Elected Member Induction Notebooks

The Governance of Scotland
This notebook provides you with some information about the key bodies that help make up the governance arrangements in Scotland. These organisations are important partners for local government and work with individual councils in ways that shape their operating environment.
Local Government’s Relationship With Other Elected Tiers of Government

Local government is one of two elected tiers of government within Scotland, along with the Scottish Parliament, in addition to the UK Parliament and the European Parliament.

The Scottish Parliament operates on devolved powers from the UK Parliament at Westminster. The UK Parliament legislates for Scotland on reserved matters (which are explained below). In certain circumstances the Scottish Parliament may give its consent for Westminster to legislate for Scotland on devolved matters.

The European Parliament also has a significant impact on local government in Scotland, as councils implement a great deal of the legislation and regulations passed by the Parliament particularly in the areas of environmental policies, transport, procurement and consumer protection and rights. The Scottish government is also bound by European Union (EU) law in the same way as is the government of any EU member state. Despite the outcome of the EU Referendum on 23 June 2016, EU legislation will continue applying directly to Scottish councils until the point that we leave.

Local government in Scotland does have considerable powers. However, there are a number of ways in which the position of local government in Scotland still falls short of that elsewhere in Europe. In principle, any party or coalition with a majority in the Scottish Parliament can change the number of councils in Scotland or even abolish local government altogether in Scotland if it saw fit. Most other states of the European Union, in compliance with the European Charter on Local Self-Government, have either a written constitution or statutory protection of the position of local government. In other words, local government is constitutionally recognised to be part of the overall government of those countries and any change to local government is deliberately made difficult to bring about for that reason. Local government does not have that level of protection in Scotland.

Local government also remains in a position where the vast majority of its general funding is allocated to it by the Scottish Parliament. This puts councils in a very dependent position and means that decisions made by the Scottish Government and Parliament about the overall level of revenue funding have a significant impact on how much councils have to spend on local services.
Further information on the role of the Scottish Government and Scottish, UK and European Parliaments is detailed below.

The Scottish Parliament

The creation of the Scottish Parliament in 1999 saw a very significant change in how Scotland is governed. Prior to that, whilst much of government in Scotland was decentralised administratively, all legislative responsibility rested with the UK Parliament at Westminster, and Ministers in the Scottish Office who ran much of Scotland’s domestic policy were answerable to it. Since devolution, Scottish Ministers have been accountable to a Scottish Parliament in Edinburgh, composed of 129 Members of the Scottish Parliament (MSPs) directly elected by the people of Scotland.

The Scottish Parliament can legislate on all matters not specifically reserved to the UK Parliament. Key devolved matters where the Scottish Parliament can legislate, some of which can significantly impact on the activities of local government, include:

- Local government
- Education and training
- Housing
- Social work
- Police and fire services
- Planning, tourism, economic development and financial assistance to industry
- The environment
- Some aspects of transport, including the Scottish trunk road network, bus policy and ports and harbours
- Law and home affairs, including most aspects of criminal and civil law, the prosecution system and the courts
- Sport and the arts
- Natural and built heritage
- Agriculture, forestry and fisheries
- Statistics, public registers and records
- Health

The Scotland Act 2016 has further delegated a range of powers to the Scottish Parliament in areas which are still largely reserved matters. Some of the key provisions include:
Finance
- The power to set the rates of income tax
- Opportunities for Scottish Ministers in agreement with the Chancellor of the UK to assign VAT rates
- Setting tax on carriage of passengers by air
- Tax on the commercial exploitation of aggregate

Welfare
- Ability to set disability, severe disablement, industrial injury and carer’s benefits
- Ability to set level of maternity, funeral, heating in cold weather expenses and discretionary support
- Ability to set level of housing benefit or any reserved benefit that may arise in making rent payments
- Control in setting the benefits under schemes for improving nutrition: pregnant women, mothers and children
- The power to create other new benefits
- Decisions on Universal Credit for those who rent accommodation and persons to whom, and time when, paid

Some matters remain reserved to the UK Parliament, most obviously Defence and Foreign Affairs.

The Acts and Statutory Instruments of the Scottish Parliament do not have the same status as those made at the UK Parliament. They can be challenged in the Court of Session through an action of judicial review, on the basis that they are beyond the scope of the Scottish Parliament’s powers, or that they do not comply with the Human Rights Act 1998, or that they are so unreasonable, irrational or perverse that they cannot be allowed to stand.

The Chamber is the focal point for the Scottish Parliament’s business. It is where MSPs meet to debate topical issues and decide on new laws. It is also where MSPs question the First Minister, Cabinet Secretaries and Ministers on a regular basis, and where statements are made on policy developments and key events.

The Scottish Parliament conducts most business through committees. These committees play a central part in the work of the Parliament - taking evidence from witnesses, scrutinising legislation and conducting
inquiries into issues which may impact upon local government functions. Further information on the Scottish Parliament’s committees is available at [www.parliament.scot/parliamentarybusiness/committees.aspx](http://www.parliament.scot/parliamentarybusiness/committees.aspx).

**Members of the Scottish Parliament (MSPs)**

The area covered by a council electoral ward will overlap with those of MSPs (as well as MPs and MEPs). There are two types of MSPs:

- constituency MSPs who represent a geographical constituency; and
- regional list MSPs who are elected on a regional basis from Independents and lists of candidates put forward by political parties.

Many elected members find that their activities as elected representatives and dealing with issues on behalf of their constituents bring them in to contact with MSPs, MPs and MEPs and they find it useful to keep in contact, to ensure all are aware of each others activities.

The [Scottish Parliament's website](http://www.parliament.scot) is the key source of information on its people, policies and procedures.

**Scottish Government and Public Bodies**

The Scottish Government is led by the First Minister. The legal title is the Scottish Executive but the name Scottish Government is now used instead as a matter of practice. At the time of writing, the First Minister has appointed nine Cabinet Secretaries and two law officers (the Lord Advocate and the Solicitor General), who are supported by twelve Ministers.

The Scottish Government is in charge of deciding how the country is run for devolved matters. It formulates policy and implements laws that have been passed by the Scottish Parliament. Any decision or action taken by the Scottish Government can be challenged as being unlawful because it conflicts with the Scotland Act 1998 and 2016 or the Human Rights Act 1998.

The Scottish Government is answerable to the Scottish Parliament. The [Scottish Government website](http://www.gov.scot) sets out the details of how national governance is arranged.

The Scottish Government and the Scottish Parliament also oversee the activities of a range of public bodies in Scotland which work with national
and local government to ensure the effective delivery of public services. These public bodies have important roles in the process of government, providing advice or regulating and delivering public services in areas such as health, culture and enterprise as well as supporting services in education and social care.

Some have been established to provide services which must be free from political interference. For example, key public bodies that operate regulatory regimes such as Scottish Environment Protection Agency (SEPA), or promote culture, tourism and sport (Creative Scotland, VisitScotland, and sportscotland) or oversee whole services (e.g. NHS Health Boards). In each of these cases Ministers have no direct control of the activities - although Ministers retain overall responsibility for the bodies.

Other public bodies operate as part of the Scottish Government, but retain a separate identity to reflect the specialist nature of their tasks (e.g. executive agencies such as Accountant in Bankruptcy or the Scottish Prison Service). The Parliament also supports a range of independent commissions - such as the Standards Commission which oversees the conduct of elected members as well as members of public bodies (see the Elected Member Briefing Note on the Standards Commission).

The Scottish Government maintains a directory of public bodies as well as a reference source describing the normal features of each category of body.

**UK Parliament**

There are currently 59 UK Parliament constituencies in Scotland, each electing one Member of Parliament (MP) to a seat in the House of Commons.

The Fixed Term Parliament Act provides for general elections to be held on the first Thursday in May every five years, unless a motion of no confidence in the government is passed by a simple majority, or, a motion for a general election is agreed by two-thirds of MPs in the House of Commons or that legislation is repealed. The Government generally is formed by the political party with the majority of seats in the House of Commons, or if no one party has a majority, by a coalition of two or more parties.

Under the Scotland Act 1998 (an act of the UK Parliament), the Scottish Parliament was established and given the power to make laws on a range of
issues, which are known as devolved matters. The UK Parliament retained the power to make laws for Scotland on certain issues, known as reserved matters. However, certain matters within UK Parliament powers were devolved to the Scottish Parliament as a result of the Scotland Act 2016. Reserved matters include:

- Equal opportunities
- Social Security
- Fiscal, economic and monetary system
- Immigration and nationality
- UK defence and national security
- UK foreign policy
- Common markets
- Trade and industry, including competition and customer protection
- Some aspects of transport, including railways, transport safety and regulation
- Employment legislation
- Gambling and the National Lottery
- Abortion, human fertilisation and embryology, genetics, xenotransplantation and vivisection
- Energy: electricity, coal, gas and nuclear energy
- Data protection
- Constitutional matters

The Secretary of State for Scotland operates through the Scotland Office, and further information can be found at www.scotlandoffice.gov.uk. Information on MPs as well as UK policies and procedures can be found at www.parliament.uk.

**European Union (EU)**

As a result of the EU Referendum and the invoking of Article 50 to leave the EU, the relationship of Scotland and the UK with the EU will be renegotiated. Until leaving the EU there is an expectation that EU legislation will continue applying directly to councils in Scotland.

Scotland returns six of the 72 Members of the European Parliament (MEP) who represent the UK with MEPs serving five-year terms. The Scottish Government is bound by EU law in the same way as is the government of any EU member state.

The EU has a significant impact on
local government and depending on the extent to which access is maintained to the European Economic Area (EEA) this is likely to continue to into the foreseeable future. The legislation is agreed by Member State Governments and the MEPs, who have equal weight in decision making, but councils implement a great deal of this legislation. Vast policy areas such as environmental obligations, public service provision, shared services, transport and EU funding stem from the European institutions. Often these proposals carry legal and financial obligations and, on occasion, might affect existing local government powers.

Because of this and the need to enter into discussions about which level of government is the most appropriate, the EU created a Committee of the Regions where the Convention of Scottish Local Authorities (COSLA – see page 14 for further information) nominates and supports four members. These elected members are nominated by COSLA and officially appointed by the Scottish First Minister and the UK Prime Minister as official representatives of Scottish local government at EU level. The Scottish contingent also includes four MSPs. They go to Brussels four to eight times a year for Committee or Plenary meetings.

More information on Scottish local government’s relationship with the EU can be found on COSLA’s website.

Information on the EU and its Institutions as well as policies and procedures can be found at www.europarl.org.uk and at www.ec.europa.eu.
Community Planning, the Third Sector and Community Councils

Councils, working with the NHS Board, Scottish Enterprise/Highlands and Islands Enterprise, Police Scotland and the Scottish Fire and Rescue Service, have statutory duties to facilitate community planning and take all reasonable steps to ensure the Community Planning Partnership (CPP) conducts its functions effectively and efficiently. The most local tier of statutory representation in Scotland is community councils, which help to bridge the gap between councils and communities. Further information is provided below on community planning partnerships, the third sector and community councils.

Community Planning Partnerships (CPPs)

Community planning is about public bodies working together and with the local community to plan for, resource and provide services which improve local outcomes in the local authority area, all with a view to reducing inequalities. Community Planning Partnerships (CPPs) are the vehicle in which community planning is delivered in Scotland.

There are 32 CPPs in Scotland which cover the same boundaries as local authorities. Statutory community planning partners are defined in the Community Empowerment (Scotland) Act 2015. Whilst not a statutory community planning partner, the third sector is also involved in the CPP. CPPs operate with a variety of themes, structures and mechanisms for political involvement which are determined by local circumstances.

The Community Empowerment (Scotland) Act 2015 places specific statutory duties on CPPs to improve local priority outcomes and acting with a view to tackling inequalities of outcome across communities within their area. In particular, CPPs are required to:

- prepare and publish a local outcomes improvement plan (LOIP), with CPPs securing participation from communities and community bodies and others, which will involve developing and agreeing a common understanding of local needs and opportunities, setting out the local outcomes which the CPP will prioritise for improvement

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1 The Community Empowerment (Scotland) Act 2015 defines statutory community planning partners as the local authority, the health board, Scottish Enterprise/Highlands and Islands Enterprise (SE/HIE), Police Scotland, Scottish Fire and Rescue Service, Regional Transport Partnership, Skills Development Scotland, Integration Joint Board (Health and Social Care), Scottish Natural Heritage, Scottish Environment Protection Agency, Historic Environment Scotland, a National Park Authority, Scottish Sports Council (i.e. Sportscotland), VisitScotland, the board of management of a regional college and a regional strategic body in Further and Higher Education (Scotland) Act 2005.
and developing an effective, shared approach for achieving those outcomes – identifying who will do what, by when, and with what resources.

• identify which geographical areas have communities that experience the poorest outcomes and prepare and publish locality plans to improve outcomes on agreed priorities for these communities. This may be done via Locality Partnerships in some areas.

• review and report publicly on progress towards their LOIP and locality plans, and keep the continued suitability of these plans under review

• take all reasonable steps to secure the involvement in community planning of any community body which it considers is likely to be able to contribute to it. CPPs must in particular have regard to community bodies which represent those communities experiencing socio-economic disadvantage. Statutory partner bodies must contribute funds, staff or other resources to secure that participation.

The Act also places specific duties on statutory partner bodies, linked to improving outcomes, the aim of which is to ensure that all public service organisations which can help the CPP fulfil its core duties take that responsibility as seriously as their other statutory functions and duties, and that their governance and accountability arrangements reinforce that. These duties include:

• working collaboratively with other partners in carrying out community planning

• taking account of the LOIP in carrying out its own functions

• contributing such funds, staff and other resources as the CPP considers appropriate to improve local outcomes in the LOIP and to secure the participation of community bodies in community planning.

The Policy and Legislative Context Induction notebook contains further information on community planning and the Community Empowerment (Scotland) Act 2015.

**The Third Sector**

Third sector organisations (comprising social enterprises, voluntary organisations, community organisations and volunteering) have an important role in delivering better outcomes for our communities as they
provide a wide variety of services, including to some of the most vulnerable people in Scotland.

Scotland’s third sector is incredibly diverse, and has a wide-reaching impact. From housing associations, social care providers and grant making trusts, through to non-governmental organisations (NGOs) and social enterprises, right down to the grassroots level of residents’ associations and community sports groups, the sector plays a vital role in shaping Scottish civil society. These organisations build the networks and relationships that contribute so significantly to Scotland’s economy and quality of life. This makes Scotland a better place to live - whether by caring for elderly parents, enthusing and training young people, preserving our natural and cultural heritage or giving people the opportunity to create art or play sport.

Each local authority area in Scotland has a Third Sector Interface (TSI) to support, promote, develop and represent the third sector. The Interface is a vital connection between the Community Planning Partnerships and the third sector.

More information is available on the Voluntary Action Scotland website.

### Community Councils

Community councils were created by the Local Government (Scotland) Act 1973. This Act requires all local authorities to establish a scheme for Community Councils and empowers them to assist community councils, both with funding and administrative support, including the administering of elections.

Elected members of the local authority and members of the Scottish, United Kingdom and European Parliaments are ineligible to remain a community councillor, or to stand for election to a community council. Upon taking office, such persons become ex-officio members of the community councils contained in whole or in part of their electoral division, and they do not have voting rights.

Community councils are the most local tier of statutory representation in Scotland. They bridge the gap between councils and communities, and help to make public bodies aware of the opinions and needs of the communities they represent. The statutory purposes of community councils are set out in section 51 (2) of the Local Government (Scotland) Act 1973 as follows:
“In addition to any other purpose which a community council may pursue, the general purpose of a community council shall be to ascertain, co-ordinate and express to the local authorities for its area, and to public authorities, the views of the community which it represents, in relation to matters for which those authorities are responsible, and to take such action in the interests of that community as appears to it to be expedient and practicable.”

Community councils are also statutory consultees on planning and some licensing applications. Many community councils also involve themselves in a wide range of other activities including fundraising, organising community events, undertaking environmental and educational projects and much more.

The [national community council website](#) has a tool that lets you [find community councils](#) in your area.
Local Government’s National Representative and Improvement Organisations

The Convention of Scottish Local Authorities (COSLA)

COSLA is the main representative organisation for Scottish local government with 28 member councils. Its main aims are to promote the position of local government as the elected tier of governance closest to the people of Scotland, to take the lead in shaping the future of local government and to ensure that local councils remain at the heart of public service delivery. COSLA endorses and promotes the principles included in the European Charter on Local Self-Government, and sees these as providing a valuable framework to shape its relationship with other tiers of local government, and their agencies. COSLA also acts as the employers’ association on behalf of all Scottish councils.

You can find out more about COSLA’s activities by visiting its website.

Scottish Local Government Partnership (SLGP)

The Scottish Local Government Partnership (SLGP) was established in March 2015 and provides a voice and representation for its four founding member Councils (Aberdeen City, Glasgow, Renfrewshire and South Lanarkshire) on priority issues that affect local Government.

The SLGP was set up to deliver:

- a voice and representation for its members at a national level on priority issues
- a proactive agenda for communication, lobbying and engagement with various levels of government on policy and financial matters
- advice and support to members on a range of policy issues
- engagement with other stakeholders on priority issues; and
- collective bargaining on pay and terms and conditions for its members’ employees

The primary decision making body is its Cabinet.

More information is available on the SLGP website.
The Improvement Service (IS)

The Improvement Service (IS) is the national improvement organisation for local government in Scotland. The IS aims to help councils and their partners to improve the health, quality of life and opportunities of all people in Scotland through community leadership, strong local governance and the delivery of high quality, efficient local services. This is done by providing a range of products and providing advisory services including consultation and facilitation, learning and skills, performance management and improvement, and research. You can find out more about the IS and the support available to councils and CPPs by visiting the IS website.

The Improvement Service has a non-partisan role to support all elected members in Scotland, which includes the development of national induction resources for elected members, of which this notebook is part. Other support available to elected members includes:

- [www.localcouncillor.scot](http://www.localcouncillor.scot) - a website for people interested in becoming an elected member
- Induction materials for all newly elected and returning elected members on the planning system in Scotland
- Continuous Professional Development (CPD) Framework for Elected Members in Scottish local government
- Elected Member Briefing Series
- Elected member workshops
- Quarterly newsletters

Please see the Improvement Service website for more information on these offers of support for elected members.
Audit and inspection of local government

Local government is subject to a range of audit, regulation and inspection.

The Accounts Commission has a ‘gatekeeper’ role in the scrutiny of local government, coordinating the requirements of the different scrutiny bodies in order that councils can have a clear picture of what scrutiny activity they will be participating in.

To do so, the Commission convenes a group of Scotland’s main public sector scrutiny bodies:

- Accounts Commission
- Audit Scotland
- Education Scotland
- Care Inspectorate
- Healthcare Improvement Scotland
- Her Majesty’s Inspectorate of Constabulary in Scotland
- Her Majesty’s Fire Service Inspectorate
- Her Majesty’s Inspectorate of Prisons
- The Inspectorate of Prosecution in Scotland
- Scottish Housing Regulator

Details of each body are below.

This work results in an annual national scrutiny plan for local government that summarises the scrutiny taking place for local government each year. Below the national plan, there is also a local scrutiny plan (LSP) for each council, brought together by a local area network of scrutiny bodies which assess the risks faced by each council. LSPs also include nationally programmed scrutiny, such as the Care Inspectorate’s joint inspections of services for children, young people and families and joint inspections of adult health and social care services. This approach, called Shared Risk Assessment (SRA), is designed to ensure well coordinated, proportionate and risk-based scrutiny.
The **Accounts Commission** is a non-departmental public body (NDPB). It is appointed by ministers but operates independently and impartially. It is the public’s independent watchdog for local government in Scotland. Its role is to hold councils to account by reporting on how Scotland’s 32 councils and associated joint boards and committees - including the new health and social care integration boards - manage their finances and resources. To do this, the Commission secures the audit of the council including the annual audit and Best Value (which is a statutory duty on each council to demonstrate continuous improvement in its performance) and performance audits at a national level across all councils. The Commission also directs councils on the performance information that they must publish to help citizens gauge their performance. The Controller of Audit is a statutory post established alongside the Commission and reports to the Commission and highlights areas of concern.

**Audit Scotland** is a statutory body providing services to the Accounts Commission and the Auditor General for Scotland (AGS). Working together, the Accounts Commission, the AGS and Audit Scotland ensure that public sector bodies in Scotland are held to account for the proper, efficient and effective use of public funds.

**Care Inspectorate** (formally, Social Care and Social Work Improvement Scotland) is a non-departmental public body (NDPB). The Care Inspectorate’s purpose is to provide assurance and protection for people who use care, social work and children’s services and to support improvement in social care and social work provision.

**Education Scotland** is an executive agency. It is the Scottish Government’s national development and improvement agency for education. It is charged with providing support and challenge to the education system, from early years to adult learning, in line with the government’s policy objectives.

**Healthcare Improvement Scotland** (HIS) is a health body. The function of HIS is to improve the quality of the care and experience of every person in Scotland every time they access healthcare by supporting healthcare providers.

**Her Majesty’s Fire Service Inspectorate in Scotland** exists to provide independent, risk based and proportionate professional inspection of the Scottish Fire and Rescue Service. Its purpose is to give assurance to the Scottish public and Scottish Ministers that the Service is working in an efficient and effective way, and to promote improvement in
the Service. Through this, the Inspectorate provides external quality assurance to the Service, and provides support to the Service in delivering its functions.

**Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS)** provides independent scrutiny of both Police Scotland and the Scottish Police Authority. Its approach is to support Police Scotland and the Authority to deliver services that are high quality, continually improving, effective and responsive to local needs. It can inspect other UK police services that operate in Scotland and are members of the National Preventive Mechanism, inspecting police custody centres to monitor the treatment and conditions for detainees.

**Her Majesty’s Chief Inspector of Prisons for Scotland** is required to inspect the 15 prison establishments throughout Scotland in order to examine the treatment of, and the conditions for prisoners. The Chief Inspector also has responsibility for the inspection of legalised police cells. These are cells and the treatment of and conditions for prisoners under escort.

**Her Majesty’s Inspectorate of Prosecution in Scotland** is headed by HM Chief Inspector who reports directly to the Lord Advocate. The aim of the Inspectorate is to enhance the quality of service and public confidence in the Crown Office and Procurator Fiscal Service through independent inspection and evaluation.

**The Scottish Housing Regulator (SHR)** is a non-ministerial department. The statutory objective of the SHR is to safeguard and promote the interests of people who are or may become homeless, tenants of social landlords, or recipients of housing services provided by social landlords.

Together with the Auditor General for Scotland, the Accounts Commission delivers public audit for all of the public sector in Scotland. The Commission oversees local government (including health and social care integration boards) while the Auditor General oversees the remainder. With an increasingly complex landscape of how public services are delivered, the Accounts Commission and the Auditor General produce joint performance audits at national level that cover different parts of the public sector.
Local government’s relationship with the Ombudsman

Scottish Public Services Ombudsman (SPSO)

The Scottish Public Services Ombudsman (SPSO) is an impartial, independent and free service. It is the final stage for complaints about most organisations providing public services in Scotland including councils and housing associations.

The SPSO has a statutory function to oversee the development of standardised and simplified complaint handling procedures in the public sector. Their internal unit, the Complaints Standards Authority, leads on this work.

The SPSO looks into complaints where a member of the public claims to have suffered injustice or hardship as a result of maladministration or service failure. It represents the final point in the complaints system, normally only investigating cases when the complainant has already completed the formal complaints procedure of the council or other organisation concerned.

There are some areas that are exempt from investigation by the SPSO, as laid down in the Scottish Public Services Ombudsman Act 2002. For elected members, the most important areas that the SPSO cannot consider complaints about are:

- Personnel issues, such as the appointment of staff, pay, or discipline issues
- Most educational issues, such as development of curricula, discipline and conduct
- Conduct of elected members (this is the remit of the Standards Commission)
- Community Councils
- Matters where there is a statutory right of appeal
- Matters which are subject to legal proceedings or where there is remedy by way of proceedings through any court of law
- Matters which are the subject of a criminal investigation

The Ombudsman cannot question the merits of a decision taken by or on behalf of an authority, which had the right to make that decision. However, the processes leading up to the making of such decisions are open to investigation.

The elected member briefing note on the SPSO has further information on complaints handling and how to support constituents with their complaints about a public service.