

# **MEETING OF THE COMMISSION**

Wednesday 24 September 2008

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2008.

Applications for reproduction should be made in writing to the Licensing Division,  
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ  
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate  
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR  
Donnelley.

---

# CONTENTS

Wednesday 24 September 2008

	<b>Col.</b>
<b>AUDIT SCOTLAND (CORPORATE GOVERNANCE)</b> .....	95

---

## **SCOTTISH COMMISSION FOR PUBLIC AUDIT 5<sup>th</sup> Meeting 2008, Session 3**

### **CONVENER**

\*Angela Constance (Livingston) (SNP)

### **COMMISSION MEMBERS**

\*Robert Brown (Glasgow) (LD)

\*Derek Brownlee (South of Scotland) (Con)

\*George Foulkes (Lothians) (Lab)

\*Hugh Henry (Paisley South) (Lab)

\*attended

### **THE FOLLOWING GAVE EVIDENCE:**

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

### **SECRETARY TO THE COMMISSION**

Mark Brough

### **LOCATION**

Committee Room 6



## Scottish Parliament

### Meeting of the Commission

*Wednesday 24 September 2008*

[THE CONVENER *opened the meeting at 12:37*]

### Audit Scotland (Corporate Governance)

**The Convener (Angela Constance):** Good morning, colleagues. I welcome everybody to this meeting of the Scottish Commission for Public Audit. I appreciate that time is of the essence, as this is a lunch-time meeting.

This is the second session in our review of the corporate governance of Audit Scotland. We are examining how well arrangements are working eight years on under the devolution settlement. As part of our programme, we agreed to hear from the Scottish Government, particularly about how the issues involved relate to public sector reform proposals. With that in mind, I warmly welcome the Cabinet Secretary for Finance and Sustainable Growth, John Swinney MSP, and Ms Lorna Gibbs, who is head of the Scottish Government's scrutiny improvement team. Their time is much appreciated.

I think that Mr Swinney would like to make an opening statement.

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** If I may, convener.

I thank the commission for the opportunity to discuss with it the corporate governance of Audit Scotland. I will make some opening remarks for the record; I will then be happy to answer questions.

First, I stress the absolute importance that we attach to rigorous financial auditing in all aspects of the scrutiny of the Government's actions and conduct. The importance of such auditing is expressed in the Crerar review, to which the Government has responded; I reiterate that response. The role of Audit Scotland and the Auditor General for Scotland and the whole financial scrutiny process are fundamental to the good operation and sound management of public finances.

The Government also accepts what the Crerar review says about the need to undertake radical reform of the operation of scrutiny. In so doing, we must remember two important characteristics. First, as we reduce the number of organisations with a scrutiny role, or as we ask Parliament to

consider reducing the number of such organisations, we must remember to retain the strength of financial audit in the process. Secondly, with respect to some of the wider questions relating to scrutiny reform, we must remember that, as we progress proposals, members of the public must be assured about the effective scrutiny of public services at all times.

On the material that the commission is considering, the Government is in a slightly difficult position, because we are on the receiving end of most of the scrutiny from the Auditor General, Audit Scotland and the Accounts Commission. That reflects how things are and, into the bargain, how they should be. Questions about how that role should be performed are not necessarily easy for the Government to answer, because we recognise the absolute importance of strong public assurance about the effective role of the audit instruments over the conduct of Government policy.

My final point is about how any such issues might be progressed. As the First Minister announced to Parliament after the summer recess, the Government will introduce next year the Scottish public services reform bill, which will develop some of the Government's agenda on scrutiny reform and scrutiny improvement. Opportunities might well arise for measures that the commission wants to introduce to form part of the bill proposals.

I have had initial discussions with Tom McCabe, in his capacity as a member of the Scottish Parliamentary Corporate Body, to make it clear that the Government is keen to provide whatever support and opportunity it can to Parliament to address measures that interest the SPCB in relation to the governance arrangements for parliamentary commissioners, which vest largely in work that the Finance Committee did in the previous parliamentary session.

The corporate governance of Audit Scotland is of great interest to us, because the public need to be assured that the Government is being properly and effectively scrutinised and that the work of public services is considered in that way. I am happy to answer the commission's questions.

**The Convener:** I am sure that my colleagues have many questions.

**Hugh Henry (Paisley South) (Lab):** Beyond the cognoscenti who are in the know about structures in Scotland, does the broad mass of the public understand the differences between the various bodies that are responsible for audit structures? Is there a case for simplifying the arrangements, while retaining the fundamental independence of the audit process?

**John Swinney:** I do not think that people understand the distinctions between the Accounts Commission, Audit Scotland and the Auditor General. I had the privilege—if I can call it that—to be a member of the Finance Committee that considered the Public Finance and Accountability (Scotland) Bill in 1999. I recall vividly the late nights and the headaches from trying to get my head around such questions.

If ways in which arrangements can be simplified exist, they should undoubtedly be considered, but I lodge two caveats. First, it is not for the Government to consider such questions. That would fundamentally undermine my second point, which is that if the process is to be simplified, the purpose of doing so must be to make the public ever more assured about the audit process's strength and independence. Any steps should be taken in that context.

**Robert Brown (Glasgow) (LD):** One problem is that several bodies—parliamentary and governmental—have an interest in audit. As a layperson, my provisional view was that the accountability structure of the Auditor General and the Accounts Commission was complex. Local government audit is different from central Government audit and the Auditor General is in the slightly unusual position of being Audit Scotland's accountable officer and a member of its board.

Do you have views on the structure that operates in Wales, which appears simpler? A single audit body there with a single board does central and local government audit. It has a more straightforward accountability structure. Would that have the advantages of understandability for everybody and of clarity of governance arrangements? Would you be interested in exploring the issue with us, particularly given Government's interest in the Accounts Commission?

12:45

**John Swinney:** I am happy to explore the issue. I would be surprised if anyone in Parliament did not attach significant value to the question of supreme independence of the audit process; I use that generic term to capture all the different bodies that are involved. If we start from that point, the issue is how we take forward a debate about structures that will make the process easier to undertake.

Let us take the example of the role of the Accounts Commission in scrutinising local authorities. Since I became a minister—my predecessors also wrestled with the issue—I have on a couple of occasions been on the receiving end of conclusions arising from an Audit Scotland

investigation into the performance of a local authority that was considered by the Accounts Commission. I received such conclusions in relation to Aberdeen City Council. I have found the process to be extremely valuable in raising issues of legitimate public interest that members of the Scottish Government, as stewards of the public finances of Scotland, have a duty to ensure are addressed effectively. The process has worked well and has highlighted the need for a body that can actively scrutinise organisations that are outwith the direct control of ministers.

It is slightly more difficult to apply such scrutiny to Government. Government must be able to be on the receiving end of reports by audit organisations. The Public Finance and Accountability (Scotland) Act 2000 set out clearly the remit and outlook of the audit service, which was not just to undertake a traditional audit of financial performance but to delve into the areas of efficiency and value for money. It is essential that we should be on the receiving end of independent consideration of those issues. If there were to be a merger, based on the Welsh model, I am not altogether sure how the Government would be able to benefit from the two perspectives that are available to us at the moment. The first is that of a body that scrutinises external organisations that we fund, especially local authorities, and raises issues of public interest. The second is that of a body that is able to look at the Government thoroughly and, at times, to be critical of Government's performance in delivering efficiency and value for money. I hope not to be on the receiving end of many reports of that character, but the option of publishing such reports should be available, if required.

**Robert Brown:** I take the point that you make. Nothing that has been said in our investigation has cast doubt on the value of Audit Scotland or the reports to which you refer, or on the need for Audit Scotland to be independent of Government, under parliamentary supremacy. At issue are the accountability arrangements for the body, through whatever board is in place, and whether there is justification for the arrangements for the Accounts Commission bit being slightly different from those for the central Government bit. Given that they perform the same sort of role for different sorts of public sector bodies, is there some logic in having a single board structure? At issue is not the operation of the audit process, but the arrangements for accountability, budget setting and so on.

**John Swinney:** If lines of accountability were to be changed, I would want accountability to be vested in the sphere of Parliament, rather than the sphere of Government. The role of the Accounts Commission is to act on behalf of ministers, to some extent, to assess the performance of

individual local authorities and to perform other functions. Audit Scotland's work is much more about the parliamentary agenda and accountability to Parliament. If a choice had to be made about those arrangements, it would have to be to veer in the direction of parliamentary control rather than that of ministerial control.

**George Foulkes (Lothians) (Lab):** Would you have any objection to the Accounts Commission being incorporated into Audit Scotland's structure and being accountable to a committee of the Parliament?

**John Swinney:** It depends on what you mean by "accountable to a committee of the Parliament". I sat through the Finance Committee's 2006 governance inquiry into the parliamentary commissioners, as, I think, did Mr Brownlee. We wrestled with how we, as a Finance Committee, could simultaneously ensure that the commissioners had independence of operation and exercise financial control over elements of their budgets. We came to the conclusion—by a majority, if I recall correctly—that it was absurd to say that the Finance Committee would be intruding on the independence of the commissioners by saying, for example, that they could have a budget of £1 million rather than one of £100 million.

Accountability to a parliamentary committee might mean that an organisation's budget must be approved by that committee. My understanding of the present arrangements as they relate to Audit Scotland is that such accountability means that its budget must be approved by the SCPA. I think that that is entirely appropriate. However, as I understand it, the commission does not set Audit Scotland's work programme; were it to do so, that would be completely inappropriate. I suppose that the issue goes back to Mr Brown's points. If there is a model that could simplify some of the governance arrangements without altering the fundamental independence of the bodies concerned, and which could assure members of the public of their continued independence, I would certainly be happy to engage with the commission on the matter.

**George Foulkes:** I was thinking of the Audit Committee, which is chaired brilliantly by Hugh Henry, having such a role, not the Finance Committee, which, as you said, examines the budget and overall spending. As was apparent at this morning's meeting of the Audit Committee, its work is about the audit function and what has happened in the past rather than future policy issues. I do not see why the Parliament's Audit Committee could not supervise the Accounts Commission or, rather, the work that it does to audit local authority accounts, as well as

examining value-for-money reports on local authorities, health boards and other public bodies.

**Hugh Henry:** Let us clarify the context of the discussion. My understanding of what George Foulkes is saying is that he is suggesting that a committee of the Parliament could look at some of the work that the Accounts Commission does in the same way that it looks at the work that Audit Scotland does. That is different from suggesting that either body should be operationally accountable, or accountable for any of its specific functions, to a parliamentary committee, which would be a dangerous route to go down. The argument is whether there could be a simplification of the process so that there is some overall scrutiny of what goes on.

**John Swinney:** The convener of the Audit Committee will have a better knowledge of the position than I do, but I do not think that there is anything to prevent the Audit Committee from considering any of the work that the Accounts Commission undertakes on local authorities. I might be wrong about that.

**Hugh Henry:** We are constrained in what we can do. For example, if the Accounts Commission produced a report on a local authority, we would not be able to say that that authority had behaved inappropriately or that we endorsed the Accounts Commission's findings, unless the Auditor General produced a report for us.

**John Swinney:** But you would be able to summon me to appear before the committee to explain what I was doing, having received that report.

**Hugh Henry:** Only if we received a report, but I am not aware that reports of that nature have come before the Audit Committee, or that they can come before the committee.

**John Swinney:** I have dealt with such a situation: I received a report from the Accounts Commission, undertook a set of actions in relation to it and expect to have further dialogue with the Accounts Commission about the situation. Certainly, I would find no difficulty in there being parliamentary oversight of elements of that, if members so desired.

**George Foulkes:** Good.

**Robert Brown:** Can I explore that a bit further? If I understood you correctly, you drew out another distinction between the role of the Accounts Commission and that of the Auditor General: the ability of ministers to instruct the Accounts Commission to produce reports in particular instances. The operational independence aspect therefore operates in different ways. Have I understood that correctly? I think I am right in saying that when we were in government—I

cannot remember whether it was in Hugh Henry's day but it was certainly when Peter Peacock was a minister—reports were instructed into aspects of certain local authorities' work on the social work or education front. Obviously, you have experienced that sort of situation as well. Do you perceive there to be difficult issues around the role of ministers in relation to local authorities, as opposed to central Government, which would be upset by a change of balance?

**John Swinney:** In a sense, that is an argument for the status quo. I certainly think that ministers must be able to commission work if they are concerned about the performance of local authorities. Equally, the Auditor General and Audit Scotland must be able to send ministers letters in which they say that they will investigate particular issues as part of their work programme. The normal and legitimate function of the audit process is to examine how the Government delivers value for money in certain areas of activity. Ministers have a twin role: they can initiate and commission work; and they must be accountable for and responsive to wider issues that the Auditor General puts to them.

**Robert Brown:** There has been a suggestion that, because of the Crerar review, you might want Audit Scotland to have an enhanced role as a gatekeeper that receives instructions or requests from the Government to assess risk in certain areas. Audit Scotland's role might therefore change anyway if the Government takes that suggestion on board. Is that a fair point?

**John Swinney:** I am encouraging the Accounts Commission to take on a particular role in the short term—it is applying itself to that—of co-ordinating the inspection of local authorities to avoid the criticism that one set of auditors goes out the revolving doors as another set comes in to ask similar questions in different areas of corporate audit. We are not challenging the process; we simply recognise that that is not a terribly efficient way of going about matters.

The Accounts Commission is working with a variety of scrutiny bodies: Her Majesty's Inspectorate of Education, the Social Work Inspection Agency, the Scottish Commission for the Regulation of Care, Audit Scotland, the Scottish Housing Regulator and NHS Quality Improvement Scotland. They are all round the table co-ordinating their scrutiny work in local authorities and aligning people in order to simplify the process without undertaking structural change. We may consider formalising that process. However, it shows that a sensible amount of business planning can help.

**Robert Brown:** Are you happy for your officials to discuss with the secretary to the SCPA the issues that we have talked about today so that

they can be teased out a little bit behind the scenes for further discussion later?

13:00

**John Swinney:** I am very happy for such discussions to take place. The Government plans to introduce a public services reform bill, which will address how we can improve and streamline the arrangements for scrutiny in Scotland. We expect that bill to be introduced around February next year. It is in active preparation now, and the timescale is pretty tight. I am happy for discussions to take place to develop some of the aspects that we have been discussing.

As I said in my opening remarks, I have opened up discussions with the SPCB on creating an opportunity for the Parliament to consider the role of commissioners, ombudsmen and other office-holders in relevant capacities. I will leave it to the SPCB to consider how best to do that, but we will maintain dialogue with it in any case.

**The Convener:** I have a couple of questions about the SCPA's role. In our review, we have been examining the role and governance of other people and organisations. It is appropriate that we invite comments about the commission's role, although whether you can comment on that in detail is a matter for you.

The commission currently does not have the protection of parliamentary privilege in relation to defamation and so on. Do you have any views on that?

**Hugh Henry:** You will notice that we have been very polite to you today, cabinet secretary.

**John Swinney:** I am just thinking about which members of the Parliament could be in danger of defaming anybody else.

**George Foulkes:** Do not look at me.

**John Swinney:** I have a suspect in mind.

I am not familiar with the issue, although I can quite understand what lies behind the question. It is essential that members are free to probe without fear or favour. That is the only way in which the system can operate effectively. It is a bit like what I feel about the audit system: the Auditor General and Audit Scotland must be able to pursue their activities without fear or favour, and the arrangements must be in place to support that. If the organisations feel inhibited about pursuing their agenda, that is not good for public confidence in the system of public administration.

**The Convener:** At present, the commission has no powers to modify Audit Scotland's proposed budget. I am not suggesting anything—I am not offering an opinion about that either way—but if those arrangements were to change, would there

be any implications for the Scottish Government's management of the budget process?

**John Swinney:** As I understand how the arrangements currently work, Audit Scotland's budget is submitted to the SCPA. The issue is similar to the one that I raised about the role of ombudsmen and their budgets. Audit Scotland's budget for 2008-09 is £7.3 million, which comes out of an overall budget of £31.3 billion. After the Scotland Office top-slices the consolidated fund, it is Audit Scotland's turn, then Parliament's turn, and then I get left with the remainder.

It would be only reasonable for the commission to reach agreement with Audit Scotland about the content of its budget. Experience over the years shows that Audit Scotland's budget has been relatively consistent. We must have in place the correct infrastructure to ensure that Audit Scotland can carry out the functions that we all expect it to carry out. It strikes me that the best way to proceed is for the commission and Audit Scotland and the Auditor General to come to a sensible agreement. I think that, providing there is the ability to hold such discussions, those arrangements are adequate.

**The Convener:** As we have no further questions, we can now relieve the cabinet secretary and detain him no longer. I thank him for his time, which is greatly appreciated.

13:05

*Meeting continued in private until 13:26.*



Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

**Monday 6 October 2008**

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament annual subscriptions: £350.00*

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

**Blackwell's Bookshop**

**53 South Bridge  
Edinburgh EH1 1YS  
0131 622 8222**

**Blackwell's Bookshops:**  
243-244 High Holborn  
London WC1 7DZ  
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

**Blackwell's Scottish Parliament Documentation**  
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

**Telephone orders and inquiries**  
**0131 622 8283 or**  
**0131 622 8258**

**Fax orders**  
**0131 557 8149**

**E-mail orders**  
**business.edinburgh@blackwell.co.uk**

**Subscriptions & Standing Orders**  
**business.edinburgh@blackwell.co.uk**

**Scottish Parliament**

**RNID Typetalk calls welcome on**  
**18001 0131 348 5000**  
**Textphone 0845 270 0152**

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers