



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Public Audit and Post-legislative Scrutiny Committee

**Thursday 8 February 2018**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE**  
**5<sup>th</sup> Meeting 2018, Session 5**

**CONVENER**

\*Jenny Marra (North East Scotland) (Lab)

**DEPUTY CONVENER**

\*Liam Kerr (North East Scotland) (Con)

**COMMITTEE MEMBERS**

\*Colin Beattie (Midlothian North and Musselburgh) (SNP)

\*Bill Bowman (North East Scotland) (Con)

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

\*Iain Gray (East Lothian) (Lab)

\*Alex Neil (Airdrie and Shotts) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Andrew Chapman (Scottish Government)

Caroline Gardner (Auditor General for Scotland)

Eleanor Ryan (Scottish Government)

Mark Taylor (Audit Scotland)

Aileen Wright (Scottish Government)

**CLERK TO THE COMMITTEE**

Terry Shevlin

**LOCATION**

The Adam Smith Room (CR5)



# Scottish Parliament

## Public Audit and Post-legislative Scrutiny Committee

Thursday 8 February 2018

*[The Convener opened the meeting at 10:01]*

### Decision on Taking Business in Private

**The Convener (Jenny Marra):** Good morning and welcome to the fifth meeting in 2018 of the Public Audit and Post-legislative Scrutiny Committee. I ask everyone in the public gallery to switch off their electronic devices or turn them to silent, so that they do not affect the committee's work.

Agenda item 1 is a decision on taking business in private. Do we agree to take items 3 and 4 in private?

**Members indicated agreement.**

# Scotland Act 2016 (Audit and Accountability Arrangements)

10:01

**The Convener:** Item 2 is to take evidence on audit and accountability arrangements under the Scotland Act 2016. I welcome, from the Scottish Government, Eleanor Ryan, director of financial strategy; Aileen Wright, head of corporate reporting, accountancy and governance; and Andrew Chapman, team leader for fiscal delivery and constitutional change. I welcome also Caroline Gardner, who is the Auditor General for Scotland, and Mark Taylor, who is assistant director of Audit Scotland. I invite opening statements from Eleanor Ryan and the Auditor General.

**Eleanor Ryan (Scottish Government):** Thank you for inviting us to come and discuss this audit and accountability framework.

The clerk's note sets out a very clear account of the origin and history of the document. Some key principles for the audit and accountability framework were set out in the technical annex of the fiscal framework itself. Those were that audit arrangements should be efficient and effective, that they should avoid duplication, and that they should not result in auditors becoming overburdened. We have had those principles in mind, as well as the more succinct principle set out by the Public Audit and Post-legislative Scrutiny Committee that the framework should be proportionate, transparent and robust. Those principles have informed our discussions with Her Majesty's Treasury officials, which resulted in the draft. We have also had very important input from Audit Scotland and the National Audit Office.

It is really important to the Scottish ministers that the Scottish Parliament, through this committee, has an opportunity to review and comment on the framework and help to shape it before a final version is agreed through the joint exchequer committee. We look forward to discussing any points that the committee wishes to raise.

**Caroline Gardner (Auditor General for Scotland):** I know that some people might see this morning's subject matter as a bit dry and technical, so I am grateful for the committee's interest, and we will do our best to set out for you why we think that it matters. I will also briefly summarise my views on the draft that is set out in the submission that you have before you.

The committee knows very well the fundamental changes to Scotland's public finances that are coming through as a result of the Scotland Act

2016. A number of United Kingdom bodies now have an important role in functions that are central to the Scottish Parliament's responsibilities, including Scottish income tax, aspects of devolved social security, VAT assignment and the detailed operation of the fiscal framework that governs all of that.

The audit and accountability framework will determine the ability of the Scottish Parliament and its committees to scrutinise those areas, including how United Kingdom bodies report to the Scottish Parliament, how they respond to requests for information and evidence and how that is underpinned by the audit process. Those are likely to be critical issues for the Parliament's committees as they scrutinise the operation of the new powers.

In my view, the draft framework has some important strengths. It provides a reasonable basis for the direct accountability of UK public bodies to the Scottish Parliament, where that is relevant, and it reinforces the role of independent public audit, both in fully devolved areas and in areas in which UK bodies are involved.

I have highlighted some areas in which I think that the draft framework could be strengthened further to better support accountability to the Scottish Parliament, including the provisions for value-for-money audit in UK bodies that undertake devolved responsibilities.

Ultimately, it is for the two Governments to agree on the arrangements that are to be put in place, but it is important for the committee to be able to contribute its views on behalf of the Parliament. Together with colleagues from the Government, we will do our best to help you with that.

**The Convener:** Thank you. We will now move to questions.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** Over a period of several years, this committee has been interested in the arrangements between the devolved Administration and the UK Government in terms of how to implement various acts. In all that time, we have had reassurances that all is well and that everything is going smoothly. This is the first time that we have heard anything negative. During the negotiations, would there have been a time when this issue could have been raised with us, so that we could have had some input?

**Caroline Gardner:** The first thing that I would say is that I would not see this as being negative; I think that it is an important next step on the journey of fiscal devolution. The Scotland Act 2016, which this committee has considered several times, radically increases the financial powers of the Scottish Parliament. When it is fully

in effect, it will increase the amount of revenue that is raised in Scotland from about 10 per cent of what we spend to close to 50 per cent, and it devolves about £3 billion-worth of social security benefits, too. That is a big step change that is happening at the moment.

The committee will recall that, in your first meeting of 2018, you had reports from the Comptroller and Auditor General of the National Audit Office and me about the Scottish rate of income tax. They were on the last year in which the 10p rate was the power that was in place. We are now moving into a world in which, effectively, all income tax on earned income, plus VAT and social security, is in the gift of the Scottish Parliament. I have said to this committee before that, in my view, the arrangements that we had in place for the Scotland Act 2012 have served us well. However, that step change means that it is time to reconsider how they need to develop. I think that the draft framework is the process by which that is happening.

**Colin Beattie:** I believe that Eleanor Ryan indicated that you and Audit Scotland had input into the document. Given the reservations that you have listed, does that mean that you were overruled on that or that there was a disagreement?

**Caroline Gardner:** I would not characterise it in that way at all. The primary discussions have been going on between Eleanor Ryan's colleagues in the Scottish Government and UK colleagues in Her Majesty's Treasury. Both those parties have been discussing matters with their national auditors—the Scottish Government with me as the Auditor General for Scotland and the Treasury with the Comptroller and Auditor General of the National Audit Office. As I said in my submission and in my opening remarks, I think that there are some significant strengths, and many of our contributions have been taken on board.

We are appearing before the committee this morning so that the committee has the chance to put its views and so that you can be made aware of the areas in which I think that the framework can be strengthened further. I would not want that to be taken as me sounding an alarm about the framework not being fit for purpose.

**Colin Beattie:** Your submission not only asks for the framework to be strengthened but points out some weaknesses, and I think that that is important.

Eleanor Ryan said that Audit Scotland was fully engaged in the process. How have we ended up at this point, with a document that the Auditor General has some issues with?

**Eleanor Ryan:** It is important to recognise the fact that earlier drafts benefited hugely from the

points that the Auditor General and her colleagues have raised. We therefore have a much better draft framework than we would have had otherwise.

This is a process that is being undertaken by two Governments and which involves two national audit bodies. One individual set of views cannot suddenly change everything in the framework. We recognise several of the points that the Auditor General has raised, and we will very happily go back and represent them again in further discussion with the Treasury. There is no sense in which the Scottish Government is trying to resist the points that Audit Scotland has raised.

**Colin Beattie:** I presume that those points must have been raised before with the Treasury, and it must have disagreed with them.

**Eleanor Ryan:** Some of them have been, but not necessarily all the points that the Auditor General has made have been raised before.

**Colin Beattie:** The draft document would benefit from plain English. It is fairly obscure in places. Governments these days are supposedly trying to bring in documents that can be read and understood by the layman, but some bits of the document are very close to gobbledygook. However, we have what we have, and I want to raise one or two specific points.

Item 5 in the second paragraph on page 6 of the draft document says:

“the secondary auditor must ensure that it has confirmed that the primary auditor is content for the work to be carried out.”

Does that mean that the primary auditor has a veto if the secondary auditor thinks that some examination or investigation is required? Is there a mechanism to resolve that?

**Eleanor Ryan:** We would expect that the primary auditor would take account of the views of both Parliaments in setting out their programme of work and that there would be good co-operation between the two—

**Colin Beattie:** Are there guidelines for that, or are you speculating?

**Eleanor Ryan:** I think that that point is raised in the draft framework. If you think that that needs to be strengthened, that is, obviously, another point that we can take back.

**Colin Beattie:** I am trying to ascertain whether there is something that will create a guideline or a mechanism for that, or whether you simply think that that is the way that it should be.

**Eleanor Ryan:** It is a principle point. The other principle point is the independence of audit bodies. There is something in the drafting that officials

between the two Governments need to be careful of. When drafting a framework, it is absolutely essential to ensure that it does not cut across the freedom of the audit bodies. The Auditor General may well have a view on that, too.

**Colin Beattie:** That means that the framework would benefit from clarity.

**Caroline Gardner:** I will add to Eleanor Ryan's point. I think that that is one of the areas in which the framework could be strengthened to reflect the interests of the Scottish Parliament and the views that the predecessor committee expressed. Although the National Audit Office, the Comptroller and Auditor General and I have every interest in making the framework work in practice, there are circumstances in which the requirement for the Comptroller and Auditor General to agree that I do some work in Her Majesty's Revenue and Customs, for example, and for that body to agree could limit my rights of access. We will do our best to make the framework work, but I thought that it was worth flagging up to the committee that I think that it is more limited than the Parliament might ideally like it to be.

**Colin Beattie:** To take that example, if the National Audit Office decided to veto the work, that would be it.

**Caroline Gardner:** Under the proposed framework, I would have no rights of access, except in respect of value-for-money or performance auditing with the agreement of the Comptroller and Auditor General and HMRC. That has not been a problem so far. There are incentives in the system for the Comptroller and Auditor General and I to continue to work well together to serve the interests and needs of both Parliaments, but I thought that it was right to highlight to the committee that there is a potential limitation on the extent to which I can provide assurance to the Parliament about the way in which United Kingdom bodies such as HMRC are delivering significant devolved responsibilities on behalf of the Parliament.

**Colin Beattie:** I do not doubt the good will on all sides to make the framework work, but surely there should be a mechanism so that one party cannot just say no without there being a forum in which the matter can be discussed at a higher level.

**Caroline Gardner:** The current memorandum of understanding between me and the Comptroller and Auditor General includes a dispute resolution mechanism, which effectively escalates an issue to the two of us to resolve it.

Beyond that, the safeguard that is in place would be my ability to report to the Parliament that I felt that there was a need for a particular piece of work to be carried out, that the C and AG did not

agree or that HMRC had not agreed and, therefore, that I had not been able to do it, so there is a safeguard in terms of public reporting. I do not think that it is a do or die around the framework as drafted, but the committee might wish to express its views on the matter.

10:15

**Colin Beattie:** If there is any difference between the framework and the document that you have negotiated with the NAO, which document prevails?

**Caroline Gardner:** There is no doubt that the framework agreed between ministers would be the starting point.

**Colin Beattie:** So it would prevail.

**Caroline Gardner:** Absolutely.

**Colin Beattie:** Therefore, any agreement that you have with the NAO would be subject to whatever terms are in the framework.

**Caroline Gardner:** Once the framework is agreed between ministers, the next step will be to update the memorandum of understanding between me and the C and AG to reflect it. We would include a process for agreeing differences of view between us. There would be no further option within it other than a safeguard of me being able to report to Parliament if I felt that there was work that I would like to do but was not able to do under the framework.

**Colin Beattie:** Would there not be a benefit to having your document at least referenced in the framework document, so that it has some validity in what the ministers agree and is taken into account?

**Caroline Gardner:** There might be merit in doing that. I think that the existing agreement already includes a reference to the MOU. I ask Mark Taylor to fill in the details.

**Mark Taylor (Audit Scotland):** A broad aspect of the audit and accountability framework that is in front of the committee sets out provisions for different parties to put in writing the detailed arrangements that we have. Therefore, there is a provision in the framework that says that we and the National Audit Office can put in writing a memorandum of understanding. There is a link to the existing memorandum of understanding, and how it is referenced to the framework is set out in the draft.

**Iain Gray (East Lothian) (Lab):** Auditor General, I want to ask you about the situation in which the Scottish Government has no choice but to use a UK public body. The obvious example is the Scottish rate of income tax. In your opening remarks, you made clear the step change between

the 2012 or current position and the new position that is just beginning. In paragraph 34 of your submission, you say:

“The draft framework does not significantly develop the audit model for Scottish Income Tax”.

Are you saying that there is a huge step change taking place but that the framework does not recognise or reflect it in any way?

**Caroline Gardner:** It is useful to have the chance to expand on that point. There are two dimensions to it. One relates to the financial audit of HMRC and, within that, the collection of the Scottish income tax in future.

Within the accounting standards and the auditing standards, there are already well-developed arrangements for a group auditor, in effect, to place reliance on the auditor of the bodies that make up that group and vice versa. Those arrangements are in place and work well. We also have the mechanism by which, under the legislation, the C and AG reports to the Scottish Parliament about the financial statements and I provide additional assurance, which tells you that I think that the work has covered the right issues, and can place it in the Scottish context. That works well and I cannot see good reasons for changing it.

The framework could be strengthened in relation to performance and value-for-money audit. That could examine matters such as the efficiency with which the taxes are collected and the services that are provided to Scottish taxpayers. At the moment, I have no rights of access on that and the framework does not go much further on it. I have said in evidence to the committee before that the step change that we see in the amount of fiscal responsibility that the Parliament has means that that arrangement is worth reviewing. The framework does not move it much further along the lines that Mr Beattie expressed.

**Iain Gray:** So is it fair to say that that is what you mean when you say in paragraph 28 of your submission:

“In my view broadening the provisions for access to UK bodies to these circumstances would strengthen the framework and better satisfy the needs that the Scottish Parliament has identified”?

**Caroline Gardner:** In broad terms, yes.

**Iain Gray:** My question is how that would happen and whether it is simply a matter of negotiation in the agreement in the framework or whether something more profound is required. Going back to paragraph 34 of your submission, the next sentence begins:

“In my view, meeting the statutory requirements—which were established in relation to the more limited powers in the 2012 Act”.



To my mind, the question that that begs is whether you think that there should have been statutory requirements in the Scotland Act 2016 to cover the broader position, but there were not.

**Caroline Gardner:** I do not think that that is the case. I think that there is scope in the ways that I suggested in my submission to give more assurance to the Scottish Parliament about the audit work that is carried out on UK bodies. The framework takes us a fair way along that road, and I am highlighting to you the particular question about the value-for-money audit.

In future, it is clear that there will be quite a range of different relationships between UK bodies, the Scottish Government and Scottish public bodies. The one that I am highlighting to you as being potentially short of what this committee and the Parliament have expressed that they would like is around the value-for-money audit responsibilities in relation to UK public bodies whose services the Scottish Government has had no choice but to use, and HMRC—

**Iain Gray:** I am still struggling to envisage what access would, in your view, be sufficient to provide that comfort to the committee and the Parliament. If we are not talking about a change in statute, ought there to be an additional section in the draft framework or a change to one of the principles?

**Caroline Gardner:** In some ways, that goes back to Mr Beattie's questions. The starting point for all this is that the Comptroller and Auditor General and I, HMRC and the Scottish Government have many incentives to make the framework work, but we want it to be designed to take account of problems that we have not yet encountered. We do not want to be designing arrangements when problems come up.

As it is currently drafted, the framework gives me access, subject to the agreement of the C and AG and of HMRC. Although we have not encountered problems yet, it is possible to envisage situations in which this Parliament feels that it would like a piece of work to be done that the C and AG feels is not necessary or—more likely—the timing of which he does not feel is right. At the moment, in effect, there is a veto on that happening.

**Iain Gray:** So what would be required would be to remove that veto.

**Caroline Gardner:** Yes—the conditions would have to be removed.

**Iain Gray:** Thanks.

**Colin Beattie:** First, I have an overall comment to make about the draft framework. As a layman reading it, I would expect it to be clear and easily understood. I do not see that. From that point of view, I believe that the document fails.

**Caroline Gardner:** Okay.

**Colin Beattie:** I want to touch on a couple of specific points. On page 13 of the draft framework, the second bullet point refers to

“a distinct and significant impact on devolved matters in Scotland”.

How do you define that?

**Eleanor Ryan:** Is that under point D at the top of the page?

**Colin Beattie:** That is correct.

**Eleanor Ryan:** The text under point D is an attempt to explain that. I understand from your question that you do not consider it to be a sufficiently clear definition.

**Colin Beattie:** You have given one or two examples of issues—high speed 2 and immigration, for example—that have a significant effect on Scotland, but there could be other matters where it is less clear whether they are having a significant impact, and that could become a contentious issue. There should be a definition—some way of understanding that.

**Eleanor Ryan:** I agree. The difficulty in writing a framework such as this one lies in trying to encompass all the different circumstances that might arise clearly—as you have said—and simply, but at the same time comprehensively. We can take away the point that we need to try to clarify that part. At the moment, I am not sure whether I see a way to make it absolutely precise.

**Colin Beattie:** It is more a case of having a process for how to define whether there is an impact than it is of trying to define a list, which will change over time anyway.

On page 13, the third paragraph under the heading “Public bodies with more than one category of service delivery” says:

“at the judgement of the relevant Accounting Officer”.

How does that work? It sounds as if judgments will be made by the accounting officer, so there will be no appeal or comeback. It sounds arbitrary.

**Eleanor Ryan:** I will take that as relating to your general point on disputes, disagreements or differences of opinion over how things should apply, and how those should be resolved. We can certainly see whether we can come up with a way of making that clearer.

**Colin Beattie:** There is a warning to accounting officers that they

“should take particular care when responding to any recommendations of the devolved legislature or executive on reserved policy areas.”

Would recommendations and so on go to the accounting officer? What level are we talking

about? For example, if the Auditor General had a concern and went to the accounting officer, and the accounting officer said, "Nah, that's a reserved matter; we're not going to get involved in that," where is the process for that to be escalated if it is an important issue? I am looking for clarity in the document on how a conflict or disagreement can be escalated and resolved.

**Eleanor Ryan:** Ultimately, we have two Parliaments, both of which have an interest. The document has been drafted by officials from the two Governments. I recognise the Scottish and UK Parliaments' interests as primary. I think that we are in the territory of how one would resolve a difference of opinion between two Parliaments.

**Colin Beattie:** I am not sure whether it would necessarily go to parliamentary level. I am throwing it out to you that there is a lack of clarity in the document about what will happen. In 99 per cent of cases, there will be no problem at all and everything will be done amicably. However, there could be a real difference of opinion. For example, the Auditor General might feel that there was a real problem that had to be investigated, and for some reason—technical or otherwise—the accounting officer might not engage. How would that be resolved?

**Eleanor Ryan:** That is a very fair challenge. The Scottish Government's interests, Audit Scotland's interests and indeed the Scottish Parliament's interests are aligned. It is not in the Scottish Government's interest for Audit Scotland to be unable to carry out audit work on any devolved matter, or any matter that impinges on a devolved matter, that is considered necessary. It is also not in our interest for an arbitrary decision to be taken whereby an accounting officer, a UK body or anyone else is not willing to allow Audit Scotland access.

We recognise all those points, some of which have been made in drafting previously. I think that the conversation with the committee today will strengthen our hand in arguing that some of those points should be reflected more strongly in the draft document.

**The Convener:** Auditor General, do you think that the lack of clarity is inevitable given the current devolution settlement, under which some but not all powers have come to the Scottish Parliament, or are there areas that could clearly be strengthened or clarified by the Scottish Government?

**Caroline Gardner:** That is a really good question. It is worth us all remembering the broader context, which is that the Scotland Act 1998 set a pretty clear devolution settlement: if a matter was not devolved, it was reserved, and a clear line could be drawn between the two.

Gradually, over the past 20 years or so, we have moved towards a situation in which the line is much more wavy down the middle. Control over income tax—earned income—in Scotland belongs to the Scottish Parliament and the Scottish Government but, under the legislation, that tax needs to be collected by HMRC. The social security benefits that have been devolved are quite clearly defined, but they interact with universal credit and the Government has a choice about the extent to which it wants to use the Department for Work and Pensions to administer some of that. The line is therefore much wavier and that inevitably brings some of the complexity that we are talking about.

10:30

When it comes to the audit arrangements, which are my main interest in supporting the interests of the committee and Parliament, the framework goes most of the way towards fulfilling what is required. We have highlighted the one area where I think that Parliament's interests could be safeguarded further.

The section on page 13 that Mr Beattie has been referring to is, in some ways, the most difficult. For the first time, this framework recognises that many more UK public bodies now have some degree of accountability to the Scottish Parliament for services that they provide that have a significant relationship with the devolved responsibilities of the Parliament, but that will vary a great deal from case to case. Eleanor Ryan was right that there needs to be a bit of flexibility in this. Parliament and the committee will be keen to ensure that the interest is firmly registered and that there is scope to develop and review the arrangements as they unfold over time.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Where to start with this? I remember how, during our early consideration of the SRIT, the Finance and Constitution Committee discussed how Audit Scotland would interact with the NAO, and then the memorandum of understanding emerged. At the time, my impression was that there was a sensible working relationship, but I have to say that I am now a wee bit more concerned that there is not one.

When I look at the summary on page 2, it is quite worrying to see you saying:

"There is no provision for me to be able to audit value for money in areas such as the administration of Scottish Income Tax".

Iain Gray led the discussion about that. Just before that, you say that in effect the Comptroller and Auditor General has a veto. If we cannot audit what we think we should audit, and we cannot require the National Audit Office to come and talk

to us, how on earth do we carry out our scrutiny and accountability role for the Scottish public?

**Caroline Gardner:** I would not want you to take away the impression that relationships between us are anything other than professional, cordial and effective. As I said earlier, we are looking to make sure that, if problems emerge, there is a strong basis in the framework for resolving them, and the Scottish Parliament's interests are respected and reflected as far as possible.

We have highlighted provision for value-for-money audit of the HMRC around income tax and, potentially, VAT in the future. Our experience, and your experience I think, is that the Comptroller and Auditor General and his team have been willing to come to the committee to talk through the work that they have done and to take away suggestions for future work. In my view, we can make the framework work as it stands.

It is worth the committee being aware of where I think there is scope to strengthen the framework, not least so that if, in future, you ask why we cannot do those audits, I can tell you about the process that we have been through. It is also important that the framework is part of the review of the fiscal framework that is due to take place by 2022. By then, we will have a bit more experience of how it is working. I might have brought to the committee's attention areas in which I think it would have been good to do some audit that I have not been able to. Alternatively, there might be areas that the committee would like to see audited that we have not been able to respond to. I am highlighting an area that could be further strengthened, not a fundamental concern about the framework as a whole.

**Willie Coffey:** I have to be honest that I think that such agreements should have been enshrined in the first draft rather than us having to go through a process of expressing concern about something as fundamental as this. Looking slightly ahead to the post-Brexit future, we will leave a number of operational frameworks that manage certain processes, such as devolved responsibilities that come back from Europe. If this is the first example of an agreed framework, I would be a bit concerned, particularly if we are clearly saying that we do not have the powers that we think we have that enable us to audit and scrutinise functions that are carried out on our behalf. I am concerned about that.

**The Convener:** Does Eleanor Ryan want to respond to that?

**Eleanor Ryan:** I am happy to. As I said in my previous response, this is an area where we would see the interests of the Scottish Government, Audit Scotland and the Scottish Parliament as aligned. We have raised that point. The draft

framework that you have in front of you is the compromise that we have reached so far, but we will raise the point again and represent the views that we have brought back from Parliament.

Given the strength of feeling, which is quite reasonable, if the committee particularly wanted to underline the point, given that the Chief Secretary to the Treasury has written to the convener to draw attention to the draft framework, the convener could consider writing directly to the Chief Secretary to the Treasury to highlight any of the committee's important concerns.

**Willie Coffey:** This will be my last question, because I know that other members want to get in.

The third principle for accountability and devolution in the draft framework is about information sharing. The language is quite difficult to understand but, as I read it, we will not be allowed to request information from a UK body. We will have to ask our Government to make a request to the other Government, which in turn will make a request to its public body. It seems to be a case of building in red tape. Surely to goodness we do not want to agree to such a process, which will make it more difficult for a committee such as ours to obtain information on an issue such as the Scottish rate of income tax.

**Eleanor Ryan:** Again, we would entirely agree. Why would we in the Scottish Government want the committee to have to ask us to ask someone else for information? If what was provided did not meet the committee's needs, we would have to act as a go-between. We would be content with a provision that allowed for direct contact. That is another point that we can raise.

**Willie Coffey:** Why is such a silly provision in the draft framework? Surely it is obvious that such an arrangement is ridiculous. Why is it in there?

**Eleanor Ryan:** Not everyone necessarily has the same perspective.

**Willie Coffey:** So that principle does not represent our perspective; it is somebody else's.

**Eleanor Ryan:** There are other parties to the drafting of the framework.

**The Convener:** What is your opinion on that, Auditor General?

**Caroline Gardner:** It is primarily a matter for the Scottish Government rather than for audit, but I know from discussion with my team that our view is that that is an unnecessary step in the process. It should be possible for the Scottish Parliament to request information from a UK body that is significantly involved in delivering devolved services.

**Alex Neil (Airdrie and Shotts) (SNP):** I want to follow up on that specific point. Buried within the

draft framework is the suggestion that, if this committee wanted information from HM Revenue and Customs, we would have to go through the Scottish Government. Why?

**Caroline Gardner:** I do not have much to add to my previous comment. There ought to be provision for the committee to ask for such information.

**Alex Neil:** I regard the proposed arrangement as absurd. We would go straight to HMRC, and we would expect it to respond to us in the same way that it would respond to the Public Accounts Committee in the House of Commons.

**Caroline Gardner:** Absolutely—in relation to devolved matters, that would be the sensible way to operate.

**Alex Neil:** I think that we need to be very explicit about that. We should explain to the reserved bodies that that is how we intend to operate. As a parliamentary committee, we will not wait for them to tell us what we can and cannot do. We will tell them what to do.

**Caroline Gardner:** The only thing that I can add is that, over the course of the development of Scottish income tax powers, HMRC has been very willing to appear before the committee to talk about progress.

**Alex Neil:** But that represents a change of attitude. I remember a time when HMRC would not appear before a committee of the Scottish Parliament. As you rightly say, the people from HMRC who gave evidence to us were very co-operative and cordial. The same was true of the National Audit Office. The Comptroller and Auditor General from down south was very pleasant and co-operative. However, we cannot rely on the personality of the current office-holder. We have to have a system that guarantees the rights of the Scottish Parliament and the Scottish Government, regardless of who is in office up here or down there.

**Caroline Gardner:** I agree entirely, which is why the framework matters.

**Liam Kerr (North East Scotland) (Con):** I have a couple of follow-up questions. On page 10 of the draft framework, the fifth principle for accountability and devolution is that

“A public body may provide information, advice or reporting direct to the legislature of another jurisdiction voluntarily”.

When might it do that? Can you give any examples?

**Eleanor Ryan:** I will ask Andrew Chapman whether he has an example from the work that we have done on the drafting.

**Andrew Chapman (Scottish Government):** A range of audit and accountability work is going on across the Scottish Government in the context of this framework. There is work going on with the Crown Estate; the Crown Estate Transfer Scheme 2017 came into force in April 2017. There is also the Railway Policing (Scotland) Act 2017, which received royal assent in August 2017. The statutory arrangements in section 66 of the Scotland Act 1998 require that reserved bodies, such as Ofcom, the Office of Gas and Electricity Markets and the Commissioners of Northern Lighthouses, lay their accounts with the Scottish Parliament.

When it comes to non-statutory provisions, which I think lie at the heart of Mr Kerr's question, a range of work is going on in social security to conclude MOUs and service level agreements, where we need the DWP to carry out devolved activities on our behalf as part as the safe and secure transfer of social security powers.

In sum, there is a range of non-statutory and statutory work between various policy leads in the UK and Scottish Governments in the context of our drafting the audit and accountability framework.

**Liam Kerr:** That is helpful—thank you.

I will stick to the point about clarity, which we have examined a few times. Various terms are spread throughout the six principles that will no doubt mean something to you chaps but do not necessarily mean something to me, such as “parliamentary bodies”, “requesting legislature” and “requesting legislature's equivalent body”. To extend that issue further, Colin Beattie asked about the definition of “distinct and significant impact”. That term does not really mean anything. Those terms might mean something to you, but they do not mean anything to me. Will there be a glossary that defines terms and clarifies such phrases?

**Eleanor Ryan:** If you would find that helpful, I am sure that that could be added.

**Liam Kerr:** Thank you.

**Andrew Chapman:** We have tried to clarify some of the terminology—that is, what accountability and service delivery mean and what a UK public body is—in the first section of the document. As Eleanor Ryan has said, we are here today to listen. The document is a draft and it still needs to go to the joint exchequer committee, which is the formal UK Government forum for agreeing such matters.

You mentioned Mr Beattie's point. If a glossary of the terms would be helpful, we are more than happy to provide that and to refine further some of

the words and make the document, which covers a technical area, more accessible.

**Liam Kerr:** That would be helpful.

**Bill Bowman (North East Scotland) (Con):** I will develop Liam Kerr's point. Before I read the draft framework, I had expected it to be more of a legal document. Maybe we do not need the heretofores, the therefroms or the section 3(C)(2)(1)s, but the framework needs a bit more structure. You need to add in definitions and look at the terms that may be in common use but which do not have an exact legal definition. Although that may slightly contradict the clarity, it may make it easier in the long term to understand.

My question is for the Auditor General. There will be areas where you rely on work that is done by the National Audit Office—is my understanding correct?

**Caroline Gardner:** Not quite in the sense that I think you are asking the question. The arrangements that are in place in relation to HMRC for the financial statements audit are clear that the Comptroller and Auditor General carries out the audit. He has statutory rights of access, which I do not have. Under the existing memorandum of understanding, when he reports on the Scottish rate of income tax, I provide an additional assurance report to this Parliament, which provides assurance that I think that the NAO has done the work according to the professional standards and in the right areas, and I can set that work into context. I am not taking reliance in quite the way that I think you are suggesting.

**Bill Bowman:** Do you have a discussion beforehand about the level of work that the National Audit Office would do?

**Caroline Gardner:** Yes.

Mark Taylor will talk you through how it has worked over the first three years.

**Mark Taylor:** The way that it has worked has been through conversation between us and the National Audit Office. The NAO very much carries out the work, but it is interested in our views on the issues and risks that are important. The Comptroller and Auditor General made the point to this committee that, from the NAO's perspective, it is a helpful process. He recognised that, when we have suggested that the NAO covers a certain area, it is very keen to make sure that it addresses that in the course of its work.

10:45

**Bill Bowman:** In a UK context, the numbers might not be particularly material but, in a Scottish context, they could be very material.

**Caroline Gardner:** That is right.

**Bill Bowman:** If the NAO were not using the right level of materiality, what could you do about it?

**Mark Taylor:** How the system works at the moment is that we have conversations through the course of the audit to make our views known and, at the end of the process, the Auditor General has the opportunity to state her view if we feel, in those circumstances, that the NAO has not used the right level of materiality to reflect Scottish interests.

**Bill Bowman:** So there is no process to resolve a disagreement on that.

**Caroline Gardner:** As Mark Taylor said, the process is for me to report that formally to this Parliament. I do not audit HMRC's collection of taxes—

**Bill Bowman:** I understand that.

**Caroline Gardner:** —and there are statutory restrictions on rights of access to HMRC.

**Bill Bowman:** In your submissions, you talk about agreeing and discussing approaches and working together, but there does not seem to be a way to resolve it if the NAO were not to do the work that you want it to do. You could not do anything about that.

**Caroline Gardner:** It is worth taking a wee step back. The financial audit is governed by statute in the ways that I have described for good reason. There is a separate statement and account of Scottish income tax and, in due course I assume, of the assigned VAT revenues, which the Comptroller and Auditor General audits in terms of the materiality that relates to that account. It is not lost in the overall revenues and much smaller expenditure of HMRC, so there are professional safeguards there. It is extremely unlikely that we would see circumstances in which the Comptroller and Auditor General wanted to be in a position in which he was reporting on HMRC's activities and I was reporting to this Parliament and saying, "I think that that work doesn't cover this Parliament's interests." In practice, that is quite a strong safeguard.

**Bill Bowman:** We have heard comments from others that we are relying on how it is now and on the current good relations. Do you not feel that there is a need to have some form of fall-back position?

**Caroline Gardner:** I feel that much more strongly in relation to value-for-money audits than I do in relation to the collection of tax revenues, because of the provisions that are already in place with separate tax accounts for those revenues.

**Bill Bowman:** I want to go back to an earlier comment; perhaps you can remind me what was

said. We were talking about what would happen if, as Auditor General, you disagreed with the accounting officer on an issue, or if you relied on the accounting officer deciding whether they wanted to take a suggestion or recommendation.

**Caroline Gardner:** I think that you are referring to the question that Mr Beattie asked, which was about the accounting officer's decision about which accountability model to apply. That is less likely to be in relation to one of my recommendations than simply in the operation of a UK body and the accountability relationships that it puts in place.

**Bill Bowman:** If there was some disagreement between you and an accounting officer, you would just report it to us at the Parliament.

**Caroline Gardner:** I am struggling to think of a situation in which I would have a disagreement with an accounting officer of a UK body, because I do not audit any of them. The situation is much more plausible that I would have a disagreement with the C and AG about the need for a value-for-money audit in a UK body, rather than a direct disagreement with the accounting officer. There might be a question for the Scottish Government team about what happens if they disagree with the model that an accounting officer chooses to apply under the category of public bodies with more than one type of service delivery. However, it is not something that I am likely to have a concern about from my perspective.

**Bill Bowman:** I have a general question for the Scottish Government team. I have come to the issue and seen that it has been going on for a number of years. How long have you all been involved in it? Have you been involved throughout?

**Eleanor Ryan:** I think that Aileen Wright has been involved throughout.

**Aileen Wright (Scottish Government):** I have.

**Eleanor Ryan:** I have been involved since I came back into this role about a year ago. I think that Andrew Chapman has been involved for a similar length of time.

**Andrew Chapman:** I have been involved from the start along with Aileen Wright.

**The Convener:** Sorry, can we just clarify the question? Do you mean involved in the preparation of the document, Mr Bowman?

**Bill Bowman:** The framework talks about it going back over a number of years and refers back to the meetings of previous committees in the Parliament. The committee is picking this up now and some of us are new to it, so I wondered whether the Scottish Government officials have been involved throughout the process.

**The Convener:** Did you all answer?

**Eleanor Ryan:** I think so.

**Bill Bowman:** Had Andrew Chapman finished?

**Andrew Chapman:** I have certainly been involved since we began drafting the framework document.

**The Convener:** Page 26 of the framework document contains further information on model D. The flowchart says that

"Scottish MPs challenge on devolved impacts",

but there is no explanation of what that means. How is it decided whether a UK Government decision might have a distinct and significant impact on devolved matters in Scotland? What is the role for Scottish MPs in that, if any?

**Eleanor Ryan:** Andrew Chapman might wish to expand on this, but my reading of

"Scottish MPs challenge on devolved impacts"

is that it is the normal role that Scottish MPs play. If they feel that some matter that is under the jurisdiction of the UK Parliament is very relevant to Scotland, they raise it. There are mechanisms for them to do so.

**The Convener:** Do you mean the existing mechanisms of questions in the House of Commons or the work of the Scottish Affairs Committee?

**Eleanor Ryan:** Yes. I read it as being through those existing mechanisms.

**Andrew Chapman:** That is my understanding.

**The Convener:** Does Willie Coffey want to comment?

**Willie Coffey:** There is a clear route through the Public Accounts Committee in Westminster, which, presumably, has oversight of the issue, as our committee does. The Scottish MPs are represented through that, I imagine.

**The Convener:** Does Eleanor Ryan disagree with any of the concerns that the Auditor General raised in her report?

**Eleanor Ryan:** We have no fundamental disagreement with any of Audit Scotland's points, and we will happily represent them, yet again, in our conversations with UK officials. However, we recognise that Treasury officials are in discussion with the National Audit Office, and there might well be comments from the Public Accounts Committee, too, so the eventual framework is likely to be a compromise between all the points of view that are expressed.

**The Convener:** Are we likely to see the Auditor General's concerns reflected in the next or final drafts of the framework?

**Eleanor Ryan:** I undertake to feed the concerns back and to seek to have them reflected, but I cannot guarantee that that will be the outcome of the discussion.

**The Convener:** As members have no further questions for our witnesses, I thank them for their evidence. I close the public session of this meeting of the Public Audit and Post-legislative Scrutiny Committee.

10:52

*Meeting continued in private until 11:34.*





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