**Accountant in Bankruptcy**

**Agency Framework Document**

**2020**

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# Introduction

1. Accountant in Bankruptcy is an Executive Agency. As such it operates impartially while remaining directly accountable to the Scottish Ministers for its performance and use of public funds. The Chief Executive is also The Accountant in Bankruptcy, an independent statutory officer of the court appointed under section 1 of the Bankruptcy (Scotland) Act 1985, as amended. The Accountant in Bankruptcy is also the Debt Arrangement Scheme (DAS) Administrator appointed by virtue of section 8 of the Debt Arrangement and Attachment (Scotland) Act 2002.
2. This document sets out the broad framework within which Accountant in Bankruptcy, as an Executive Agency of the Scottish Government, (SG) operates. It does not convey any legal powers or responsibilities. It seeks to set out:
* the role, purpose and key functions of the Agency
* the roles and responsibilities of the key people involved including Scottish Ministers, the Chief Executive and the Director-General Economy of the SG
* accountabilities – to the public through Scottish Ministers and the Scottish Parliament, and detailed financial accountability mechanisms
* management arrangements – the Chief Executive’s delegated authority and performance management arrangement
* relationships with other bodies
* how amendments to this Framework Document will be made and agreed

# The mission, values and key functions of the Agency

1. The Agency’s mission is to ensure access to fair and just processes of debt relief and debt management for the people of Scotland, which takes account of the rights and interests of those involved.

We will ensure our activities are:

* + independent
	+ responsive
	+ accountable
	+ transparent
	+ fair
	+ open
1. The Agency will help deliver against all 11 of Scotland’s National Outcomes. Our primary focus is the National Outcome on poverty and the associated National Indicator on unmanageable debt.
2. We will achieve this through the following key functions, whilst recognising our unique statutory role:
	* delivering, with stakeholders, a range of options for individuals seeking debt relief and debt management
	* supervising the bankruptcy process
	* providing statutory information on our public registers
	* supporting Ministers to develop and refine policy
	* achieving best value services to our customers Our key functions can be further defined as listed below:

Delivering, with stakeholders, a range of options for individuals seeking debt relief and debt management by:

* determining debtor applications for bankruptcy
* acting as trustee in all bankruptcies awarded by the Agency, where the debtor has not requested a named person to be the trustee
* acting as trustee in all bankruptcies awarded by the Sheriff Courts where a sheriff does not appoint a named person to be trustee
* acting as interim trustee before the award of bankruptcy except in those cases where an alternative interim trustee is appointed when nominated by the petitioning creditor
* acting as trustee as appointed by the sheriff on the resignation or death of the original trustee where no new trustee is elected
* undertaking the functions of the commissioners in bankruptcies where none are elected by creditors
* approving debt payment programmes and approving DAS money advisers
* adjudicating DAS debt payment programme applications from certain categories of businesses

Supervising the insolvency process by:

* supervising the operation of the bankruptcy process including the performance of trustees and commissioners in the exercise of their statutory duty
* regulating and supervising the registration and administration of trust deeds, including the performance of trustees
* investigating debtor behavior prior to and following sequestration and imposing Bankruptcy Restrictions Orders for periods of up to 5 years where appropriate. In cases where a longer period of bankruptcy restrictions is believed to be warranted, cases are referred to the sheriff court for consideration
* registering statutory company insolvency documents filed by receivers and liquidators in terms of the Insolvency Act 1986

Providing statutory information on our public registers by:

* maintaining a public Register of Insolvencies, which records bankruptcies awarded by the Scottish Courts or by the Agency. The Register also provides moratorium information along with information on protected trust deeds, Bankruptcy Restrictions Orders and corporate insolvencies
* maintaining the DAS register, which records details of individuals who are repaying their debt through a DAS debt payment programme or have intimated an intention to submit a DAS application, and moratorium information

Supporting Ministers to develop and refine policy by developing:

* policy for personal insolvency and diligence and developing arrangements for corporate insolvency in Scotland
* policy for the Debt Arrangement Scheme (DAS)
* debt advice policy

Achieving best value services to customers by:

* minimising the requirement for public funding
* maximising the return to creditors insofar as the rights and interests of all those involved are duly considered
* embedding efficient systems and processes
1. Detailed targets and objectives are provided in the Agency corporate and business plans

# Roles, responsibilities and Relationships Scottish Ministers

1. Scottish Ministers are responsible for determining the overall policy and resources framework within which the Agency operates and, ultimately, are accountable to the Parliament for its functions and performance. They will not, however, intervene in the day-to-day management of the Agency.

Responsibilities of Scottish Ministers include:

* + holding the Chief Executive to account for the performance of the Agency
	+ approving the Agency’s strategic objectives and the performance framework within which it operates
	+ receiving corporate and business plans
	+ setting the budget for the Agency
	+ approving proposals for fees orders prior to submission to Parliament
	+ receiving the annual report and audited financial accounts from the Chief Executive
	+ ensuring the Agency’s Chief Executive has the right of direct access to appropriate Ministers
	+ approving this Framework Document and any revisions to it
1. Scottish Ministers may, after consultation with the Lord President of the Court of Session, give the Chief Executive general directions as to the performance of their functions under the Bankruptcy (Scotland) Act 1985, as amended. Such directions may be given in respect of all cases or any class or description of cases but may not be given in respect of any one particular case.

Director General
2. The Director General, or a senior officer appointed by the Director General, has the following responsibilities in relation to the Agency:
* supporting Ministers in the discharge of their duties towards the Agency, including approving the Agency’s strategic objectives and related performance targets and outcomes; agreeing the corporate and business plans; and setting an appropriate budget, in discussion with the Agency Chief Executive
* ensuring the relationship between the Chief Executive and Ministers is healthy and working effectively
* ensuring the Agency objectives and performance contribute to and are part of the Portfolio as a whole; and are aligned to the Government’s Purpose and National Outcomes set out in the National Performance Framework, while respecting the independent nature of the Agency’s role
* ensuring there is a clear framework for strategic performance improvement and management of the Agency’s work; providing support and constructive challenge to ensure the Agency is high performing and continuously improving; and ensuring operational accountability is being exercised properly
* monitoring the financial and operational performance of the Agency using materials such as Agency Board or Management Team papers and the annual reports and accounts, seeking clarification on any matter as and when required
* ensuring the Agency is taking steps to improve its operating efficiency, including through participation in collaborative procurement and shared service arrangements
* promoting integration and organisational alignment, as appropriate, e.g. by involving the Agency Chief Executive within portfolio management arrangements; holding regular meetings with the Chief Executive; ensuring the Chief Executive is aware of SG-wide strategic developments and corporate decisions impacting on the Agency; and ensuring the position of the Agency is taken into account in relevant SG policy decisions
* representing the interests of the Agency within the wider SG, ensuring the SG has due regard for the advice provided by the Agency and ensuring the Agency Chief Executive is aware of SG-wide strategic developments and corporate decisions impacting on the management or operations of the Agency and where necessary, appropriate SG-wide corporate services are available to support and facilitate the work of the Agency
* performance appraisal of the Chief Executive
* ensuring an appropriate Framework Document is in place and maintained
1. The Director-General Economy has appointed the Director of Economic Development as the senior responsible officer for the responsibilities listed above
2. The senior responsible officer, otherwise known as the Agency’s Fraser Figure, acts as a focal point within the SG for supporting and facilitating the work of the Agency in meeting its objectives and targets and approves the level of resources required as a result. In particular, as indicated above, the Fraser Figure approves, on behalf of Scottish Ministers and the Director-General Economy, the Agency’s performance targets and the Agency’s proposed corporate and business plans
3. The Fraser Figure may therefore seek relevant business information from the Agency but will not intervene in its day-to-day management. They will provide support in the exercise of the Chief Executive’s functions as both Agency Chief Executive and Accountable Officer.

# Chief Executive

1. The Chief Executive of the Agency is accountable to the Scottish Ministers for the delivery of its functions, its performance and for planning its future development. The Chief Executive is also responsible for:
* being Accountable Officer for the management of the Agency’s resources, as appointed by the Principal Accountable Officer
* being personally answerable for the efficient and effective operation and financial management of the Agency and for performance against key targets
* developing and providing Ministers and others with strategic policy advice on debt and insolvency matters
* consulting on a regular basis with stakeholders involved in the insolvency and debt management sectors
* ensuring the Agency works across Government in support of the Government’s purpose and national outcomes set out in the National Performance Framework
* ensuring the Agency is a high performing and continuously improving organisation
* providing support to the Fraser Figure including assurance about the financial performance, operational effectiveness and risk management arrangements of the Agency and its business improvement activity
* ensuring all relevant financial considerations and Scottish Government guidance, including issues of propriety, regularity, efficiency and value for money, are taken into account in delivering the Agency’s business
* preparing and publishing the Agency’s annual reports, accounts, corporate and business plans, subject to approval
* management and development of Agency staff
* ensuring Best Value in all aspects of the Agency’s operations, both front line delivery and corporate support functions, including the use of collaborative procurement and shared service arrangements where participation offers value for money for the Agency or to the wider public purse
* replying to correspondence from members of the Scottish Parliament on operational issues within the Agency’s responsibilities and otherwise supporting Ministers by preparing Ministerial briefing and responses to Ministerial correspondence and Written or Oral Parliamentary Questions
* keeping the content of the Agency’s Framework Document under review, discussing changes with the Fraser Figure

# The Advisory Board and non-executive Board members

1. The Chief Executive, as Agency Accountable Officer, is personally accountable to Scottish Ministers for the performance of the Agency and delivery of its functions. In doing so, they are supported by the Advisory Board. The Board’s role is to provide advice to the Chief Executive about discharging the Chief Executive’s functions.
2. The Advisory Board is made up of executive and non-executive members, as determined by the Chief Executive. The non-executive members are appointed to bring an independent, external perspective to the work of the Agency. At least two of the non-executive members also sit on the Agency’s Audit Committee.
3. The Chief Executive is responsible for the recruitment of the Agency’s non- executive Board members. The Chief Executive may also establish any other corporate committees that may be required to discharge the Agency’s responsibilities and functions.

# Accountable Officer arrangements

1. The Permanent Secretary of the SG is the Principal Accountable Officer for the SG Scottish Administration and is responsible for designating, under section 15 of the Public Finance and Accountability (Scotland) Act 2000, the Agency Chief Executive as the Agency Accountable Officer. The Accountable Officers has personal responsibility to Parliament for the propriety and regularity of public finances for the part of the Scottish Administration for which they have stewardship.
2. The roles and responsibilities of Portfolio Accountable Officers and Agency Accountable Officers are set out in the Memorandum to Accountable Officers for parts of the Scottish Administration.

# Parliamentary Committee attendance

1. The Scottish Parliament has the power to request a particular individual to attend a Parliamentary Committee. Scottish Ministers decide who should represent them at Parliamentary Committee hearings. In practice, the Chief Executive will normally represent Scottish Ministers on matters relating to their delegated responsibilities.
2. The Chief Executive may also be required to appear before Committees of the Scottish Parliament, including the Audit Committee, to account for the discharge of their responsibilities under the terms of this Framework Document. They are also responsible for putting into effect any relevant recommendations of the Audit Committee or other Committees of the Scottish Parliament which are accepted by Scottish Ministers.

# Arrangements for dealing with Parliamentary Correspondence

1. The Minister will encourage members of the Scottish Parliament to communicate directly with the Agency Chief Executive on operational matters within their authority. The Chief Executive will provide Ministers with any necessary information and support the answer of Parliamentary Questions or deal with any other Parliamentary business for which the Agency is responsible.

# Complaints process and the Ombudsman

1. The Chief Executive is responsible for ensuring an effective complaints procedure setting out how the Agency deals with complaints is in place and published. The Agency is subject to investigation by the Scottish Public Services Ombudsman (SPSO) and anyone not satisfied with the way the Agency has responded to a complaint may raise their concerns with the SPSO. The Chief Executive ensures any actions arising from investigations by the Ombudsman are appropriately and promptly addressed.

# Financial regime

1. The Agency is funded by the Scottish Parliament through the Finance, Employment and Sustainable Growth budget. This budget covers all capital and current programme expenditure by the Agency, including direct administration costs. Fees charged and other income arising from the Agency's operations are treated as budget income and this is the primary source of funding for the Agency's capital and current expenditure.
2. The financial delegations for the Agency are set out in Annex A. These arrangements should provide the Chief Executive maximum practicable flexibility to make efficient use of the resources available to the Agency, within the context of strategic and policy objectives, and corporate plans agreed by Scottish Ministers. The delegated limits are reviewed regularly and amended where this will assist the Agency to achieve its objectives.
3. The Chief Executive is responsible for ensuring relevant Government financial procedures are followed and may delegate authority in accordance with relevant guidance.
4. The financial regime agreed for the Agency recognises its income will vary in line with the extent of its operations and contracts with other bodies. Accordingly, within the Scottish Ministers’ decision on the distribution of public expenditure block resources, the Chief Executive has authority to deploy the Agency’s income towards its expenditure in the implementation of Agency objectives.
5. The Chief Executive, as The Accountant in Bankruptcy, is responsible for formulating proposals for changes to fees and for providing justification for any changes.

# Arrangements for audit

1. The Chief Executive is responsible for arranging a system of internal audit is provided in accordance with the objectives and standards laid down in the Government Internal Audit Manual.
2. The SG Internal Audit therefore provides an audit service to the Agency in accordance with the Service Level Agreement signed between the Chief Executive and the Head of SG Internal Audit. This confirms Internal Audit has the right of access to the Agency and its staff.
3. The Agency has an Audit Committee, chaired by a non-executive Board member, with membership and operating procedures determined by the appropriate guidance in the Scottish Public Finance Manual and the Audit Committee Handbook. The remit of the Audit Committee includes supporting the Chief Executive with regard to the efficient and effective use of programme expenditure and the associated responsibilities for risk, control, governance and assurance.
4. The Audit Committee is responsible for drawing any significant matters arising in this respect to the attention of the Scottish Government Audit and Risk Committee, for example in instances where issues may depend upon factors which are beyond the control of the Agency or have implications for the operation of the Scottish Government and its public bodies more generally. The Audit Committee is responsible for determining the meeting cycle of the Committee.
5. The Director General reserves the right to have appropriate representatives (e.g. Internal Audit) undertake any work required to provide independent assurance about the Agency’s management and control, if they consider it necessary.
6. The Agency is subject to external audit by the Auditor General for Scotland (AGS) or by auditors appointed by AGS.

# Arrangements for producing accounts

1. The Chief Executive is responsible for producing and publishing accounts for the Agency and for laying them before the Parliament together with the Agency’s annual report. The accounts are produced in accordance with the accounts direction from Scottish Ministers and the timetable for the production of the Scottish Government’s consolidated accounts each year. The Public Finance and Accountability (Scotland) Act 2000 stipulates the Scottish Government’s consolidated accounts will be laid before the Scottish Parliament and published after they have been audited and certified by the Auditor General for Scotland.
2. The Chief Executive is responsible for maintaining a sound system of internal control that supports the achievement of the body's policies, aims and objectives and for regularly reviewing the effectiveness of that system. A Governance Statement is provided by the Accountable Officer alongside the Agency’s annual accounts.

# Business and corporate plans

1. The Chief Executive is responsible for preparing and publishing a corporate plan covering the medium to long term business of the Agency and an annual business plan that takes account of and reflects the Scottish Government Business Strategy. The plan is approved by the Agency’s Fraser Figure, on behalf of Scottish Ministers and the Director-General Economy. Exceptionally, if policy or circumstances change, revisions may be proposed. Any revisions will also be subject to approval by the Fraser Figure. The corporate and business plan detail how the activities of the Agency are aligned to the Purpose and national outcomes and the performance indicators by which the Agency’s performance is measured annually.
2. The corporate and business plans are developed in consultation with internal and external stakeholders at the earliest stage possible and the final draft produced and published prior to the reporting year it takes effect. The corporate and annual business plans are placed in the Scottish Parliament Information Centre (SPICe) and published on the Agency website.

# Risk Management

1. The Chief Executive is responsible for implementing and monitoring risk management arrangements as part of a robust corporate governance framework. This involves the active monitoring and reporting of risks: to monitor whether or not the risk profile is changing, to gain assurance risk management is effective, and to identify when further action is necessary.
2. There will be regular discussion with the Fraser Figure to provide assurance and ensure a comprehensive and coordinated approach to managing risk and the successful delivery of Agency functions and projects. The Chief Executive is supported by the Audit Committee and the internal advisory work of Internal Audit. Further guidance is outlined in the Scottish Public Finance Manual*.*

# Other management arrangements, including pay policy and Human Resources

1. The section sets out:
* The Agency is part of the SG main bargaining unit which complies with the Public Sector Pay Policy for staff pay remits. Agency staff are civil servants within the SG employed on civil service terms and conditions of service. They are covered by the civil service pensions arrangements
* The Agency will comply with the Civil Service Code (Scottish Executive version), which sets out the core values of the Civil Service and the standards expected of civil servants
* The Agency is responsible for the recruitment of its staff, in consultation with the Scottish Government’s Human Resources and Organisational Development Directorate. All recruitment will adhere to the Civil Service Management Code, the Scottish Government Main Resourcing Policy and Procedures and, for external recruitment, the Civil Service Commission Recruitment Principles
* The Agency is responsible for promoting and supporting effective employee relations and, where appropriate, consulting with Civil Service Trades Unions in line with either a local Partnership Agreement or the overarching Partnership Agreement that exists between the Permanent Secretary and the Council of Scottish Government Unions
* The Chief Executive is responsible for the development of Agency staff, drawing as necessary on Scottish Government staff development resources and activity
* The Chief Executive is responsible for ensuring appropriate promotion arrangements are in place, noting Agency staff are eligible for promotion opportunities within the Scottish Government Main and vice versa. The Agency will be expected to agree with Scottish Government Human Resources the arrangements to ensure common promotion standards are in place
* The Agency’s risks, including public and employer liability, are carried in line with the Scottish Government's policy on insurance and the Chief Executive will keep the Portfolio Finance Team/Finance Business Partners or equivalent informed of the level of any contingent liabilities, including where possible an assessment of their values. Where appropriate, they will report contingent liabilities to the Scottish Parliament, seeking prior approval where appropriate in line with the Scottish Public Finance Manual
* The responsibility for Health and Safety management lies with the Chief Executive, in line with current Health and Safety legislation, guidance and/or best practice. Assurances on Health and Safety management may be sought by the Occupational Health & Safety Branch of the Scottish Government
* The Chief Executive, with regard to the requirements of efficient government and value for money, will keep the provision of support services under review as part of ensuring best value in all aspects of the Agency’s operations. This includes the use of shared service arrangements where participation offers value for money for the Agency or to the wider public purse. Opportunities to share the delivery of front-facing services should also be considered. The Agency will report annually on the steps taken during each financial year to improve efficiency, effectiveness and economy (including details of shared services activity), under the terms of the Public Services Reform (Scotland) Act 2010 and the associated guidance
* The Chief Executive is responsible for ensuring the Agency complies with all statutory duties and relevant Scottish Government policies to which it is subject
* The Chief Executive is responsible for ensuring adherence to all Scottish Government equality and diversity policies and relevant equalities legislation, including relevant public sector duties

# Appointing the Chief Executive

1. The Chief Executive is a Civil Servant and is subject to the Civil Service Code. The post of Chief Executive may be filled by a managed move within the Civil Service, in the same way as any other senior management position within the Scottish Government, or it may be filled by open competition overseen by the Civil Service Commissioners.
2. The arrangements for appointing a Chief Executive will be managed by the Senior Staff Team within the Scottish Government’s Human Resources and Organisational Development Directorate.

# Relationship with stakeholders and other bodies

1. The Agency is committed to engaging with all of its partners and customers, with a strong focus on stakeholder communication.

# Framework Document - arrangements for review

1. This Framework Document was revised and agreed in February 2020 and will be reviewed by the Fraser Figure and Chief Executive every 3 years or as required by either party. Changes may be proposed in the light of experience or changed circumstances. Relevant parts of the SG will be consulted on any proposed changes before they are submitted to the Scottish Ministers for approval.

# Annex A: Financial Delegations

Within agreed overall budgetary provision, and subject to the Scottish Public Finance Manual and Scottish Procurement Policy Handbook, Accountant in Bankruptcy’s Chief Executive has delegated authority as set out below. The Chief Executive may sub-delegate authority to staff within the Agency but will remain accountable for decisions taken and transactions carried out under such arrangements. “Unlimited” in the context of this annex means unlimited within the agreed overall Spending Review and annual budget provisions.

|  |  |
| --- | --- |
| 1. Commit expenditure and authorise payments | Unlimited, apart from items 2 to 7 below. |
| 2. Authorise capital expenditure: | Unlimited with the exception that specific approval must be sought from Finance before fresh financial and procurement commitments above £250,000 are entered into; including where the expenditure in question is already part of an approved programme and the Portfolio holds an agreed budget. Certain exceptions are listed in the Core Scottish Government Scheme of Delegation document.. |
| 3. Accept receipts | Unlimited, but receipts in excess of those authorised in a Budget must be surrendered to the Scottish Consolidated Fund as extra receipts. |
| 4. Incur contingent liabilities: | Subject to prior Ministerial approval for any contingent liabilities outside the normal course of business. |
| 5. Let contracts | Unlimited apart from the items below and in accordance with EU legal requirements and the Scottish Procurement Policy Handbook |
| 6. Commission consultants | Contracts up to £10,000 approved by a Deputy Director, between £10,000 and £50,000 approved by the relevant Director General and over £50,000 approved by the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy, |
| 7. Authorise losses and special payments | Requires written delegated authority from the relevant Finance Business Partner (or equivalent) or the Finance Administration Team to write off losses or make special or other ex gratia payments. The Director, the Finance Business Partner and Finance Administration Team must be informed of all losses/write-offs and special payments in order to ensure that the appropriate accounting treatment is undertaken. In the absence of specific written agreement from the Finance Business Partner or Finance Administration Team there is no power delegated. |

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