

A REPORT BY THE AUDITOR GENERAL FOR SCOTLAND UNDER SECTION 22(3) OF
THE PUBLIC FINANCE AND ACCOUNTABILITY (SCOTLAND) ACT 2000

THE 2008/09 AUDIT OF TRANSPORT SCOTLAND

1. I have received the audited accounts of Transport Scotland for the year ended 31 March 2009. The auditor has given an unqualified opinion on the accounts. However, I have decided to report to Parliament on the remuneration arrangements relating to the departures of the Chief Executive and the Director of Finance and Corporate Services, both of whom left during the financial year.
2. I submit these accounts and the auditor's report in terms of sub-section 22(4) of the Public Finance and Accountability (Scotland) Act 2000, together with this report which I have prepared under sub-section 22(3) of the Act.

Background

3. Transport Scotland is an executive agency of the Scottish Government. It began operating in January 2006 and manages the trunk road network, the railway network and concessionary travel schemes in Scotland.
4. In 2008/09 Transport Scotland's total net outturn was £2.055 billion. Its net operating costs for the year were £1.892 billion, with staff costs accounting for £13.370 million of this total.

Departure arrangements

5. The remuneration report in Transport Scotland's financial statements for 2008/09 shows that both the Chief Executive and the Director of Finance and Corporate Services left the organisation during the financial year ending 31 March 2009.
6. The Chief Executive retired from his position on 17 February 2009. His retirement date was planned for November 2009 but the Scottish Government and the Chief Executive agreed that it would be mutually convenient for him to finish in February. The Chief Executive's contractual notice period was three months. In this instance, the Scottish Government exceptionally agreed to pay him six months' salary in lieu of notice, totalling £61,000, along with untaken annual leave, as they considered it would provide organisational advantages in respect of Transport Scotland's delivery programme.
7. The departure of the then Director of Finance and Corporate Services ('the Director') was of particular interest to the Scottish Parliament's Public Audit Committee ('PAC'). The Director left Transport Scotland on 28 November 2008. His departure occurred close to the publication of my report on *The First ScotRail passenger rail franchise*, which contained commentary about him holding shares and share options in First Group (the company contracted to provide most passenger rail services in Scotland).
8. The auditor's report notes that the Director left Transport Scotland by mutual agreement and that the Scottish Government, in order to facilitate the departure, put in place a compromise agreement. The auditor reviewed the remuneration arrangements and confirmed that they were in accordance with rules and regulations, and that the Scottish Government had concluded that the arrangements represented value for money.
9. Transport Scotland's annual report and accounts do not contain details of the remuneration paid to the Director during 2008/09. The Scottish Government has indicated that, under the Data Protection Act 1998, Transport Scotland is not able to

disclose this information without the Director's consent. The Director's contract of employment had no specific clause requiring him to disclose the information, and he declined to allow the information to be disclosed, as permitted by the 2008/09 Government Financial Reporting Manual (a document produced by HM treasury and applied by all of the UK devolved administrations).

10. The auditor reported that, whilst he considered the non-disclosure to comply with guidance, and that legal advice has concluded that for Transport Scotland to disclose the information would breach its responsibilities under the Data Protection Act 1998, a key principle in the use of public money is that its use is open and transparent, and open to public scrutiny. This is recognised in the Scottish Public Finance Manual in relation to Severance, Early Retirement and Redundancy Terms, which states that "any undertakings about confidentiality should leave transactions open to proper public scrutiny". To ensure that there is effective transparency and public scrutiny in the remuneration to senior staff within public bodies it was the auditor's view that:
 - the contracts of senior staff should include the requirement for them to disclose their remuneration within the annual accounts and report of the relevant body as standard, with no option to refuse disclosure; and
 - compromise agreements, whilst being a legitimate method of enabling effective organisational management, should not prevent the appropriate disclosure of remuneration information, including compensation packages.

Conclusion

11. I fully support the views of the auditor in relation to disclosure and will be asking all auditors carrying out public audit work on my behalf to continue to encourage disclosure of all remuneration, wherever possible.
12. The information in this report has been provided in accordance with legal obligations. These include the need to process personal information relating to the former Director of Finance and Corporate Services in accordance with his legal rights under the Data Protection Act 1998.



ROBERT W BLACK
Auditor General for Scotland

11 December 2009