

## **PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010: DUTIES ON PUBLIC BODIES TO PROVIDE INFORMATION**

### **Introduction**

1. Sections 31 and 32 of the Public Services Reform (Scotland) Act 2010 (“the Act”) impose new duties on the Scottish Government and listed public bodies to publish information on expenditure and certain other matters as soon as is reasonably practicable after the end of each financial year. These duties come into force on 1 October 2010 by virtue of The Public Services Reform (Scotland) Act 2010 (Commencement No. 2) Order 2010 (SSI 2010 No 321).

2. Sections 31(7) and 32(2) of the Act provide that listed public bodies must have regard to any guidance issued by the Scottish Ministers about the duties imposed by these sections. This guidance, which has been laid before Parliament as required by sections 31(8) and 32(3) of the Act, is designed to assist public bodies in giving effect to these statutory duties and to promote consistency between bodies in the way in which they give effect to these duties.

3. This guidance should be read in conjunction with the relevant provisions of the Act. It remains the responsibility of each listed public body to satisfy itself that it has complied in full with the statutory reporting duties imposed on it by sections 31 and 32; and to put in place and maintain the necessary reporting systems to enable it to do so. The public bodies to which the duties to publish information apply are listed in schedule 8 to the Act, which can be found at:

[http://www.opsi.gov.uk/legislation/scotland/acts2010/asp\\_20100008\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/acts2010/asp_20100008_en_1)

### **The scope of the duties**

4. The statutory duties to publish information imposed by sections 31 and 32 are strict in that they require the disclosure of certain specific information and are not subject to any exemptions in the Act. It should be noted that the exemptions to the general right of access to information in the Freedom of Information (Scotland) Act 2002 are not available in respect of the duties imposed by sections 31 and 32.

5. While these duties to publish information are strict, public bodies have some discretion as to how to describe expenditure for the purposes of section 31(1) (see paragraphs 11 – 14 below); and how to specify the subject-matter of payments made in excess of £25,000 for the purposes of section 31(3) (see paragraph 22 below). Although the description and specification must satisfy the requirements set out in sections 31 and 32, public bodies should, to the extent possible, give effect to these duties in such a way as to avoid breaching other obligations relating to non-disclosure.

6. In particular, the disclosure of ‘personal data’ as defined by section 1 of the Data Protection Act 1998 should be avoided unless it is necessary for the purposes of satisfying the disclosure requirements in sections 31 and 32. Where it is necessary for these purposes, the disclosure of personal data will be exempt from the non-disclosure provisions of the 1998 Act by virtue of section 35(1) of that Act.

7. The Public Services Reform (Scotland) Act 2010 (Ancillary Provisions) Order 2010 (SSI 2010 No 322), which also comes into effect on 1 October, makes one exception to the duties to publish information imposed by sections 31 and 32. These duties do not apply to expenditure incurred or payments made where the expenditure or payment arises out of an obligation contained in a contract entered into by the public body before 1 October 2010 and the disclosure of that expenditure or payment would breach an express term of the contract relating to that obligation. For the avoidance of doubt, it should be noted that the duties to publish information will apply to all contracts entered into on or after 1 October 2010 irrespective of the terms of those contracts.

8. In relation to the financial year 2010-11, the Ancillary Provisions Order provides that statements of expenditure relating to public relations, overseas travel, hospitality and entertainment and external consultancy, and payments in excess of £25,000, should cover the period 1 October – 31 March only. However if public bodies hold or can readily obtain information relating to the relevant expenditure for the period from 1 April to 30 September 2010, then as a matter of good practice they should publish that information so that their statements for 2010-11 cover the whole of the financial year.

9. The duties to publish a statement specifying the number of individuals who received remuneration in excess of £150,000, and statements of the steps taken to promote and increase sustainable growth and to improve efficiency, effectiveness and economy, apply to the financial year 2010-11 as a whole.

10. The duties to publish information are intended to promote greater openness and transparency. In giving effect to them, the guiding principle should be to publish as much information as possible and to interpret the duties imposed by Parliament widely rather than narrowly. If in doubt about the precise scope of any of the duties, the presumption should be to publish information rather than not to do so. However if public bodies decide to publish additional information, or to detail expenditure or payments in a way which goes beyond the scope of these duties, any other obligations relating to non-disclosure should be applied in the normal way.

### **Duties to provide information on certain expenditure**

11. Section 31(1) and (2) require public bodies to publish as soon as is reasonably practicable after the end of each financial year a statement of any expenditure they have incurred during that financial year on or in connection with the following matters:

- Public relations;
- Overseas travel;
- Hospitality and entertainment;
- External consultancy.

12. None of these terms are defined in the Act but they are all terms which are widely used and well understood. As indicated in paragraph 10 above, the guiding principle should be to publish as much information as possible and to interpret the duties imposed by Parliament widely rather than narrowly.

13. It should be noted that in some cases expenditure may fall to be reported under more than one category: for example, expenditure on external public relations consultants should be reported under both ‘public relations’ and ‘external consultancy.’ Where items of expenditure are reported under more than one category, public bodies may wish to draw attention to this in the relevant statements.

14. Public bodies are required to publish the total amount of expenditure during each financial year on or in connection with each of the categories set out above, but it is open to public bodies to publish a more detailed breakdown of expenditure if they so wish together with any relevant explanation or commentary.

### **Public relations**

15. The statement of expenditure on public relations should state the total amount of expenditure during the relevant financial year on all external communications, including the cost of in-house and contracted staff and consultants. Expenditure on ‘public relations’ includes (for example) marketing, PR campaigns, media relations, marketing research and evaluation, branding and design, promotional events, external events, conferences and exhibitions, corporate communications, sponsorship, publications and printing, digital communications, advertising and media planning.

16. The statement should include expenditure on external communications relating to the services which the public body provides, such as promoting tourism in the case of Visit Scotland. It is not necessary to include expenditure which relates only to internal communications, such as staff newsletters, or to recruitment advertising.

### **Overseas travel**

17. The statement of expenditure incurred on overseas travel should include travel to as well as from the United Kingdom; and should also include the cost of hotels, conference fees, the cost of travel and subsistence during the overseas visit and any other related expenditure. In other words, expenditure incurred on ‘overseas travel’ should be regarded as the full costs incurred in connection with the trip from departure until return, and not simply the cost of the journey itself.

### **Hospitality and entertainment**

18. Hospitality and entertainment should be interpreted widely as including any gifts, meals, parties, receptions, tickets for or invitations to public, sporting, cultural or other events or other similar benefits accorded by a public body to its own members or employees or third parties for whatever reason. The payment of reasonable travel and subsistence allowances and the reimbursement of expenses that are necessarily incurred in relation to service as a member or employee of a public body (including office-holders and company directors or secretaries) should be excluded.

19. Gifts and benefits which are wholly trivial and of minimal value may also be excluded as *de minimis*. In the interests of consistency, it is suggested that a threshold of £25 for ‘one off’ gifts or benefits would be reasonable for this purpose, provided

that the gifts or benefits in question are not regular or recurring. If a different threshold is adopted it should be set out in the statement of expenditure.

### **External consultancy**

20. Scottish Government guidance on 'Use of Consultancy Procedures' defines 'consultancy' as including a wide range of professional services such as management consultancy, IT consultancy, financial consultancy, construction or infrastructure related consultancy, research and evaluation and policy development (including feasibility studies). It is suggested that the definition set out in this guidance should be adopted for the purposes of the statement of expenditure. It should be noted that the definition applies to the services which are being procured, not the name of the supplier or the supplier's own description of the service. The guidance is available at: <http://www.scotland.gov.uk/Topics/Government/Procurement/about/SPDDOCFORMS/v>

21. 'External consultancy' does not include outsourcing or buying in technical or specialist services such as legal advice and representation or recruitment services.

### **Payments with a value in excess of £25,000**

22. Section 31(3) provides that as soon as is reasonably practicable after the end of each financial year each listed public body must publish a statement specifying the amount, date, payee and subject-matter of any payment made during that financial year which has a value in excess of £25,000 (inclusive of VAT).

23. 'Payments' include all individual payment transactions, including payments for goods and services, grants or grant-in-aid to third parties and transactions with government departments or other public bodies. The reporting requirement relates to cash payments, not accruals or invoices; and includes relevant payments made by a listed body on behalf of third parties. It does not include information relating to remuneration or other payments made to an individual in respect of their service as a member or employee of a public body (including office-holders and company directors or secretaries), such as salary, bonuses, allowances, fees, receipt of pension, voluntary severance, compromise agreements or redundancy payments.

24. Where multiple payments are made to a person or body in the course of the same financial year all of which are below £25,000, but which cumulatively exceed the reporting threshold, there is no statutory duty to report the payments in question. However it would be good practice to do so where the relevant payments can readily be identified.

25. It is open to public bodies to publish statements of expenditure on a monthly or quarterly basis if they so wish, and to publish links to these statements as the basis of the annual statement which is published after the end of the financial year. The current practice, in respect of the core Scottish Government, is to publish a statement of payments above £25,000 on a monthly basis.

## **Members or employees who received remuneration in excess of £150,000**

26. Section 31(4) provides that as soon as is reasonably practicable after the end of each financial year each listed public body must publish a statement specifying the number of individuals (if any) who received remuneration during that financial year in excess of £150,000 in relation to service as a member or employee of a public body (including office-holders and company directors and secretaries).

27. Remuneration in relation to service as a member or employee includes salary, bonus or other discretionary performance payments, allowances, fees, royalties and also bonus or other payments in respect of performance in a previous financial year, but does not include receipt of pension, voluntary severance, compromise agreements or redundancy payments.

## **Sustainable economic growth**

28. Section 32(1)(a) provides that as soon as is reasonably practicable after the end of each financial year each listed public body must publish a statement of the steps it has taken during that financial year to promote and increase sustainable growth through the exercise of its functions. Since this requires the publication of a statement it is not sufficient simply to refer to other published material such as the Annual Report. The statement can, of course, draw on such material.

29. The Government Economic Strategy, which was published in November 2007, sets out the Government's central Purpose is *"to focus the Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. By sustainable economic growth we mean building a dynamic and growing economy that will provide prosperity and opportunities for all, while ensuring that future generations can enjoy a better quality of life too."*

30. The National Performance Framework was developed to provide a clear focus and direction for the whole of the public sector in Scotland and in common with the rest of the public sector, all public bodies are expected to align their activity (demonstrated through their corporate and business plans) in support of the Purpose, Purpose Targets and the 15 National Outcomes set out in the Framework.

31. Further information about the National Performance Framework, together with the Government Economic Strategy and the Economic Recovery Plan which was first published in January 2009 and most recently updated in March 2010, can all be found on the Scottish Government's website at: [www.scotlandperforms.com](http://www.scotlandperforms.com).

## **Efficiency, effectiveness and economy**

32. Section 32(1)(b) provides that as soon as is reasonably practicable after the end of each financial year each listed public body must publish a statement of the steps it has taken during that financial year to improve efficiency, effectiveness and economy in the exercise of its functions. Once again, this may draw on other published material but should take the form of a self-standing statement.

33. The Scottish Government publishes guidance on the definition of efficiencies as part of the Efficient Government Programme. It also publishes Efficiency Delivery Plans which explain how various public bodies intend to deliver efficiencies together with an annual outturn report which sets out the extent to which that has been achieved. All of these documents can be found at:

<http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/efficientgovernment>

34. As part of their drive to improve the efficient and effective delivery of public services and to achieve maximum economy, Scottish Ministers are keen to ensure that public bodies actively explore and implement as appropriate all opportunities for sharing the provision of back office and front line functions. In the statement required under section 32(1)(b), public bodies should therefore provide details of the current level of shared service activity in which they are engaged, either as a provider or a user, including details about the functional areas involved and the scale of the activity.

35. The Scottish Government's Guidance on Shared Services is currently being revised and the new version will be a live web-enabled document, regularly updated, to provide information, guidance and case studies on shared services. The Guidance can be found at:

<http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/efficientgovernment/SharedServices/Resources>.

36. Statements under section 32(1)(b) should also include details of the steps taken to improve procurement processes and capability, including contract management; managing risk in the supply chain; acting on procurement capability assessments; and savings achieved through collaborative and local contracts. Guidance on best practice in relation to procurement is available at:

<http://www.scotland.gov.uk/Topics/Government/Procurement>.

## **Conclusion**

37. The statements and information which public bodies are required to provide by virtue of sections 31 and 32 must in all cases be published as soon as is reasonably practicable after the end of the financial year, meaning the year ending 31 March (unless Scottish Ministers specify another date by order). In most cases this duty may most easily be discharged by publishing the required statements and information prominently on websites. It is not necessary for any of the information to be included in annual report and accounts, although it may be convenient to publish the statements and information required under the Act at the same time (provided this does not involve any unnecessary delay).

38. Although executive agencies are part of the Scottish Government, each agency should publish its own statements and information separately.

39. Public bodies should include in their statements any relevant expenditure incurred, payments made and steps taken to promote and increase sustainable growth and to improve efficiency, effectiveness and economy by wholly-owned subsidiaries.

40. While there is no prescribed format for the publication of the relevant statements and information, the Scottish Government will provide advice and guidance on good practice at <http://scotland.gov.uk/about/foi/datapublication>, including publishing information in CVS format so that it can readily be accessed and compared across different public bodies.

41. Section 34 enables the Scottish Ministers, by order, to modify the reporting requirements in various ways, including the periods to which statements are to relate; the frequency with which they are to be published; the matters to which they relate and the thresholds in respect of payments and remuneration. The Scottish Ministers may also issue further guidance from time to time about the duties imposed by sections 31 and 32; and will keep the guidance under review in the light of experience.

**Scottish Government**  
**10 September 2010**