

Memorandum of Understanding between the Scotland Office and the Boundary Commission for Scotland 2022/2025

Introduction and background

1. Purpose of document

1.1. This framework document (the “framework document”) has been agreed between the Office for the Secretary of State for Scotland (“the Scotland Office”) and the Boundary Commission for Scotland (“the BCS”) in accordance with HM Treasury's handbook Managing Public Money (“MPM”)¹ (as updated from time to time) and has been approved by HM Treasury.

1.2. The framework document sets out the broad governance framework within which the BCS and the Scotland Office operate. It sets out the BCS’s core responsibilities, describes the governance and accountability framework that applies between the roles of the Scotland Office and the BCS, and sets out how the day-to-day relationship works in practice, including in relation to governance and financial matters.

1.3. The document does not convey any legal powers or responsibilities but both parties agree to operate within its terms.

1.4. Copies of the document and any subsequent amendments have been placed in the libraries of both Houses of Parliament and made available to members of the public on the BCS’s website.

1.5. This framework document should be reviewed and updated at least every 3 years unless there are exceptional reasons that render this inappropriate that have been agreed with HM Treasury and the Principal Accounting Officer of the sponsor department. Boundary reviews are carried out every 8 years. The latest date for review and updating of this document is 2026.

2 Independence of the Boundary Commission for Scotland

2.1. BCS is an advisory Non-Departmental Public Body (NDPB). These are usually set up to perform functions that are technical or require political neutrality, and are therefore not suitable for departments under direct ministerial control. The BCS is sponsored by the Scotland Office (Scotland Office).

2.2 The BCS is independent of the UK Government in terms of:

- the recommendations it makes on any necessary changes to the parliamentary constituencies of the House of Commons in Scotland;
- the actions it carries out and the judgement exercised in coming to those recommendations.
- BCS and Scotland Office agree to work to ensure the continued independence of the BCS's recommendations as well as to work within the norms of good financial and corporate governance required by all Scotland Office business units and staff , complying as far as possible with Treasury and Cabinet Office guidance on the roles and responsibilities of sponsor departments and Advisory NDPBs.
- This Memorandum will facilitate continued trust in the BCS's ability to perform the duties given to it by Parliament as an advisory independent body, while following Scotland Office best practice in financial and corporate governance. In seeking a balance between these two elements , BCS and Scotland Office take particular note of the Treasury guidance statement that nothing should discourage the application of sheer common sense.

3.

Objectives

3.1. The Scotland Office and the BCS share the common objective of fair and thorough reviews of UK Parliament constituency boundaries in Scotland. Scotland Office supports BCS in the delivery of this objective.

4. Classification

4.1. The BCS has been classified as a central government organisation by the Office of National Statistics (ONS)/HM Treasury Classifications Team.

4.2. It has been administratively classified by the Cabinet Office as a nondepartmental advisory public body (NDPB).

Purposes, aims and duties

5. Purposes

5.1. The BCS has been established under the Parliamentary Constituencies Act 1986. Its purposes are set out in Section 2 of that Act.²

6. Powers and duties

6.1. The BCS powers and duties stem from the Parliamentary Constituencies Act 1986 (as amended, particularly by the Parliamentary Voting System and Constituencies Act 2011(PVSC)) and the Scotland Act 1998, as amended (Schedule 1) and the Parliamentary Constituencies Act 2020 Act.³

6.2. The BCS's statutory duties and functions are to:

- to keep under continuous review the boundaries of the Parliamentary constituencies of the House of Commons in Scotland; and
- to make recommendations on any necessary revisions to those boundaries.
- carry out reviews of boundaries every 8 years.

Governance and Accountability

7. Governance and Accountability

7.1. The BCS shall operate corporate governance arrangements that, so far as practicable and in the light of the other provisions of this framework document or as otherwise may be mutually agreed, accord with good corporate governance practice and applicable regulatory requirements and expectations.

7.2. In particular (but without limitation), the BCS should:

- comply with the principles and provisions of the Corporate Governance in Central Government Departments Code of Good Practice⁴ (as amended and updated from time to time) to the extent appropriate and in line with their statutory duties or specify and explain any non-compliance in its annual report
- comply with MPM

² <https://www.legislation.gov.uk/ukpga/1986/56/section/2>

³ Parliamentary Constituencies Act 1986:

<https://www.legislation.gov.uk/ukpga/1986/56/contents>

Parliamentary Voting System and Constituencies Act 2011:

www.legislation.gov.uk/ukpga/2011/1/contents

Scotland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/46/contents>.

⁴ <https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments-2017>

- in line with MPM have regard to the relevant Functional Standards⁵ as appropriate and in particular those concerning Finance, Commercial and Counter Fraud
- take into account the codes of good practice and guidance set out in Annex A of this framework document, as they apply to ALBs

The Role of the Department

8. Appointments to the Board

8.1. The Speaker of the House of Commons is the ex-officio Chair of the BCS.

8.2. The 1986 Act specifies that the ex-officio Chair of the Commission is the Speaker of the House of Commons.

8.3. The Deputy Chairman is appointed by the Lord President of the Court of Session, and is unpaid.

8.4. Two further Commissioners are appointed by the Secretary of State for Scotland. The appointments of the two Commissioners will comply with the Code of Practice of the Office of the Commissioner on Public Appointments.

8.5. There are assessors (technical advisors) to the BCS. They are the Chief Executive of Ordnance Survey and the Registrar General of Births, Deaths and Marriages for Scotland. They are invited to all Commission meetings but can choose to be represented by deputies, whenever the Commission has a need to consult them on their areas of expertise.

8.6. The assistant commissioners also provide advice and assistance, without remuneration, when required in particular acting as chairs for public hearings during reviews.

8.7. Scotland Office is the sponsoring department for the BCS.

9.8. All such appointments should have regard to the principle that appointments should reflect the diversity of the society in which we live, and appointments should be made taking account of the need to include a balance of skills and backgrounds.

9. Resolution of disputes between the BCS and Scotland Office.

9.1. Any disputes between Scotland Office and the BCS will be resolved in as timely a manner as possible. The Scotland Office and the BCS will seek to resolve any disputes through an informal process in the first instance. If this is not possible, then a formal process will be agreed to resolve the issue.

10. Freedom of Information requests

10.1. Where a request for information is received by either party under the Freedom of Information Act 2000, or the Data Protection Act 1998 or 2018, the party receiving the request will consult with the other party prior to any disclosure of information that may affect the other party's responsibilities.

11. Reporting on legal risk and litigation

11.1. The BCS shall notify the sponsor of the existence of any active litigation and any threatened or reasonably anticipated litigation. The parties acknowledge the importance

⁵ <https://www.gov.uk/government/collections/functional-standards>

of ensuring that legal risks are communicated appropriately to the sponsor in a timely manner.

12. BCS governance structure

12.1. The general structure of the BCS is laid out in Schedule 1 to the Parliamentary Constituencies Act 1986 (as amended). The BCS consists of a Chair, Deputy Chair and two Members. It is serviced by a Secretary and secretariat. The Speaker of the House of Commons is the ex-officio Chair of the BCS.

12.2. The 1986 Act specifies that the ex-officio Chair of the Commission is the Speaker of the House of Commons. The Deputy Chair is appointed by the Lord President of the Court of Session, and is unpaid. Two further Commissioners are appointed by the Secretary of State for Scotland. The appointments of the two Commissioners will comply with the Code of Practice of the Office of the Commissioner on Public Appointments.

12.3. There are assessors (technical advisors) to the BCS. They are the Chief Executive of Ordnance Survey and the Registrar General of Births, Deaths and Marriages for Scotland. They are invited to all Commission meetings but can choose to be represented by deputies, whenever the Commission has a need to consult them on their areas of expertise. Sheriffs Principal also provide advice and assistance, without remuneration, when required in particular acting as chairs for public hearings during reviews.

13. Parliamentary accountability

13.1. Scotland Office Ministers will account for the BCS's business in Parliament. Where communication with Parliament is necessary, BCS and Scotland Office will be careful to observe their respective responsibilities. In particular, BCS and Scotland Office will endeavour to make clear the independence of the BCS regarding both the recommendations it makes and the judgement exercised in coming to those recommendations.

13.2. The BCS must submit an annual progress report to the Speaker of the House of Commons, in accordance with section 10(4) of the PVSC Act 2011.

14. Financial accountability and Framework

14.1. The Director of the Scotland Office, as Scotland Office Accounting Officer (SOAO), is accountable overall for the financial management of BCS, and through Scotland Office Ministers, is accountable to Parliament for the money spent by SO. The SOAO is the principal ministerial adviser on matters affecting Scotland Office as a whole, including resource allocation to and expenditure by the BCS. This includes, among others, being satisfied that the BCS has:

- adequate resources to carry out its statutory remit;
- financial resources available to ensure the efficient and effective conduct of its business, in accordance with the arrangements set out in Annex D;
- systems in place to safeguard financial propriety and regularity.

14.2. Unless agreed by Scotland Office and, as necessary, HM Treasury, the BCS shall follow the principles, rules, guidance and advice in *Managing Public Money*, referring any difficulties or potential bids for exceptions to SO's Corporate Services Division.⁶ Once the funding has been agreed, BCS shall have authority to incur expenditure approved in the funding without further reference to SO. This authority is subject to any restrictions

⁶ <https://www.gov.uk/government/publications/managing-public-money>

imposed by this document or by statute.

14.3. However, the BCS shall obtain SO's prior written approval before:

- entering into any undertaking to incur any expenditure that is not provided for in BCS's annual funding as approved by SO.
- Incurring expenditure for any purpose that is or might be considered novel or contentious, or which has or could have significant future cost implications;
- making any significant change to the scale of operation or funding of any initiative or particular scheme previously approved by SO;
- making any change of policy or practice which has wider financial implications or which might significantly affect the future level of resources required;
- carrying out policies that go against the principles, rules, guidance and advice in *Managing Public Money*;
- incurring any expenditure for which the authorisation of the Scotland Office Board is needed: BCS will ensure that Scotland Office provides it with adequate advice from time to time about what types of expenditure fall into this category.

Insurance

14.4. The BCS shall not undertake any insurance without prior approval of SO, other than third party insurance required under the Road Traffic Acts and any insurance which is a statutory obligation.

14.5. In the case of any claim arising against the BCS from injury to, or death of, any person, whether that person is in the employment of the BCS or otherwise, or in the case of any claim for damage to or loss of property, the BCS shall not accept liability to make any payment without the authority of so.

Hospitality Register and away days

14.6. The BCS Secretary shall maintain a record of gifts and hospitality, both given and received, and seek approval from the Scotland Office before any gift or donation is contemplated.

14.7 Expenditure on away days, hospitality and gifts is subject to the SG procedures.
Fraud,

15. Managing conflicts

15.1. If the Commission, is contemplating a course of action involving a transaction which the Scotland Office Director considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration, efficiency or effectiveness, is of questionable feasibility, or is unethical the Scotland Office Director in their role as AO should reject that course of action and ensure that the Board have a full opportunity to discuss the rationale for that rejection.

15.2. Such conflicts should be brought to the attention of the AO and the responsible Minister as soon as possible.

15.3. Furthermore, and if agreed with the responsible Minister, the AO must write a letter of justification to the deputy chair of the Commission setting out the rationale for not following the advice and recommendation of the Commission and copy that letter to the Treasury Officer of Accounts.

15.4. If the responsible Minister agrees with the proposed course of action of the Commission it may be appropriate for the Minister to direct the AO in the manner as set out in MPM paragraph 3.6.6 onwards.

16. Individual Commission members' responsibilities

16.1. Individual committee members should:

- comply at all times with the Code of Conduct for Board Members of Public Bodies, which covers conduct in the role and includes the Nolan Principles of Public Life as well as rules relating to the use of public funds and to conflicts of interest
- demonstrate adherence to the 12 Principles of Governance for all Public Body Non-Executive Directors as appropriate⁷
- not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations
- comply with the BCS's rules on the acceptance of gifts and hospitality, and of business appointments
- act in good faith and in the best interests of the BCS
- ensure they are familiar with any applicable guidance on the role of public sector non-executive directors and boards that may be issued from time to time by the Cabinet Office, HM Treasury or wider government

17. Risk management

17.1. The BCS shall ensure that the risks that it faces are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance, and develop a risk management strategy, in accordance with the Treasury guidance Management of Risk: Principles and Concepts.

18. Counter fraud and theft

18.1. BCS should adopt and implement policies and practices to safeguard itself against fraud and theft.

18.2. BCS should act in line with guidance issued by the Counter Fraud Function and in compliance with the procedures and considerations as set in MPM Annex 4.9 and the Counter Fraud Functional Standard. It should also take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter a contract or to provide grant or grant-in aid.

18.3. The BCS should keep records of and prepare and forward to the department an annual report on fraud and theft suffered by BCS and notify the sponsor department of any unusual or major incidents as soon as possible. The BCS should also report detected losses from fraud, bribery, corruption and error, alongside associated recoveries and prevented losses, to the counter fraud centre of expertise in line with the agreed government definitions as set out in the Counter Fraud Functional Standard.

19. BCS Staff^[1]

Broad responsibilities for staff

19.1. Within the arrangements approved by the responsible Minister and the Treasury, the BCS will have responsibility for the recruitment, retention and motivation of its staff. This is done within the terms of Scottish Government policies and processes. The Boundary Commission of Scotland is not an employer.

Pensions, redundancy and compensation

⁷ <https://www.gov.uk/government/publications/public-bodies-non-executive-director-principles/12-principles-of-governance-for-all-public-body-neds>

19.1. Compensation scheme rules and pension scheme rules are delivered within the terms of Scottish Government policies and processes.

Business plans, financial reporting and management information

20. Corporate and business plans

20.1. The BCS shall submit annually to the sponsor department a draft of the corporate plan covering three years ahead. The BCS shall agree with the department the issues to be addressed in the plan and the timetable for its preparation. The plan shall reflect the BCS statutory and/or other duties and, within those duties, the priorities set from time to time by the responsible Minister (including decisions taken on policy and resources in the light of wider public expenditure decisions). The plan shall demonstrate how the BCS contributes to the achievement of the department's medium-term plan and priorities and aligned performance metrics and milestones.

20.2. The business plan shall be updated to include key targets and milestones for the year immediately ahead and shall be linked to budgeting information so that resources allocated to achieve specific objectives can readily be identified by the department. Subject to any commercial considerations, the corporate and business plans should be published by the BCS on its website and separately be made available to staff.

20.3. The following key matters should be included in the plans:

- key objectives and associated key performance targets for the forward years, and the strategy for achieving those objectives
- key non-financial performance targets
- a review of performance in the preceding financial year, together with comparable outturns for the previous [2-5] years, and an estimate of performance in the current year
- alternative scenarios and an assessment of the risk factors that may significantly affect the execution of the plan but that cannot be accurately forecast
- other matters as agreed between the department and the BCS

The above section should comply with any statutory requirements as set out in governing legislation. Where the statute is silent the above represents good corporate governance expectations

21. Budgeting procedures

21.1. Each year, in the light of decisions by the department on the updated draft corporate plan, the department will send to the BCS:

- a formal statement of the annual budgetary provision allocated by the department in the light of competing priorities across the department and of any forecast income approved by the department
- a statement of any planned change in policies affecting the BCS

21.2. The BCS and the Boundaries Scotland share resources and a workforce. Both Commissions are independent organisations who are funded by the Office of the Secretary of State for Scotland and Scottish Government respectively. For efficiency and practical reasons the two bodies share a workforce and the following arrangements are in place for the supply of corporate services to the two commissions.

Service	Provider
Staff	Scottish Government employees on assignment to the Commissions

HR services, including payroll	Scottish Government People Directorate
Finance systems and services	Scottish Government Finance Directorate
ICT	Information Services and Information Systems (Scottish Government)
Procurement services, supplier management and set-up	Scottish Government Procurement Directorate
Accommodation services	Scottish Government

21.3 Costs incurred by the Commissions are recorded separately, where applicable, for example for reviews and public engagement on UK boundary reviews, or staff allocated to work to a specific Commission. Other corporate costs, such as accommodation, ICT and consumables are shared equally by the Commissions.

21.5 The arrangement whereby finance services are provided by the Scottish Government means that the Scottish Government will raise invoices on behalf of the BCS and the Scotland Office will be invoiced for the costs.

22. Staff recruitment and management, remuneration and expenses

22.1 The ex-officio Chair of the BCS is the Speaker of the House of Commons.

22.2 The Deputy Chair is a Judge of the Court of Session who is not paid for BCS work. He or she is entitled to be reimbursed for expenses incurred in carrying out BCS duties.

22.3 The Members of the BCS are paid a daily fee which is set by the Scotland Office, subject to the agreement of the Treasury. Payment is made to Members, with the necessary tax and national insurance deductions, for days (or half days) spent either preparing for, attending or following up on Commission meetings or functions. It is the responsibility of members to ensure that tax and national insurance deductions are appropriate. The Members are also entitled to be reimbursed for expenses incurred in carrying out their BCS duties.

22.4 Assistant Commissioners may be appointed, by the Secretary of State, at the request of the Commission, to assist the Members of the BCS in their duties. They are paid expenses, subject to the agreement of the Treasury.

22.6 The BCS Secretary post holder is recruited through a joint Scotland Office /SG recruitment process. The Secretary, who is the Commission's senior officer, is normally a civil servant assigned from the Scottish Government, and the Secretary of State is invited to approve the appointment (in accordance with Paragraph 7 of Schedule 1 of the Parliamentary Constituencies Act 1986, as amended) following a recommendation by Scotland Office senior management. Thus the appointment is a civil service appointment, rather than a Ministerial appointment. The appointment will be made in consultation with the Commission.

22.7 As part of their overall responsibilities, the Secretary will be responsible for the propriety, regularity and economy, efficiency and effectiveness of the Commission's financial activities. In these matters the Secretary will be answerable directly to the Director of the Scotland Office, who maintains overall accountability to Parliament for all monies voted by Parliament. The financial duties of the Secretary to the Commission are set out below (Annex F). The Commission shall not give the Secretary instructions which conflict with the duties as set out below. The Secretary is subject to Scottish Government performance management procedures.

22.8 BCS secretariat supports the work of the BCS secretary and the Commissioners. The BCS secures the share of the Scotland Office resources of the joint secretariat that it needs

in agreement with LGBCS. BCS secretariat should satisfy itself that the LGBCS is taking on its duties towards staff such as recruitment, retention, development, non-discrimination, performance appraisal, responsibility for staff costs, pay, condition of service and others.

23. Financial Monitoring

23.1. On a monthly basis, the BCS shall submit to the Scotland Office a financial statement in an agreed format confirming total spend for the relevant month and the total spend in the financial year to date. It should also provide a forecast of the outturn for the financial year. The statement should contain any necessary explanatory narrative about the forecast expenditure, likely underspend and any committed expenditure.

23.2 In addition to this formal reporting requirement, Scotland Office will liaise with the Secretary on a regular basis, where necessary, to discuss the most up to date financial position, review forecast of expenditure, forthcoming procurements and any such other matters as either party may consider necessary.

23.3 The Secretary will be responsible for producing an annual report at the end of each financial year showing the expenditure against the funding provided for the year ending, and the provisional funding for the financial year ahead. The figures shown in the report must correspond with those reported by the Scotland Office at financial year end. The annual report will be made available publicly on the BCS's website.

23.4 The Commission will be expected to produce and roll forward annually a 3 year Corporate Plan which will include key activities, related performance indicators and a forecast of required resources and expenditure for each year.

23.5 Scotland Office officials are responsible for advising the Secretary of State on the Commission's Corporate Plan and ensuring that the Secretary of State has adequate information to decide on the allocation of finance to the Commission in any year as compared with competing public expenditure priorities. Scotland Office officials will provide all reasonable assistance to the Commission to ensure accurate information and statistics are used in the planning process.

24. Information sharing

24.1. The department has the right of access to BCS records on finance and governance for any purpose including, for example, sponsorship audits and operational investigations.

24.2. The BCS shall provide the sponsor department with such information about its operations, performance, individual projects or other expenditure as the sponsor department may reasonably require.

24.3. The department and HM Treasury may request the sharing of data held by the BCS in such a manner as set out in central guidance except insofar as it is prohibited by law. This may include requiring the appointment of a senior official to be responsible for the data sharing relationship.

Audit

25. Internal audit

25.1. The BCS (BCS) shall:

- ensure that the sponsor department's internal audit team have complete access to all relevant records

- ensure that any arrangements for internal audit are in accordance with the Public Sector Internal Audit Standards (PSIAS) as adopted by HM Treasury²².
- forward the audit strategy, periodic audit plans and annual audit report, including BCS Head of Internal Audit opinion on risk management, control and governance as soon as possible to the sponsor department
- keep records of and prepare and forward to the department an annual record of fraud and theft suffered by BCS and notify the sponsor department of any unusual or major incidents as soon as possible. This will be covered in the annual report.
- will share with the sponsor department information identified during the audit process and the Annual Audit Opinion Report (together with any other outputs) at the end of the audit, in particular on issues impacting on the department's responsibilities in relation to financial systems within the BCS.

26. Availability or records

26.1. The BCS shall make available to Scotland Office staff or the staff of the National Audit Office all financial and other governance records on request, subject to section 139 of the Constitutional Reform Act 2005 (prohibition on disclosure of confidential information without lawful authority).

Reviews and winding up arrangements

27. Review of BCS's status

27.1. The BCS will be reviewed, alongside BCE, BCW, and BCNI, as part of the wider Public Bodies Reviews programme, at a time determined by the department's ministers and their AO. The date of the next review will be in 2023.

28. Arrangements in the event that the ALB is wound up

28.1. The sponsor department shall put in place arrangements to ensure the orderly winding up of the BCS. In particular it should ensure that the assets and liabilities of the BCS are passed to any successor organisation and accounted for properly. (In the event that there is no successor organisation, the assets and liabilities should revert to the sponsor department.).