

Audit, accountability and the further devolution of powers

Public Audit Committee's response to the Scotland Bill 2015 as introduced

1. Since 2013 the Public Audit Committee has proactively considered the extent to which the audit and accountability environment needs to evolve in response to the further devolution of powers to ensure that it and the Parliament can hold to account those who collect or spend public money.
2. The Committee agreed in February 2015 to scrutinise the audit and accountability proposals for further devolution arising from the UK Command paper *Scotland in the United Kingdom: An enduring settlement*. These proposals then led to the publication of the Scotland Bill 2015 on the 28 May 2015.
3. This early consideration by the Committee builds on its experiences of scrutinising the audit and accountability arrangements for the Scottish rate of income tax (SRIT). That work demonstrated that early consideration of the audit arrangements of proposals for new devolved powers is vital to ensuring that there is robust, transparent reporting to the Scottish Parliament from the start of the operation of those powers. This is particularly important where the accountability for those proposed powers remains shared between the UK and Scottish Governments.
4. As is demonstrated above, the devolution of further powers has been an ongoing and fast moving process, with further proposals for devolution now set out in the Scotland Bill 2015 published on 28 May 2015. This paper sets out the Committee's early views on the Bill's proposals for audit and accountability and highlights those areas where we consider more clarity is required. Our views are based on the written and oral evidence we have received to date on the draft clauses set out in the *UK Command Paper: Scotland in the United Kingdom: An enduring settlement*. We also build on our experience of scrutinising and then reporting on the framework for auditing the Scottish rate of income tax (which was devolved through the Scotland Act 2012).
5. We would like to thank all those who provided their views on the draft clauses and we acknowledge that all of the evidence we considered was provided to the Committee in advance of publication of the Scotland Bill 2015.
6. We recognise that it will take time to finalise the detail of audit reporting arrangements for each of the relevant bodies and powers identified within the Scotland Bill. As such this paper serves as a starting point for the Committee discussions on that detail with the Auditor General for Scotland (AGS), Comptroller of Audit and Auditor General as well as Scottish and UK Governments and the relevant bodies.
7. We agree with the Scottish Government, AGS and others such as ICAS that there will not be a one size fits all model of audit and accountability for the proposed devolved powers. The Auditor General explained that "It very much needs to start from the basis of what work the bodies carry out in Scotland and what the Scottish Parliament wants more oversight of."¹

¹ Scottish Parliament Public Audit Committee, Official Report, 1 April 2015, Co1 37.

8. With that in mind we have set out below principles which will guide us as to what level of Scottish specific data we consider should be provided by those bodies or significant proposed functions identified in the Scotland Bill 2015. We then comment on each body or function individually to the extent we consider possible given the evidence we have taken to date.

Key principles underpinning audit reporting to the Scottish Parliament

9. **Proportionate:** we consider that the level of detailed reporting to the Scottish Parliament of Scottish specific data as it relates to devolved functions should be no less than proportionate to:
 - a. the level of revenue or funding for the body or function which is raised in Scotland;
 - b. the level of expenditure in Scotland;
 - c. the level (or geographic nature) of the activity undertaken in Scotland;
 - d. the extent to which funding is provided by the Scottish Government or Scottish Parliament
 - e. the extent to which the market or policy operating in Scotland differs from the rest of the UK;
 - f. where there are disproportionately higher risks carried to Scottish interests compared to the UK.
 10. **Transparent:** we consider that in order for the Scottish Parliament to hold to account those that exercise the functions proposed in the Scotland Bill, it is essential that:
 - a. it is clear where the audit responsibility lies and over which functions;
 - b. the data provided enables the value for money of the activity or function to be scrutinised by the Scottish Parliament;
 - c. the basis upon which the data provided is clear and well understood;
 - d. the reporting arrangements are clear.
 11. **Robust:** We consider that in order for the data to provide a reasonable basis for scrutiny it should have been subject to external audit or validation which is then also reported to the Scottish Parliament.
 12. In that regard, where the functions of a body or of UK Ministers are transferred to Scottish Ministers or are otherwise within the Scottish Administration then we agree with the Scottish Government that they should then fall within the remit of the Auditor General for Scotland and Audit Scotland.
 13. We understand that all of the bodies identified within the Scotland Bill 2015 are currently subject to external audit by the Comptroller and Auditor General (C&AG) and the National Audit Office (NAO), except for the BBC (audited by KPMG) and Citizen's Advice Scotland (a charity which appoints its own auditors).
- ### **The relationship between the C&AG and the AGS**
14. We agree with the Auditor General for Scotland and others that it would normally be cost effective for the existing auditor to provide any additional opinion on any information reported to the Scottish Parliament. In that regard the Scotland Bill 2015 identifies that the C&AG will remain as auditor of some of the devolved functions whilst responsibility will transfer to the AGS in other areas.

15. In relation to those areas of audit scrutiny which remain with the C&AG and the National Audit Office, the Committee heard during its scrutiny of SRIT, that the C&AG has rights, given through legislation, to audit or examine the revenue and expenditure of UK organisations such as HMRC. These rights do not extend to Audit Scotland.
16. We have had early sight of the draft Memorandum of Understanding (hereafter referred to as 'the draft MoU') for the co-operation between the C&AG and the AGS on the audit of the Scottish rate of income tax and made no comment on it. That draft MoU set out the collaborative working arrangements between the C&AG and AGS including how Audit Scotland would provide additional assurance on the NAO's audit of HMRC along with working with the NAO on its future priorities and focus.
17. However, the Scotland Bill 2015 proposes devolution of a greater range and complexity of powers (such as the interplay between reserved and proposed devolved functions in tax and welfare). We therefore question whether this 'additional assurance' arrangement remains appropriate. **Our view is that a tipping point has been reached such that consideration should be given to enabling Audit Scotland and the National Audit Office to undertake joint performance audit work especially in relation to complex areas such as tax and welfare.** Similar views were also expressed by CIPFA, the Law Society of Scotland and the Scottish Government.
18. We note from the C&AG's written submission that before he could offer a view of the audit and accountability arrangements of the further devolution of powers he needed to consult with the Public Accounts Commission but that he is happy to work with the Committee and Audit Scotland on this matter. **We will therefore seek evidence from the C&AG on the issues identified in this paper as well on the merits of joint C&AG and AGS audit work. We have already agreed to seek evidence from the C&AG in October/November 2015 (on the progress with implementing the SRIT).**
19. We welcome the AGS confirmation that she will continue to provide assurance by reporting to the Scottish Parliament on the progress made and any risks arising during the transitional period following enactment of the Scotland Bill 2015, should it be passed. **We agree with Audit Scotland that enhanced financial reporting would provide improved transparency about where uncertainty and variability lies so we will continue to pursue the production of Scottish public sector accounts (or whole of government accounts) with the Scottish Government.**

Scottish specific data

20. Both the AGS and Cabinet Secretary for Finance, Constitution and the Economy highlighted that the level of Scottish specific data that organisations might provide to the Scottish Parliament in their accounts may be determined by the extent to which the Scottish Parliament can identify in advance the information it requires in order to scrutinise that function.
21. Whilst we agree with this view to some degree we also recognise from our experiences of scrutinising the audit arrangement for SRIT, that part of the drive to provide more Scottish specific data must also come from the organisation delivering the devolved function itself. **In that regard it is disappointing that some of the**

organisations who provided written submissions to us have not recognised the opportunity to proactively provide more data on their Scottish activities.

22. Until the Scottish Parliament is aware of the range of Scottish data that can be provided and at what cost, it can be difficult for the Parliament to identify the detailed data it may require for scrutiny. As we acknowledge above, we regard this paper as the starting point for a dialogue with organisations, C&AG, AGS and the Scottish and UK Governments about the specific Scottish data that could be provided in relation to bodies or functions to be devolved to Scotland.
23. At this early stage in our deliberations, we have set out below the three broad categories of information that underpin our consideration of 'Scottish specific data'.
- a. Financial information: this is data relating to the income and expenditure of the body or function to be devolved;
 - b. Performance information: this is data relating to the outcomes delivered by the body or function to be devolved;
 - c. Service information: this is data relating to how the body or function delivers those outcomes.
24. We have used these categories to provide an initial view as to what kind of Scottish specific data we consider should be provided by each relevant body or function identified within the Scotland Bill 2015.

Section 22 reports

25. One area where we consider greater clarity is needed is in relation to issues arising from the annual audit process. In Scotland the AGS can report to the Scottish Parliament on issues which represent poor governance, are unusual or fraudulent which may arise in a public sector organisation. These reports are laid in the Scottish Parliament under Section 22 of the Public Finance and Accountability (Scotland) Act 2000 and are in addition to the audit report in the annual accounts of the organisation concerned. Such reports may be laid where the accounts themselves are not qualified.
26. Whilst we understand that a similar reporting mechanism exists at NAO with C&AG reports, it is unclear whether, if such an issue were to arise in relation to a devolved function exercised by a UK organisation, the National Audit Office could or would report to the Scottish Parliament as well as the UK Parliament. **We therefore seek clarification on this issue from the C&AG.**

Power of direction

27. Another area where we consider greater clarity requires to be provided relates to the power of direction that exists for UK ministers in relation to the form and content of some UK annual accounts. This power provides a mechanism by which the Scottish Government and Scottish Parliament could request greater Scottish specific data from UK bodies delivering a devolved function. However it also poses a risk in that its use by UK Ministers, without any consultation with the Scottish Government or Scottish Parliament could unintentionally result in less Scottish specific data being provided in the UK accounts of those bodies delivering devolved functions.
28. **We consider that more clarity is required from the UK Government over how this power is to be exercised especially given there is currently no requirement**

for UK Ministers to consult the Scottish Government or Scottish Parliament before exercising those powers.

THE SCOTLAND BILL 2015

29. Set out below are the Committee's initial observations on the audit and accountability arrangements which accompany the further devolution of powers set out in the Scotland Bill 2015.

Taxation

30. The Scotland Bill 2015 proposes replacing the Scottish rate of income tax with 'a Scottish rate' and accordingly amends the requirement for the C&AG to report to the Scottish Parliament on SRIT to instead report on the Scottish rate provisions. The Scotland Bill 2015 enables the Scottish Parliament to set the rates and bands in relation to non-savings and non-dividend income of Scottish tax-payers, above the UK personal allowance.
31. We recognise that the Scottish rate of income tax is anticipated to come into force in April 2016 and, subject to the Scotland Bill 2015 being passed by the UK Parliament, will in due course then be superseded by Scottish rate provisions. The Scotland Bill 2015 proposes that HMRC will continue to collect and administer the Scottish rate provisions with the costs of administering those provisions met by the Scottish Government.
32. Given this we will build on the work we have already undertaken with HMRC and the C&AG on the framework for auditing the SRIT. With the increasing complexity of the income tax arrangements in the Scotland Bill 2015, we anticipate that a greater range of financial, performance and service information will be required to be reported by HMRC to the Scottish Parliament in order to allow for meaningful scrutiny. **We will pursue this further with HMRC when they give evidence to us later in the year on the progress with implementing the SRIT.**
33. We welcome the clause which proposes that the C&AG reports to the Scottish Parliament on the Scottish rate provisions in the Scotland Bill 2015. However we note that the Scotland Bill 2015 also proposes that the Scottish Government be assigned a portion of the receipts from value added tax (VAT). **We are unclear what audit and reporting arrangements will apply to the collection and administration of the Scottish portion of VAT and will therefore seek to explore this with the C&AG and HMRC in oral evidence later this year.**
34. The Scotland Bill 2015 also proposes the devolution of a number of other taxes such as Air Passenger Duty and Aggregates Levy. **As devolved taxes it is our expectation that the audit of their collection and administration will fall within the remit of the AGS who can then report on them to the Scottish Parliament as part of the current financial reporting and performance audit regime. Subject to the passing of the Scotland Bill 2015 we will seek confirmation of this from the AGS and the Scottish Government as plans for establishing each tax are progressed.**
35. The Committee notes the evidence of the AGS that Audit Scotland will continue to audit the Scottish Government's financial statements including any use of borrowing.

Welfare

36. The Scotland Bill 2015 provides for the devolution of some aspects of welfare and benefits such as elements within Universal credit, Discretionary Housing benefits and Attendance allowance. The AGS set out the three options for their administration:
- The Scottish Government could set up its own body to administer the benefits;
 - The Scottish Government could seek to have benefits administered through other arrangements such as through local authorities (such as those arrangements in place for housing benefit and council tax benefit);
 - The Department of Work and Pensions (DWP) could continue administering them on behalf of (and funded by) the Scottish Government.
37. Under the first two options we recognise that Audit Scotland would undertake the audit and performance reporting on the administration of those benefits either reporting to the Parliament (likely under the first option) or through the Accounts Commission (likely under the second option should local authorities administer any benefits). **Given the complexity and potential for interplay between UK and devolved benefits we seek clarification from the C&AG and the AGS as to how they will work together to ensure that any areas of overlap are adequately audited and reported upon to the Scottish Parliament.**
38. In relation the third option, Audit Scotland suggested that the HMRC arrangements being developed for the SRIT would provide a good model for audit reporting and accountability to the Scottish Parliament. COSLA and others also suggested that DWP should report on UK and Scottish specific activities and provide Scottish specific financial and performance data. **We agree with these views and should DWP administer welfare and benefit payments on behalf of the Scottish Government then we consider that DWP should report to the Scottish Parliament on a range of Scottish specific financial, performance and service information.** We also note the comments of COSLA that there should be a refocusing of the performance measures for welfare to include a more rounded outcome focus (such as sustainable employment or participation in community).
39. We recognise that it will be some time yet before any decisions on who will administer any devolved benefits will be made, during which time we will continue to explore these issues with the DWP, C&AG and the AGS as appropriate. That said, the Scotland Bill 2015 as drafted does not provide for DWP and the C&AG to report to the Scottish Parliament on the administration of Scottish benefits should DWP continue to administer them on behalf of the Scottish Government. **If this option is pursued then we consider that there should be specific legislation requiring the DWP and the C&AG to report to the Scottish Parliament on the administration of Scottish benefits.** We also reiterate our concerns about the challenges of auditing any interplay between UK and Scottish welfare policy and benefits for example: CAS highlighted the possible future links between Scottish Government employment programmes and the UK benefit sanction regime.

Crown Estate

40. The explanatory notes to the Scotland Bill 2015 explain the Bill provides for the devolution to Scottish Ministers or another organisation the functions of managing the Crown Estate's then current wholly-owned assets in Scotland, the revenue arising from those assets and competence to legislate about those functions going

forward. At present the Crown Estate is audited by the C&AG and the National Audit Office. Clause 31 of the Scotland Bill 2015 proposes that after the transfer of functions to Scottish Ministers, references to the C&AG in the Scotland Act 1998 should be read as references to the AGS. **As a result, we understand that if the Bill is passed, the AGS will become the auditor of those Crown Estate functions transferred to Scottish Ministers.**

41. **We welcome this proposal as allowing the AGS to audit and report on the financial and value for money of the operation of the devolved Crown Estate functions. We also acknowledge the Scottish Government's commitment that should the Crown Estate functions be devolved to another organisation, then that organisation should report to the Scottish Parliament on grounds such as performance, financial information and the contribution being made to delivering the National Performance Framework.**
42. As we heard in evidence from the Cabinet Secretary for Finance, Constitution and the Economy there is considerable debate about the extent to which the Crown Estate provisions in the Bill represent the Smith Commission agreement. **Whatever the outcome of that debate, we believe that it is important that Crown Estate investment in Scotland should be subject to audit and the results reported to the Scottish Parliament.**

Tribunals

43. The Scotland Bill 2015 puts in place a mechanism by which the management and operation of reserved tribunals may be devolved. We note that the explanatory notes to the Scotland Bill 2015 estimate that this could involve an extended process given it will involve consideration, and any subsequent transfer of functions, on a tribunal by tribunal basis.
44. The Scottish Government anticipates that the transfer of the functions of any reserved tribunal will bring them within the reporting terms of Scottish Tribunals as defined by the Tribunals (Scotland) Act 2014. That Act requires the President of Tribunals to prepare an annual report about the operation and business of Scottish tribunals, including how they have exercised their functions during the financial year and any other information considered appropriate by the President of Tribunals or Lord President. This annual report is then published and sent to Scottish Ministers.
45. **At this stage we are reassured by the Scottish Government's explanation that any further devolution of the operation of reserved tribunals will likely bring them within the current reporting system for Scottish Tribunals.**

British Transport Police

46. The explanatory notes to the Scotland Bill 2015 explain that the Bill facilitates the devolution of executive competence on relation to the policing of railways in Scotland by specifying as cross border agencies the British Transport Police Authority and certain senior post holders in the British Transport Police (BTP). This designation of BTP, the notes explain is the first step in the process of devolving greater powers to the Scottish Government. As a cross border agency any reports which are required to be laid before the UK Parliament must also be laid before the Scottish Parliament.

47. In written evidence the British Transport Police Authority (BTPA) explained that the role of governing the British Transport Police is shared between it, UK Ministers and the Chief Constable so no single body has a monopoly over policing policy. The BTPA has responsibility for defining the forces priorities and objectives, sets it budget and recruits senior post holds in the BTP as well as raising funds from the rail industry to pay for policing services. The BTP Fund is audited by the C&AG.
48. In a detailed submission the BTPA and BTP set out the consequences of a number of different options for devolving the functions of policing railways in Scotland to Scottish Ministers. It also identifies issues which may arise depending upon the way in which the transport policing in Scotland is devolved and was provided to the Committee prior to the Scotland Bill 2015 being published.
49. The Scottish Government explained in its evidence that it would propose to integrate into Police Scotland any devolved functions of the British Transport Police. The Scottish Government confirmed that it would consult on the most appropriate model for policing of railways within the Police Scotland structure. Under this proposal the devolved functions of the British Transport Police would fall within the remit of the AGS and so would be subject to audit and performance reporting as part of the Scottish Police Authority.
- 50. In considering the Scotland Bill 2015 proposals, we note that as a cross border agency the BTP fund would continue to be audited by the C&AG. It is unclear the extent to which this designation would result, post Bill implementation, in audit or performance reporting to the Scottish Parliament on any Scottish specific activity. We will explore this issue further with the C&AG, including whether any legislative underpinning would be required in order to address our concern.**

Consumer Advocacy and Advice

51. The Scotland Bill 2015 proposes that responsibility for consumer advocacy and advice is devolved to the Scottish Parliament. It also proposes consequential amendments to support the change in funding arrangements that the devolution of consumer advocacy and advice requires.
52. In its written submission Citizens Advice Scotland (CAS) explains its current audit and reporting arrangements. CAS is a charity which appoints its own auditors. CAS reports to the Department of Business Innovation and Skills (BIS) on work undertaken and funded by the UK Government or through a levy on industry. Reports on CAS' work in relation to the regulated markets of energy and post are laid in the UK Parliament. In relation to its devolved work on behalf of water consumers which is funded by the Scottish Government, CAS submit quarterly updates to the Scottish Government as well as an annual report and accounts (which is then laid in the Scottish Parliament).
53. CAS's annual report sets out its performance against the work plan, its expenditure of public funds and any other work is sent to BIS after the end of the financial year. A copy is then provided to Scottish Ministers.
54. Both CAS and the Scottish Government confirmed that in relation to any future devolution of powers over consumer advocacy and advice, similar arrangements to

those for water consumer representation would be adopted with the laying of an annual report and externally audited accounts in relation to that activity in the Scottish Parliament.

55. On the basis of the evidence provided by CAS and the Scottish Government we are content that that the audit and accountability arrangements for the proposed devolved powers of consumer advocacy and advice will be no less than that currently operating in relation to water consumer representation by CAS.

Commissioners of Northern Lighthouse Board (NLB)

56. Under the Scotland Bill 2015, the NLB will be required to send its accounts to Scottish Ministers who in turn will be required to lay the reports and accounts passed to them by the NLB before the Scottish Parliament.

57. In its submission NLB explain that the majority of its activities relate to delivering services to Scotland (with the remaining duties relating to the Isle of Man). Given its evidence that there would be an administrative burden to NLB to identify and report on Scottish only financial and performance data, it proposes that the content of its annual reports should continue to include all NLB data and where significant reference is made to non-Scottish data.

58. The NLB annual report and accounts are consolidated with the other General Lighthouse Authorities (GLA) to form the General Lighthouse Fund (GLF) Accounts which are then audited by the NAO. The accounts of the NLB are considered final once the consolidated GLA accounts have been laid in the UK Parliament. NLB's accounts do not receive an audit opinion but are audited to verify the consolidated accounts of the GLF.

59. The NLB indicates that there has been agreement in principle between the Department of Transport and the Scottish Government's legal directorate that the audit work currently undertaken by the NAO should be sufficient to allow the Scottish Ministers and Scottish Parliament to rely on the audit report and accounts of NLB in the existing format without a separate audit opinion.

60. Given the significant Scottish focus of the activities of the NLB we are concerned that it is considered to be too administratively burdensome for the NLB to provide Scottish specific data. We note that AGS evidence that producing Scottish specific data for NLB should not pose any difficulties. Without Scottish specific data we consider Scottish Parliamentary scrutiny of the NLB on its performance in relation to Scottish matters will be more difficult.

61. Whilst we note that currently the NLB does not provide a formal full set of accounts as its financial information forms part of the GLB, we are unclear why, given its significant Scottish activities Audit Scotland could not audit the NLB in future and then report to the Scottish Parliament. In that regard we heard from Audit Scotland about the previous audit arrangements for the Forestry Commission whereby separate sets of accounts were produced and audited for each country although some central functions remained. **We are therefore keen to explore this example, the barriers to producing an audit opinion on the NLB annual accounts, the**

costs of producing Scottish specific data and the proposed audit and reporting arrangements in the Scotland Bill 2015 with the NLB, C&AG and AGS.

Maritime and Coastguard Agency (MCA)

62. It is proposed that the Maritime and Coastguard Agency lays its UK annual report and accounts in the Scottish Parliament. In its evidence to the Committee the MCA explain that its intention is to lay its UK accounts simultaneously in the Scottish Parliament and the House of Commons. However in evidence the MCO confirmed that the content will remain in accordance with the guidance received from Her Majesty's Treasury and the NAO with no additional financial or operational analysis to separate out spending in Scotland.
63. The Cabinet Secretary for Finance, Constitution and the Economy explained that after the MCA had written to the Committee, it had been exploring with the MCA how it might provide more Scottish specific information to the Scottish Parliament on its activities in Scotland. In written evidence the Scottish Government confirmed that part of its discussions with the MCA and the Department for Transport was also aimed at how that information might be provided to the Scottish Parliament, such as by a supplementary report from the MCA Chief Executive.
64. **Having regard to the principles we set out above we consider that, given the disproportionate risks carried in Scottish waters, there is a need for more Scottish specific performance data to enable the Scottish Parliament to scrutinise the outcomes of MCA's activity in Scotland.**
65. **We welcome the Scottish Government discussions with MCA and DfT in that regard. However mindful of our underlying principles, we will be keen to ensure that any Scottish specific information reported to the Scottish Parliament is robust and transparent. We therefore invite the Scottish Government, MCA and the NAO to consider whether an external validation can be provided on any supplementary reporting on Scottish activity by MCA, should that approach be agreed.**

British Broadcasting Corporation

66. The Scotland Bill 2015 does not contain draft legislation relating to the laying of the annual accounts and reports of the BBC in the Scottish Parliament. Instead this proposal is set out, in summary, within a draft Memorandum of Understanding (MoU) for the BBC which is currently being considered by the Scottish Parliament. That draft MoU is subject to agreement by the Scottish Government and UK Governments', the Scottish Parliament and the BBC. In our letter to the Devolution (Further Powers) Committee we made the following observations.
67. We question the extent to which any Scottish Parliamentary Committee can hold the BBC to account on 'matters relating to Scotland' on the basis of its UK annual report and accounts. We would observe that the BBC raises revenue in Scotland and funds Scottish specific activities such as programming and coverage of major events such as the Commonwealth Games. It also reports to the Scottish Parliament on some Scottish specific activity through its BBC Scotland Management Review and provides specific audited annual report and accounts for BBC Alba.

68. **We consider therefore that for any accountability to be meaningful the BBC should provide Scottish specific data on performance, service delivery and financial information in its UK annual report and accounts. Although the BBC does provide a BBC Scotland Management Review, we consider it essential that any Scottish specific data is robust and has been subject to external audit as is the case with the BBC's annual report and accounts (which are audited by the Comptroller and Auditor General and the National Audit Office).**
69. We welcome the commitment of the Scottish Government and the Department of Culture, Media and Sport to address the issue of the provision of Scottish specific data through the BBC's Charter review process. **We welcome this approach but invite the Scottish Government to confirm that it would intend to seek views from the Public Audit Committee on this issue as the Charter review process develops.**
70. We note that the Secretary of State or the Foreign Secretary (set out in section 2 of the draft BBC MoU) has the power to give directions as to the information to be given in the report about the finance, administration and work of the BBC and in the statement of accounts. **We consider that the draft BBC MoU should provide for consultation with the Scottish Parliament before any such directions are made.**
71. This would enable the Parliament to provide any views on the impact of the proposed direction on the transparency of any Scottish specific information in the annual report and accounts. It could also provide for a mechanism by which more Scottish specific information in the annual report and accounts could be requested by the Scottish Parliament, particularly as its oversight role develops.
72. **Finally we welcome the changes made to the draft MoU to ensure that the BBC annual report and accounts are laid on the next day on which the office of the Clerk is open.**

OFCOM

73. The Scotland Bill proposes that the C&AG sends a copy of OFCOM's statement of accounts and report to Scottish Ministers who in turn will lay those accounts and report in the Scottish Parliament. It also provides for OFCOM to send its annual report to Scottish Ministers and for Scottish Ministers to then lay that report in the Scottish Parliament.
74. In written evidence OFCOM explains that the sectors it regulates remain reserved. It has found that those markets relevant to its principle duties, such as assessing competition in communications markets are UK-wide whether for the purposes of sectoral regulation or the enforcement of competition law. OFCOM confirm that the Communications Act, which established OFCOM, provides for some Scottish specific activity (mainly related to membership) to be reported including the annual Communications Market report for Scotland.
75. However OFCOM explains that it currently has no means to disaggregate Scottish specific activities, performance data and audit information. Any additional requirement would incur additional costs and expenditure which would require to be considered against the need to provide value for money to stakeholder and taxpayer.

76. OFCOM confirm that the requirements for OFCOM to prepare a statement of accounts and an annual report are set out in legislation and as such any alternative arrangements would require legislative change.
77. The Scottish Government confirmed that they are content with the initial proposals contained within the draft clauses and it does not envisage any additional audit activity would be required.
- 78. Having considered the evidence before us, we are minded to agree. That said, there is the potential for OFCOM's activity to impact differently across the UK especially in areas such as broadband. We would welcome clarification from OFCOM of how it reassures itself that such differences do not exist.**
- 79. The Committee notes that the Memorandum of Understanding agreed in April 2004 between OFCOM, the UK Government and the Scottish Government will require to be reviewed and updated to reflect the new arrangements in the Scotland Bill 2015. We would welcome an opportunity to contribute to this review as it would provide an opportunity for the Committee to reassess whether the audit and reporting arrangements remain appropriate.**

Office of Gas and Electricity Markets (OFGEM)

80. The Scotland Bill 2015 proposes that the Office of Gas and Electricity Markets (OFGEM) send its annual report to Scottish Ministers who would then lay that report in the Scottish Parliament. It also provides for OFGEM to send its certified accounts and report on its accounts to Scottish Ministers for laying in the Scottish Parliament.
81. In written evidence OFGEM explained that it does not have separate duties, objectives, targets, budgets or policy or delivery teams dedicated to Scotland, England or Wales. The requirement for OFGEM to produce an annual report and accounts are set out in legislation and it is audited by the C&AG. OFGEM observe that unless there is a change to its primary legislation, it will continue to produce its UK accounts and annual report on an UK wide basis.
82. OFGEM explain that it could apportion to Scotland some of the costs of its work based on assumptions but OFGEM consider that the outcome of that assessment would not accurately reflect its role, work or impact.
83. OFGEM highlight that in making important decisions it is required to prepare and publish an impact assessment which may include an analysis of relevant distributional or geographical factors. It also published a range of other documents which include information relevant to Scotland including:
- a. performance of some network companies in Scotland;
 - b. energy suppliers performance;
 - c. enforcement powers including fines issued;
 - d. its administration, delivery and enforcement of a range of environmental and social schemes.
84. In its written evidence, the Scottish Government proposes that Scottish activities should be identified and reported on by OFGEM and that this could be achieved either by highlighting Scottish specific activity in the main report or detailed in a separate annex. The Scottish Government also identify some examples of the types

of information OFGEM could provide such as value for money for consumers, security of supply information and update of consumer and environmental schemes.

85. **We agree with the Scottish Government and recommend that OFGEM should provide Scottish specific financial, performance and service data given the Scottish energy markets, especially in relation to renewable energy, can differ from the rest of the UK.**
86. **Having regard to the principles underpinning our views we consider it important that any Scottish specific data should be robust and transparent. We would therefore endorse the approach suggested by the Scottish Government whereby such additional data might appear as an annex to the Annual report and accounts.**

Other proposed devolved powers

87. The Scotland Bill 2015 contains a number of powers which, if agreed to, would be devolved to Scotland whilst remaining to be delivered by UK organisations and bodies. Whilst the Bill does not propose any reporting to the Scottish Parliament on the effectiveness and value for money of the delivery of those functions, we nonetheless received evidence such as that from COSLA suggesting that it might be appropriate for such bodies to submit focussed reports on specific powers.
88. The consequences of the further devolution of these powers could result in Scottish specific market conditions such as in the case of the number of certain gaming machines authorised by a bettering premises licence. **Given this we recommend that the Scottish Government considers whether alongside devolution of these powers there should be a requirement (legislative or otherwise) for some focussed reporting to the Scottish Parliament by the relevant body on the effectiveness, efficiency and economy with which those functions are exercised.**

Electoral Commission and Boundary Commission for Scotland

89. The Scotland Bill 2015 also proposed the devolution of some powers over Scottish elections and functions in relation to Scottish Parliamentary boundaries.
90. The Electoral Commission explains that its accounts are prepared under an accounts direction given by the UK Treasury and the NAO carry out the annual financial audit. In relation to local government elections, the Commission is required to prepare and lay before the Scottish Parliament a report concerning the performance of its functions in relation to council elections. The Commission comment that in any new arrangements it would expect its funding to come directly from the Scottish Parliament for each set of elections. The Commission state that it would expect the process for it to receive funds would be transparent and open and that it would be directly accountable to the Scottish Parliament for the work it undertakes.
91. The Commission comments that its views on any specific audit of its Scottish activity will be informed by the extent of any new funding arrangements and the practicalities of the auditing arrangements by Audit Scotland and the NAO.

92. The Scottish Government express similar views that in the event that the Electoral Commission's functions relating to Scottish Parliamentary elections are devolved then it would be appropriate for the Electoral Commission to report to the Scottish Parliament. The Scottish Government also explain that should the funding also come from the Scottish Parliament then the Electoral Commission's accounts should be audited by the AGS and laid in the Scottish Parliament.
93. **We agree with the approach proposed by the Electoral Commission and the Scottish Government. We also welcome the offer of the Electoral Commission to work with us to determine the most effective way ensuring transparency and accountability in relation to scrutiny of the Commission's budget and expenditure.**
94. The Scotland Bill 2015 proposes that the Boundary Commission for Scotland powers in relation to Scottish Parliamentary boundaries are transferred to the Local Government Boundary Commission (LGBC). The Bill provides for the LGBC to report to the Scottish Parliament in relation to boundary reviews for the Scottish Parliament.
95. The Scottish Government considers that if it is Scottish Ministers fund Scottish Parliamentary boundary reviews then the Commission ought to report to Ministers and their accounts should be subject to audit by the Auditor General for Scotland.
96. The Committee notes that the LGBC is an advisory Non-Departmental Public Body audited by the AGS for the purposes of performance audits. In terms of annual audit as its financial transactions are part of the Scottish Government's transactions it is externally audited as part of the audit of the Scottish Consolidated accounts.
97. **We will seek confirmation from the LGBC, AGS and the Scottish Government that the consequence of the proposed devolved powers for Scottish Parliamentary boundary reviews being transferred to the LGBC will result in them being subject to audit by the AGS.**