FINANCIAL MEMORANDUM MANUAL
THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE IN SCOTLAND

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INTRODUCTION

1. The Commissioner for Children and Young People (Scotland) Act 2003 provides for a Commissioner for Children and Young People in Scotland (the Commissioner) to promote and safeguard the rights of children and young people in Scotland. The Act provides that the Commissioner is an independent Officeholder in the exercise of his/her functions and is not subject to the control or direction of the Scottish Parliament, including the Scottish Parliamentary Corporate Body (SPCB) or Scottish Executive unless where otherwise indicated in the Act (see paragraph below).

2. The Act provides that the SPCB shall pay the salaries and allowances of the Commissioner and any expenses properly incurred by the Commissioner in the exercise of his/her functions. It also provides that the Commissioner may with the consent of the SPCB as to numbers, appoint staff and determine their terms and conditions of appointment, make arrangements for pensions, allowances or gratuities subject to the approval of the SPCB.

3. This financial memorandum sets out a framework within which the Commissioner, as Accountable Officer and the SPCB are required to operate to ensure that the administrative funding processes are in place to enable the Commissioner to undertake his/her functions, as provided for in Statute.

4. This Memorandum has been arranged in sections and guidance notes/templates etc are provided within the relevant section. SPCB guidance where appropriate has been included for information only as the Commissioner is not bound by it but may find it a useful reference tool.

5. As Accountable Officer the Commissioner is accountable to the Parliament in the exercise of the following functions:-

(i) signing the statement of accounts prepared in accordance with the Direction by the Scottish Ministers;
(ii) ensuring the propriety and regularity of their finances; and
(iii) ensuring that their resources are used economically, efficiently and effectively.

INCOME AND EXPENDITURE GENERAL

Relationship with SPCB

6. The Commissioner's funding forms part of the SPCB's budget requirement and as such, is reported to the Finance Committee as part of the SPCB's overall budget submission. The Commissioner may be invited to attend Finance Committee meetings to give evidence on his/her individual budget bid and notice in writing will be given as soon as practicable. The SPCB will advise the Commissioner of the timetable for budget submissions determined by the Finance Committee.

7. All budget bids will initially be made and discussed with the SPCB portfolio member for robustness, prior to seeking formal SPCB approval.

8. Where additional funds to the original budget for any financial year are required on an exceptional basis then the procedure as set out in the *Memorandum of Understanding on Access to the Officeholders' Contingency Fund held by the SPCB* should be followed. This provides that any bids should be submitted to the SPCB by way of a certification explaining the purpose of the funding.

9. Where there are insufficient funds in the Officeholders' contingency fund then the SPCB shall consider whether it is possible to meet the additional funding from elsewhere in the SPCB's overall budget. Where additional funding can not be met from the SPCB's resources a bid for additional funding will be submitted to the Finance Committee as part of the in-year budget revision process. The Commissioner should expect to give evidence to the Finance Committee in support of their bid.

10. Where the SPCB proposes changes to the Commissioner's budget or refuses additional funding which in the Commissioner's opinion could affect their ability to discharge their functions, the Commissioner will notify the Finance Committee by writing to the Convener of the Committee.

11. The Finance Committee will consider any such matters and make recommendations for resolution to the Parliament.

SPCB Budget Timetable

12. The SPCB will advise the Commissioner each year of the timetable for budget submissions.

Setting the Annual Budget

13. Each year, in the light of decisions by the SPCB on the Commissioner's budget submission, the SPCB will send to the Commissioner a formal statement of the annual budgetary provision allocated by the SPCB, after clearance with the Finance Committee.

14. The approved budget will take account both of its approved funding provision and of any forecast receipts and will include a budget of estimated payments and receipts together with a profile of expected expenditure and of draw-down of any SPCB funding and/or other income over the year.

15. Any funding provided by the SPCB for the year in question will be approved in the SPCB's budget and will be subject to Parliamentary control.

General Conditions for Authority to Spend

16. Once the Commissioner's budget has been agreed with the SPCB, and subject to any restrictions imposed by the Finance Committee, the Commissioner shall have authority to incur expenditure approved in the budget without further reference to the SPCB and in line with this Memorandum.

Providing Monitoring Information to the SPCB

17. The Commissioner shall provide the SPCB with information on a monthly basis which will enable the satisfactory monitoring by the SPCB of:

- The Commissioner's cash management;
- Its draw-down of any funding; and
- Forecast outturn by agreed headings against budget.

Capital and Revenue Expenditure

18. The Commissioner should separately identify capital and revenue expenditure in their budget bid to the SPCB and account for the two types of expenditure according to the relevant accounts direction, issued by Scottish Ministers.

Financial Monitoring

19. The SPCB shall on a monthly basis provide details to the Commissioner of any costs that it pays directly on behalf of the Commissioner.

INCOME

Funding

20. Funding will normally be paid to the Commissioner in monthly instalments on the basis of a written application from the Commissioner showing evidence of need. The application shall certify that the conditions applying to the use of funding have been observed to date and that further funding is now required for purposes appropriate to the Commissioner's functions. In practice, the Commissioner will complete a template provided by the Finance Department (copy attached).

21. The Commissioner should have regard to the guidance in DAO (GEN) 14/01 and to the general principle enshrined in chapter 9 of *Government Accounting* that monthly funding should be according to need.

22. Cash balances accumulated during the course of the year from funding or other Exchequer funds should be kept at the minimum level consistent with the efficient operation of the Commissioner's Office. Budgeted funding not drawn down by the end of the year shall normally lapse. However, the SPCB may request that all or part of the Commissioner's funding not drawn down in one year be carried forward to a subsequent year's budget using end year flexibility (EYF) depending on the individual circumstances. The use of EYF requires the approval of the Finance Committee in an in-year budget revision the following year and is intended for timing differences in specific project expenditure. Where the Commissioner is aware that there is going to be an underspend, he/she should inform the SPCB by writing to the SPCB explaining the circumstances and seeking approval for EYF. The Commissioner may be invited to attend the SPCB meeting in support of their request. Written confirmation of the SPCB's decision will be issued.

23. As set out in PES (2000)25, the SPCB aims to set firm multi-year budget plans where possible in consultation with the Commissioner. In particular, the SPCB shall aim to agree, ahead of the financial year in question, a rolling three-year budget for the funding of the Commissioner, fixed for at least the first year and with indicative amounts for subsequent years.

Fees and Charges

24. Fees or charges for any service supplied by the Commissioner within their statutory remit should be determined in accordance with the guidance set out in the Scottish Public Finance Manual at www.scotland.gov.uk/library5/finance/spfm/spf-oo.asp.

Receipts from Sale of Goods or Services

25. Where Statute provides for receipts from the sale of goods and services (including certain licences where there is a significant degree of service to the individual applicant), rent of land and dividends, these should

be classified as negative public expenditure in the Commissioner's national accounts and should normally be offset against the Commissioner's agreed budget funding.

26. If there is any doubt about the correct classification of a receipt, the Commissioner should seek independent advice.

Other Receipts

27. Other receipts such as reimbursement of court fees, levies and licenses should be notified to the SPCB in writing. The Commissioner should make appropriate arrangements to transfer the money promptly back to the SPCB. This can be done by liaising with SPCB Finance Office who will agree appropriate transfer mechanisms.

28. Receipts that are received from work undertaken by the Commissioner may be retained, and shall either reduce the overall funding requirement or be used to finance additional expenditure by the Commissioner. Where receipts are to be used to finance additional expenditure, approval from the SPCB should be sought by means of written correspondence.

Interest Earned

29. Any interest earned by the Commissioner on assets may be retained and treated as part of the net budget.

EXPENDITURE

30. The Commissioner should not, without prior written SPCB approval, enter into any undertaking to incur expenditure which falls outside their remit or which exceeds their annual budget as approved by the SPCB and the Finance Committee. See the Memorandum of Understanding attached.

Proposals

31. The Commissioner shall notify the SPCB in writing prior to:

- incurring any expenditure for any purpose which has or could have significant future cost implications, including those relating to staff benefits;

- making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the SPCB:

- making any change of policy or practice which has wider financial implications (eg because it might prove repercussive among other public sector bodies) or which might significantly affect the future level of resources required.

Staffing Expenditure

32. The Commissioner may with the consent of the SPCB as to numbers appoint staff. Where the Commissioner intends to create additional posts then the Commissioner must seek the approval of the SPCB. Where approval is given by the SPCB and additional funding is required which can not be met from the original budget for any given year then the Commissioner will submit to the SPCB an estimate of the additional funding required seeking access to the funds held in the Officeholders' contingency fund.

33. Further information about access to the Officeholders' contingency fund is contained in the *Memorandum of Understanding Between the SPCB and the Commissioner on Access to the Officeholders' Contingency Fund held by the SPCB*.

Pay and Conditions of Service

34. The Commissioner may appoint staff on such terms and conditions as the Commissioner may determine subject to the approval of the SPCB. Where the Commissioner intends to amend staff terms and conditions, he/she must write to the SPCB outlining his/her proposals and explaining if additional funding is required. The Commissioner should expect to appear before the SPCB in support of their determination.

35. The Commissioner should comply with the EU directive on contract workers ["Fixed Term Employees Regulations (Prevention of Less Favourable Treatment").

Pensions; Redundancy/Compensation

36. The Commissioner may make arrangements for the payment of pensions subject to the approval of the SPCB.

37. Any proposal by the Commissioner to move from existing pension arrangements, or to pay any redundancy or compensation for loss of office/ employment, requires the approval of the SPCB.
Proposals on severance payments must comply with DAO (GEN) 04/02.

Commercial Insurance

38. The Commissioner shall ensure that he/she meets his/her statutory obligations in respect of Employer's Liability Insurance and other insurance. In considering the need for insurance, the Commissioner should refer to the guidance contained in the Scottish Public Finance Manual at www.scotland.gov.uk/library5/finance/spfm/spf-oo.asp.

Procurement of Goods and Services

Procurement policies

39. The Commissioner's procurement policies should reflect guidance from the Office of Government Commerce including *Procurement Policy Guidelines*. The Commissioner should also ensure that it complies with any relevant EU or other international procurement rules.

40. Procurement of works, equipment, goods and services should be based on value for money, i.e quality (in terms of fitness for purpose) and delivery against price, unless the Commissioner deems otherwise and retains a clear record of all decisions.

41. The SPCB encourages the sharing of common services between Officeholders and where appropriate recommends that as part of the full option appraisal that the Commissioner consults with other Officeholders to ascertain if they wish to buy into any such contract.

42. The SPCB also encourages the use of G-Cat and S-Cat, the catalogue based procurement operated by OGC buying.solutions, details of which were issued in a letter from the Corporate Policy Unit on 11 October 2004 (copy of attached).

Competition

43. Contracts should normally be placed on a competitive basis and tenders accepted from suppliers who provide best value for money overall. Any exceptions to this will be decided by the Commissioner who will ensure a full audit trail for such a decision.

44. It is recognised that, exceptionally, Non-Competitive Action (NCA) is required when procurements need to be made which cannot satisfy the minimum competition requirements. Great care is needed in authorising NCA, as it remains essential to achieve best VFM, and to ensure that the procurement process undertaken is fully defensible. Examples of situations where NCA **may** be justified include:

- Small value purchases, **not exceeding £5k** (excluding VAT) do not require formal competition. However, it remains the purchaser's responsibility to ensure that the purchase represents overall value for money and offers fair & equitable treatment to suppliers. It may therefore be necessary from time to time to obtain two or more quotations, but this should be considered in conjunction with the administrative costs of obtaining low value requirements competitively.

- for work of **exceptional urgency** caused by unforeseeable circumstances where competitive tendering would cause unacceptable delay (e.g. after breakdown, storm, fire, etc.).

- the proposed firm is by recent experience (within approximately 3-6 months) the best value for money supplier and would be likely to remain so in another competition, provided the value and/or duration does not exceed the recent purchase.

- the proposed supplier is the only one known to possess unique or specialised goods and/or services, or the articles are unobtainable from any other source and there are no satisfactory alternatives.

- where Intellectual Property Rights are an important issue, e.g. research programmes commissioned by Peer Review. However, it is essential that procedures are in place to ensure value for money.

45. It is important to ensure that international obligations are fully complied with at all times and this **must** be taken into account when NCA is being considered.

GENERAL

Leasing

46. The Commissioner for Children and Young People (Scotland) Act 2003 provides that the Commissioner may acquire and dispose of land and other property and enter into contracts.

47. Before entering into any lease (including an operating lease) the Commissioner should consider if the lease offers better value for money than purchase or a rental agreement.

Risk Management

48. The Commissioner should ensure that the risks which it faces are dealt with in an appropriate manner in accordance with relevant aspects of best practice in corporate governance, and should develop a risk management strategy, in accordance with the Treasury guidance *Management of Risk: A Strategic Overview* attached.

49. The Commissioner should adopt and implement policies and practices to safeguard itself against fraud and theft in line with Treasury's guide *Managing the Risk of Fraud*, attached.

50. The Commissioner should take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter into a contract.

Gifts

51. The Commissioner may retain any gifts but should consider if there are any associated costs in doing so or any conflicts of interest arising. The Commissioner should keep a written record of any such gifts, bequests and donations and of their estimated value and whether they are disposed of or retained.

Corporate Governance

52. The Commissioner shall ensure that he/she has instituted adequate systems of internal control for the prevention and detection of fraud, irregularity and corruption, and to safeguard, standards of conduct and the organisations' financial position. The Commissioner has a duty to maintain proper accounting records to record the income, expenditure, assets and liabilities of their office. The Auditor General may carry out examinations into the economy, efficiency and effectiveness with which the organisation has discharged its functions.

Timeliness in Paying Bills

53. The Commissioner should comply with the Confederation of British Industry's Prompt Payers Code and with the Late Payment of Commercial Debts (Interest) Act 1998 as amended.
[NOTE: The target under the Prompt Payers Code is for payment to be made within agreed payment terms or 30 days of receipt of invoices not in dispute for goods and services received. The 1998 Act allows creditors to claim statutory interest and compensation on late payment of commercial debts].

54. The Commissioner should collect receipts and pay all matured and properly authorised invoices in accordance with the terms of contracts or within 30 days, as provided for in Annex 16.2 of Government Accounting.

GENERAL ACCOUNTING ISSUES

Accounting Arrangements

55. The Commissioner shall keep proper accounting records and other records in relation to the accounts and will prepare a statement of account for each financial year in the form set out in the Accounts Direction issued by Scottish Ministers. The draft accounts shall be submitted for audit not later than 30 September following the end of the financial year to which the accounts relate.

56. The Commissioner’s statutory auditor is the Auditor General for Scotland, or another body appointed by him, who shall examine, certify and report on each statement of account sent him and shall lay before the Scottish Parliament copies of each statement of account together with his reports thereon.

Charging for the Cost of Capital

57. The cost of capital charge will apply to all assets and liabilities in the balance sheet, with liabilities attracting a negative charge (i.e. a credit). The cost of capital charges ensures an appropriate return on the taxpayers' equity.

58. The charge for each item in the balance sheet will be calculated as a percentage of the average net book value of that item over the year.

Receipts from Sale of Goods or Services

59. Where Statute provides for receipts from the sale of goods and services (including certain licences where there is a significant degree of service to the individual applicant), rent of land and dividends, these should be classified as negative public expenditure in the Commissioner’s national accounts and should normally be offset against the Commissioner’s agreed budget funding.

Capital and Revenue Expenditure

60. The Commissioner shall separately identify capital and revenue expenditure in their budget bid to the SPCB and account for the two types of expenditure.

Unforecast Changes in In-year Income

61. Any changes in income not covered by receipts should be observed in the net budget provision.

Lending, Guarantees, Indemnities, Contingent Liabilities, Letters of Comfort

62. The Commissioner shall not lend money or allow any charges to be taken over assets. They should ensure that when essential, any guarantee, indemnities, letters of comfort, or any other contingent liability (as defined in chapter 26 of *Government Accounting*), are not in a legally binding form.

VAT

63. It is for the Commissioner to determine in consultation with Customs and Excise (Inland Revenue) their VAT status.

Financial Investments

64. The Commissioner shall not make any investments in traded financial instruments nor shall it aim to build up cash balances or net assets in excess of what is required for operational purposes.

Unconventional Financing

65. The Commissioner shall not enter into any unconventional financing arrangement.

MANAGEMENT AND DISPOSAL OF FIXED ASSETS

Register of Assets

66. The Commissioner should maintain an accurate and up-to-date register of its fixed assets.

Disposal of Assets

67. The Commissioner should dispose of assets which are surplus to its requirements. Assets shall be sold for best price, taking into account any costs of sale. High value assets shall be sold by auction or competitive tendering and in accordance with *Government Accounting, Chapter 24*.

68. The Commissioner may normally retain receipts derived from the sale of assets.

69. If, notwithstanding the above, the Commissioner disposes of assets which have been purchased, improved or developed with Exchequer funds and the receipts amount to more than £1 million, or where the disposal has unusual features of which Parliament should be aware, Parliamentary approval shall be secured for the receipts to be reinvested.

70. The receipts shall be surrendered to the SPCB, which shall then submit an Estimate seeking approval for the receipts to be appropriated in aid by the SPCB and for a corresponding increase in the Commissioner's funding. If the proposed new investment exceeds the Commissioner's relevant delegated authority the SPCB's approval will be needed. If the proposed new investment is novel or contentious the SPCB's approval may also be needed.

BANKING

Banking Arrangements

71. The Commissioner as Accountable Officer is responsible for ensuring that their banking arrangements are in accordance with the requirements of *Government Accounting* and the Treasury guidance document *Departmental Banking: a Manual for Government Departments*. In particular they should ensure that the arrangements safeguard public funds and are carried out efficiently, economically and effectively.

72. The Commissioner should therefore ensure that:

- arrangements are suitably structured and represent value-for-money and are reviewed at least every two years, with a comprehensive review, usually leading to competitive tendering, at least every three to five years;

- sufficient information about banking arrangements is supplied to the SPCB's Accountable Officer to enable the latter to satisfy his/her own responsibilities;

- the Commissioner's bank account arrangements shall be kept separate and distinct from those of any other person, Officeholder or organisation; and

- adequate records are maintained of payments and receipts and adequate facilities are available for the secure storage of cash.

Internal Audit

73. Internal audit should provide an independent and continuing appraisal of an organisation’s internal control system and take the action needed to provide the Accountable Officer with a continuing assurance that the organisation’s internal control systems are adequate and effective. The operation and conduct of internal audit should comply with the standards contained in the "Government Internal Audit Manual" published by HMSO.

74. Accountable Officers are responsible for ensuring that appropriate and adequate internal controls exist within their own areas of responsibility, and for deciding whether or not to accept and implement internal audit findings and recommendations. The relevant Accountable Officer has overall responsibility for ensuring that prompt and effective action is taken on recommendations, and that the risks resulting from inaction are recognised and accepted.

75. The Commissioner should ensure that a sound system of internal control is put in place that supports the achievements of their policies, aims and objectives whilst safeguarding public funds and their assets.

Internal Control System

76. The internal control system comprises the whole network of systems established in an organisation to provide reasonable assurance that organisational objectives will be achieved, with particular reference to:

- risk management;
- the effectiveness of operations;
- the economical and efficient use of resources;
- compliance with applicable policies, procedures, laws and regulations;
- safeguards against losses, including those arising from fraud, irregularity or corruption; and
- the integrity and reliability of information and data.

77. Internal audit should not have responsibility for executive functions or for the development or implementation of systems. Internal audit may, however, serve as a valuable source of advice on systems of control and related matters without impairing its objectivity and independence.

Internal Audit Process

78. Internal audit should:

- analyse the internal control system and establish a review programme;
- identify and evaluate the controls which are established in systems to achieve objectives in the most economic and efficient manner;
- report findings and conclusions and, where appropriate, make recommendations for improvement;

- provide an opinion on the reliability of the controls in the system under review; and
- provide an assurance based on the evaluation of the internal control system within the organisation as a whole.

Internal Audit Assurance

79. An annual audit assurance is provided to Accountable Officers through the professional opinion of the Internal Auditor on the adequacy and effectiveness of the internal control system and the extent to which it can be relied upon. That opinion is contained in an annual report from the Internal Audit Board to the organisation, and forms part of the assurance required by Accountable Officers to enable them to sign a Statement of Internal Control in respect of their area of responsibility.

Revision of Memorandum

80. In consultation with the Commissioner, the SPCB may revise, revoke or add to the conditions in the Memorandum either at its own initiative or in response to an initiative from the Commissioner.

81. The Memorandum should be formally reviewed; initially after 12 to 18 months and thereafter the frequency will be agreed but it should be reviewed at least every 5 years to ensure compliance with Scottish Public Finance manual requirements. Any new requirements brought in by legislative changes will take precedence over any part of the memorandum.

COMPLIANCE WITH INSTRUCTIONS AND GUIDANCE

Relevant Documents

The Commissioner shall comply with the following general guidance documents:

- This document;
- The Budgeting Process Agreement between the SPCB, the Finance Committee and the Commissioner;
- *Government Accounting*;
- *Government Internal Audit Standards*, issued by the Treasury;
- *Managing the Risk of Fraud*, issued by the Treasury;
- *Departmental Banking*: *A Manual for Government Departments* issued by the Treasury;
- Relevant *Dear Accounting Officer* letters;
- *Regularity and Propriety* issued by the Treasury;
- The Consolidation Officer Memorandum issued by the Treasury;
- Relevant *Dear Consolidation Officer* letters;
- Other relevant guidance and instructions issued by the central Departments;
- Specific instructions and guidance issued by the SPCB;
- Recommendations made by the Public Accounts Committee, or other Parliamentary authority, which have been accepted by the Government and which are relevant to the Commissioner.
- Resource Accounting Manual