ethical Standards in Public Life in Scotland, and Ian Bruce, Public Appointments Manager, Commissioner for Ethical Standards in Public Life in Scotland.

3. **Work Programme:** The Committee will consider its future approach to its post-legislative scrutiny of the biodiversity and biodiversity reporting duties.

Lucy Scharbert
Clerk to the Public Audit and Post-legislative Scrutiny Committee
Room T3.60
Tel: 0131 348 5451
Email: papls.committee@parliament.scot
The papers for this meeting are as follows—

**Agenda Item 2**

Note by the Clerk

PRIVATE PAPER

**Agenda Item 3**

PRIVATE PAPER
Introduction

1. At its meeting today, the Committee will take evidence from the Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner”).

Background to the role of the Commissioner

2. The Commissioner and his team work in two areas—
   - public standards;
   - public appointments.

Public standards

3. The Commissioner can investigate written complaints about Councillors, Members of devolved public bodies and MSPs who are alleged to have contravened their Code of Conduct. The Commissioner’s functions in relation to public standards are set out in—
   - the Ethical Standards in Public Life etc. (Scotland) Act 2000 and
   - the Scottish Parliamentary Standards Commissioner Act 2002

Public appointments

4. The Commissioner’s functions in relation to public appointments are set out in the Public Appointments and Public Bodies etc. (Scotland) Act 2003. The Commissioner regulates appointments of non-executive members to the boards of many of Scotland’s public bodies. Whilst the Commissioner regulates the process used to make appointments, it is administered by the Scottish Government. As such, the responsibility for making these appointments fairly, openly and based on merit lies with the Scottish Government.

5. The Commissioner regulates appointments in three main ways—
   - the Commissioner has produced a Code of Practice for Ministerial Appointments to Public Bodies in Scotland. The Scottish Government is expected to follow the Code when making regulated appointments. The current Code came into force on 1 October 2013;
   - the Commissioner oversees a selection of appointment processes by assigning a Public Appointments Adviser;
   - the Commissioner also conduct audits and thematic reviews.

6. The Code includes principles that the appointments process should be based on (page 6); and guidelines for the appointments system (sections A to H); the Principles of Public life in Scotland (Annex One) and Publicity and Information to be provided to applicants (Annex Two).
7. **Statutory guidance** on the application of the Code has also been published. It clarifies that the Scottish Ministers define “Merit” at the outset of each appointment round and that only candidates who meet that definition most closely may be appointed.

**Committee scrutiny**

8. The Committee has raised broader governance issues, including appointments to boards, in writing to the Scottish Government and in oral evidence sessions with a range of public bodies. The Committee’s recent scrutiny of the 2016/17 audit of the [Scottish Police Authority](#) and [2016/17 audit of NHS Tayside](#) again raised issues in respect of the scrutiny and challenge function exercised by boards.

9. In its letter to the Cabinet Secretary for Finance and the Constitution of 2 October 2017, the Committee emphasised the importance of a well-functioning board with clear objectives and clear lines of responsibility in ensuring that public bodies are spending wisely and delivering the best possible outcomes for the people they serve. The Committee made a number of points with a view to improving board performance. In particular, the letter stated that—

   - “in order to improve service delivery and ensure public confidence, we need to establish a fully effective and transparent means of assessing the performance of board chairs and board members. All boards should have a clear, publicly-available set of criteria by which they are judged;

   - it is essential that the public appointments process attracts the best possible candidates. The process should be as simple, streamlined and non-bureaucratic as possible so that well-qualified people are not dissuaded from applying because of the amount of time required to do so. However, we understand that some potentially very capable candidates from the private sector are reluctant to take part for this reason;

   - we want to ensure that people with a successful track record in the public, private and third sectors have an equal chance of succeeding, not simply those who are most adept at repeating public sector jargon. We also want to avoid a situation whereby some people are on a large number of boards and, potentially, unable to devote sufficient time to each.”

10. The Cabinet Secretary for Finance and the Constitution responded on 10 November 2017. Paragraphs 12 to 16 of that letter set out, in particular, the Government’s response in relation to the public appointments process and succession planning. The remainder of the letter provides information about the support that the Scottish Government provides to public boards.

---

Clerks to the Committee
April 2018