

**Permanent Secretary**

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## **Managing early departures from the Scottish Public Sector**

1. Thank you for your letter of 19 September. I am sorry if I did not make myself sufficiently clear in our earlier correspondence.

### **Compromise/Settlement Agreements**

2. It is worth placing on record here that Compromise Agreements have – under the Enterprise and Regulatory Reform Act, 2013 – been renamed as Settlement Agreements. It is therefore appropriate to use this term from here forward to refer to the binding agreements between an employer and an employee to settle an employment dispute. And while Settlement Agreements are normally entered into on termination of employment, they can also be used to settle disputes during employment which may not result in the individual leaving the organisation.

3. As you may be aware the Scottish Public Finance Manual (SPFM) already requires constituent parts of the Scottish Administration (including Scottish Government Executive Agencies and non-Ministerial departments) and bodies sponsored by the Scottish Government (as set out in Annex A) to consult the Scottish Government with respect to voluntary resignation payments which fall outside standard severance schemes. Not all of these require a formal Settlement Agreement and there is no central record presently maintained of these cases.

4. I indicated in my letter of 29 August that we were keeping these matters under review. I have now concluded that we should strengthen the process set out in the SPFM by requiring the bodies listed in Annex A to:-

- a) consult the Scottish Government when considering and before committing to Settlement Agreements;
- b) notify the Scottish Government of Settlements once finalised; and

c) report on their use in their annual reports or otherwise as appropriate.

5. To that end, we will now undertake a consultation with the bodies in question to examine how we can best place data on Settlement Agreements in the public domain, with the intention that the new procedures will be adopted and operative for the financial year 2014-15.

6. Attached at Annex B is a list of the public bodies who operate under the SPFM but are not required to consult the Scottish Government on voluntary severance. As part of the consultation we intend that the 'other significant national bodies' on the list be brought within with the strengthened arrangements. The arrangements will not apply to the bodies sponsored or supported by the Scottish Parliament Corporate Body.

7. Responsibility for Settlement Agreements rests with the Accountable Officers of the individual public bodies. Under the strengthened reporting arrangements described above, we will want to ensure that this primary responsibility is unimpaired. Voluntary severance payments are reported in the annual accounts of public bodies and this practice will also continue under the new arrangements.

### **Personal Data**

8. In reporting information to your Committee and more widely we will necessarily pay regard to the legal position on personal data where disclosure would contravene the data protection principles in Schedule 1 to the Data Protection Act 1998.

### **Letter of 19 September**

9. I would like now to respond specifically to the 4 areas raised in your letter of 19 September:-

- a) why the Scottish Government does not hold or collect information centrally on the number of settlement agreements used across the wider public sector;
- b) what information we hold on the use of settlement agreements across the public sector;
- c) where information about the numbers of settlement agreements for public sector staff (other than management board members) is disclosed; and
- d) what information we hold, by public body, on number of settlement agreements used in connection with Management Board members (for the past 3 years).

### **Information on Settlement Agreements**

10. Much of the response to the points in paragraphs 9a and b is set out above. You will recall from my letter to the Committee on 21 June 2013 that from 1 April 2011 to 31 March 2013 there were 3 Settlement Agreements in the Scottish Government Directorates and bodies listed in Annex C. Over the longer period from 1 April 2007 to date the number of Settlement Agreements is 15. One of the Agreements related to a Board member; the Committee will recall its consideration of this case in the context of the Scotrail Franchise extension.

11. Through our sponsor teams we keep in close touch with the relevant public bodies on voluntary resignation cases in line with SPFM. Scottish Government does not however currently record information on the number of Settlement Agreements used across the wider public sector as there is no pre-existing requirement to do so and the view had previously been taken that existing arrangements offered adequate scrutiny.

12. The Committee will be aware that local government bodies do not fall under the scope of the SPFM and these arrangements will not therefore apply to them. We will ensure however that Local Authorities, the Accounts Commission and COSLA are made aware of our intentions in this matter.

### **Formal Disclosure of Settlement Agreements**

13. With regard to paragraph 9c above, there is currently no formal disclosure requirement for the publication of information about the number of Settlement Agreements for public sector staff per se. The position of staff under the purview of the Scottish Government is described above.

### **Management Board Members**

14. The response to paragraph 9d is covered above. As we have highlighted, and as your letter notes, management board members are captured by the requirements of the Government Financial Reporting Manual (the FReM) where the FReM is applicable to the public sector.

15. I believe the arrangements described above will strengthen our oversight and scrutiny of Settlement Agreements, and provide transparent public reporting to your Committee and more broadly. Consultation with Scottish Government prior to their finalisation of Settlement Agreements will help ensure that we are able to discharge the new reporting arrangements efficiently and without any additional burden on the bodies concerned.

16. I shall be pleased to receive any further comments, advice or enquiries from the Committee on this matter.

## **Bodies Which Must Consult SG About Voluntary Redundancy And Settlement Agreements**

### **SG Core**

#### **The Crown Office and Procurator Fiscal Service**

#### **Executive Agencies**

Accountant in Bankruptcy  
Disclosure Scotland  
Education Scotland  
Historic Scotland  
Scottish Prison Service  
Scottish Public Pensions Agency  
Student Awards Agency for Scotland  
Transport Scotland

#### **Non Ministerial Departments (NMDs)**

National Records of Scotland  
Office of the Scottish Charity Regulator  
Registers of Scotland  
Scottish Court Service  
Scottish Housing Regulator

#### **Public Corporations**

Caledonian Maritime Assets Ltd  
David MacBrayne Ltd  
Highlands and Islands Airports Ltd  
Scottish Canals  
Scottish Futures Trust  
Scottish Water

#### **Executive NDPBs**

Accounts Commission for Scotland  
Architecture and Design Scotland  
Bòrd na Gàidhlig  
Cairngorms National Park Authority  
Care Inspectorate  
Children's Hearings Scotland  
Creative Scotland  
Crofting Commission  
Highlands and Islands Enterprise  
Loch Lomond and The Trossachs National Park Authority  
National Galleries of Scotland  
National Library of Scotland  
National Museums of Scotland  
Police Investigations and Review Commissioner  
Quality Meat Scotland  
Risk Management Authority  
Royal Botanic Garden, Edinburgh

Royal Commission on the Ancient and Historical Monuments of Scotland  
Scottish Agricultural Wages Board  
Scottish Children's Reporter Administration  
Scottish Criminal Cases Review Commission  
Scottish Enterprise  
Scottish Environment Protection Agency  
Scottish Funding Council  
Scottish Legal Aid Board  
Scottish Legal Complaints Commission  
Scottish Natural Heritage  
Scottish Qualifications Authority  
Scottish Social Services Council  
Skills Development Scotland  
sportscotland  
VisitScotland  
Water Industry Commission for Scotland

### **Advisory NDPBs**

Judicial Appointments Board for Scotland  
Local Government Boundary Commission for Scotland  
Mobility and Access Committee for Scotland  
Scottish Advisory Committee on Distinction Awards  
Scottish Law Commission  
Scottish Local Authorities Remuneration Committee

### **Tribunals**

Additional Support Needs Tribunals for Scotland  
Lands Tribunal for Scotland  
Mental Health Tribunal for Scotland  
Parole Board for Scotland  
Private Rented Housing Panel  
Scottish Charity Appeals Panel

### **Health Bodies**

Healthcare Improvement Scotland  
Mental Welfare Commission for Scotland  
NHS 24  
NHS Boards  
NHS Education for Scotland  
NHS Health Scotland Board  
NHS National Services Scotland  
National Waiting Times Centre Board  
Scottish Ambulance Service Board  
State Hospital Board for Scotland

**Bodies That Must Comply With The SPFM And Are Not Required To Consult SG About Voluntary Redundancy And Settlement Agreements**

**Other Significant National Bodies**

Audit Scotland  
Court of Lord Lyon  
Drinking Water Quality Regulator  
HM Chief Inspector of Constabulary in Scotland  
HM Chief Inspector of Prisons in Scotland  
HM Chief Inspector of Prosecution in Scotland  
James Hutton Institute  
Justices of the Peace Advisory Committee  
Moredun Research Institute  
Office of the Queens Printer for Scotland  
Scottish Agricultural College  
Scottish Roadworks Commissioner  
The Scottish Police Authority  
The Scottish Fire and Rescue Service  
Visiting Committees for Scottish Penal Establishments

**Parliamentary Commissioners and Ombudsmen**

Commissioner for Ethical Standards in Public Life in Scotland  
Scotland's Commissioner for Children and Young People  
Scottish Human Rights Commission  
Scottish Information Commissioner  
Scottish Public Services Ombudsman  
Standards Commission for Scotland

**Annex C**

**Settlement Agreements – Bodies included in the Data**

Scottish Government Core Directorates (including Marine Scotland)  
Transport Scotland  
Scottish Housing Regulator  
Accountant in Bankruptcy  
Scottish Public Pensions Agency  
Education Scotland  
Fire Services Inspectorate  
Fisheries Committee (until its abolition in 2010)  
HM Inspectorate of Prisons  
HM Inspectorate of Constabulary  
National Records of Scotland  
Registrar of Independent Schools  
Student awards Agency for Scotland  
Scottish Agricultural Wages Board