



CabinetOffice

The Approval Process for the Creation of Non Departmental Public Bodies

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1. EXECUTIVE SUMMARY

1.1 This guidance sets out the approval process to be followed when seeking to set up a new non-departmental public body (NDPB). It provides some high level background information on NDPBs and on the different types of NDPB, summarises the alternative delivery models that Departments must also consider, and sets out the actions that must be undertaken when seeking agreement to establish a new NDPB. There are separate guidelines on the practical steps that need to be followed in order to set up an NDPB should agreement be granted, and on making appointments to the boards of NDPBs and managing board members.¹

1.2 The guidance applies to the creation of UK NDPBs (i.e. NDPBs set up and sponsored by the UK Government), be they Executive or Advisory. It does not apply to the creation of other types of arm's length body or to the creation of public bodies in the Devolved Administrations. However, the general principles set out in this guidance may be useful to Departments and officials when setting up other types of public body.

1.3 It is stated Government policy that new NDPBs will only be set up as a last resort, when consideration of all other delivery mechanisms have been exhausted, and that approval for setting

up a new NDPB must be sought formally from Cabinet Office Ministers before any decision, or announcement, about any new NDPB is made.

1.4 When proposals are made to set up a new NDPB, a fully costed business case must be presented to Cabinet Office, and where appropriate HM Treasury, and approval of that business case sought from Ministers. It should not be assumed that applications for new NDPBs will be approved.

1.5 Annex A to this document provides a simple checklist that Departments may find useful when considering setting up a new NDPB. This checklist details the key steps that must be undertaken.

1.6 This guidance replaces the relevant sections of Chapters 1 - 2 of "*Public Bodies: A Guide for Departments*" which was published by the Cabinet Office in June 2006.²

¹ This is available on the Public Appointments pages of the Civil Service website: www.civilservice.gov.uk

² Available on the Cabinet Office website www.cabinetoffice.gov.uk

1.7 Any questions on the guidance, or on NDPBs more generally, should be directed towards the Cabinet Office. Contact details as follows:

Public Bodies Reform Team
Cabinet Office
1 Horse Guards Road
LONDON SW1A 2HQ
T: 020 7276 0387/0269

2. BACKGROUND

Definition

2.1 An NDPB is:

A body which has a role in the processes of national government but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm's length from Ministers.

2.2 There are four types of NDPB:

- **Executive NDPBs.** These are public bodies set up by Government to carry out administrative, commercial, executive or regulatory functions. They are legally incorporated and have their own legal identity, employ their own staff and are allocated their own budgets;
- **Advisory NDPBs.** These are committees and boards that provide independent, expert advice to Ministers. They are usually established on a non-statutory basis;
- **Tribunal NDPBs.** These typically provide an appeal system against administrative acts or decisions³; and

- **Independent Monitoring Boards** of prisons, immigrations removal centres and immigration holding rooms. These boards, formerly known as boards of visitors, are independent watchdogs of the prison system.

2.3 A list of NDPBs across Government is published annually by the Cabinet Office⁴.

³ It is stated Government policy that no new Tribunal NDPBs should be set up.

⁴ The annual Cabinet Office report *Public Bodies* provides headline information on the NDPB sector and lists all NDPBs as at 31 March. Copies of the most recent editions of "Public Bodies" can be downloaded from www.civilservice.gov.uk

3. CLASSIFICATION

3.1 The term NDPB is not a legal classification. It is an administrative classification used by successive Governments to identify public bodies which operate at arm's length from Ministers and Departments but for which Ministers are ultimately accountable. The purpose of classification is to enable proper reporting on, and scrutiny of, this sector of Government. It also enables Government to apply a common control framework to all NDPBs – or types of NDPB – to ensure that these public bodies are efficient, effective, transparent, accountable and delivering value for money for the taxpayer. The Cabinet Office produces guidance on the classification of public bodies which should be referred to as the definitive guide.⁵

3.2 The Cabinet Office is responsible for policy on NDPBs and for the classification of NDPBs. **Departments must, therefore, consult the Cabinet Office when planning to set up a new public body or when considering any options which include the possible creation of a new public body.** The Cabinet Office, working with Departments and with HM Treasury and the Office for National Statistics as appropriate, will determine whether the proposed body is an NDPB. Cabinet Office must also be

consulted over any proposals to re-classify or de-classify existing NDPBs.

3.3 Early engagement with the Cabinet Office is important. This will ensure that the body is correctly classified and that the classification is in line with the Government's and Department's intentions for the body in question. This also allows scope for changes to be made to the governance and control arrangements to avoid what might be seen as an inappropriate classification.

⁵ Categories of Public Bodies: A Guide for Departments available on the Cabinet Office website www.cabinetoffice.gov.uk

4. ALTERNATIVE DELIVERY MODELS

4.1 It is Government policy that new NDPBs are only established as an absolute last resort. Departments must, therefore, consider all possible delivery models when exploring options for delivering new services or functions.

4.2 The following list sets out a range of options that Departments should consider. This is not an exhaustive list and Departments should think creatively when considering how new services or functions should be delivered. However, as a minimum, Departments should explore the following options:

Do nothing/don't set up a body at all.

- Is the proposed service or function really needed?
- How does this contribute to Departmental or wider Government policy?
- Is there sufficient demand from customers or users?
- Is providing the service or function a good use of public money?
- What would be the cost and impact of not delivering the service or function?

An existing Central Government Body.

- If the service or function needs to be delivered by Central Government, can it be delivered by an existing Government Department?
- Are there any other areas of Central Government delivering similar or complimentary services or functions?
- Does the service or function duplicate work elsewhere?
- Can it be delivered by an existing public body?⁶
- Can it be delivered by setting up a subsidiary of an existing public body?⁷
- Can it be delivered through the establishment of an independent office-holder or an independent committee supported by an existing Government Department⁸ rather than by creating a whole new organisation?

⁶ This might include an existing Non-Ministerial Department, Executive Agency or Non-Departmental Public Body (NDPB).

⁷ Such as a subsidiary company, for example. A list of central government bodies is given in Categories of Public Bodies: A Guide for Departments, available on the Cabinet Office website www.cabinetoffice.gov.uk

⁸ This might be appropriate where the service or function in question is largely advisory, or simply requires independence in a decision-making process, and where it would not be appropriate or value for money to create a new organisation.

A new Executive Agency.

Does the service or function need to be delivered by Central Government but with a degree of operational independence and/or decision-making autonomy from Ministers? If so, can it be delivered by a new Executive Agency?⁹

Local Government or other forms of local and regional delivery.

If the service or function needs to be delivered by the public sector, can it be delivered at a local or regional level by local authorities or other local or regional public bodies?¹⁰

The Private or Voluntary Sector.

- Does the service or function need to be delivered by the public sector?
- Can it be delivered by the private or not-for-profit sector?
- Are there existing providers in these sectors that can deliver the service or function?
- Can it be delivered by the private or voluntary sector under contract?

- Can it be delivered by a mutual, Community Interest Company or social enterprise?

A temporary body.

Is the function something that only needs to be carried out for a limited period¹¹, for example a review of a particular policy area that will then report back to Ministers? Could a time limited body be set up, and then closed once the work of the body is completed?

A new Non-Departmental Public Body (NDPB).

- What are the costs and benefits of delivering the service or function through a new NDPB?
- How will the freedom and flexibilities of the NDPB model benefit the delivery of the service or function?
- How will the body be established? Will it require legislation?
- Will it comply with the Principles of Good Corporate Governance?¹²
- Why is the NDPB model preferable to the other models set out above?

⁹ The Cabinet Office publishes separate guidance on Executive Agencies "*Executive Agencies: A Guide for Departments*". This provides more advice on the types of activity most suited to delivery by Executive Agencies. This can be downloaded from www.cabinetoffice.gov.uk

¹⁰ Depending on the service or function, this might include local NHS bodies, education bodies or police forces,

¹¹ Cabinet Office guidance stipulates that "time limited" bodies should have a life span of no more than three years.

¹² These are available on the Cabinet Office website www.cabinetoffice.gov.uk

- Does the service or function meet at least one of the Government's three tests?¹³
- How will ultimate Ministerial accountability for the service or function be ensured?
- Have all other possible options been fully explored and evaluated?

¹³ The three tests are: is this a technical function (which needs external expertise to deliver); is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions); or is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity.

5. THE ROLE OF CABINET OFFICE - APPROVAL

5.1 Departments should consult the Cabinet Office and HM Treasury as early as possible on all proposals for new public bodies. Where a department is proposing the creation of a new NDPB that consultation is even more vital. **Any proposal for a new NDPB must be approved by Cabinet Office Ministers. Proposals must be supported by a proportionate, well structured, and costed business case.**¹⁴

HM Treasury should also be consulted on business cases for new NDPBs which are likely to have a significant spending or fiscal impact (generally this will mean Executive NDPBs but any proposals with significant spend must be consulted upon), or where legislation is required to set up the body.

Cabinet Office Ministers, and where appropriate HM Treasury Ministers, must be formally consulted – and their express approval to the business case secured – before any decision is taken or announcement made regarding new NDPBs.

5.2 Once approved, the business case must be published on the relevant Departmental website (with suitable redactions should there be any commercial confidentiality issues).

5.3 It is stated Government policy not to set up new NDPBs, and as such it should not be assumed that approval will be given for such a body in any but the most exceptional circumstances. If approval is given, Cabinet Office can provide advice and support on the steps that should be taken to set up a new NDPB and on the policy and practical implications which flow on from NDPB status.

5.4 The business case must:

- clearly identify the service or function in question and give evidence why it is needed;
- clearly show that Departments have explored the full range of options for delivering the service or function in question (see section 4);
- include a fuller assessment of the NDPB option and of all other viable deliver

¹⁴ The Government response to the NAO report “*Reorganising central government*” states that “*any re-organisation in the ALB sector must be supported by a robust, and fully costed, business case, and ensure that the headline information, in the business case, is put in the public domain*”. (Treasury Minute on the 33rd Report from the Committee of Public Accounts Session 2009-10. Cm 7886. July 2010.)

options. This must include a full cost and benefits analysis of each option;¹⁵

- for the NDPB option, state how the body will be set up to adhere to the Principles of Good Corporate Governance, and set out how the body will be incorporated into the department's triennial review timetable; and
- follow HM Treasury's best practice Five Case Model.¹⁶ This requires Departments to make the strategic case for change, the economic case, the commercial case, the financial case and the management case. The business case must also include an assessment of the service or function in question against the Government's three tests.¹⁷

¹⁵ The National Audit Office has published a memorandum on reorganising arms length bodies. This includes good practice principles to help identify, manage and realise costs and benefits. This can be downloaded from www.nao.org.uk/publications/1011/pasc_memo_arms_length_bodies.aspx

¹⁶ This can be downloaded from www.hm-treasury.gov.uk/data_greenbook_business.htm

¹⁷ The three tests are: is this a technical function (which needs external expertise to deliver); is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions); or is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity.

6. CONSULTATION

6.1 As stated above, consultation with Cabinet Office and HM Treasury is a mandatory part of the process. Departments will also need to ensure that consultation takes place with all relevant departments and stakeholders. The degree, scope and nature of consultation will vary significantly depending on the proposed public body. However, as a minimum, Departments should ensure that early consultation has taken place with the following:

- **Departmental Public Bodies/Corporate Governance Teams.** This should be Departments' first point of contact when considering setting up a new public body.
- **Departmental Public Appointment Teams.** These can advise on the process and policy on making appointments to the boards of NDPBs. They can also provide contact details (where necessary) for the Office of the Commissioner for Public Appointments.
- **HM Treasury Spending Team.** HM Treasury will have an interest in any proposals which have a spending or fiscal impact. In some cases, HM Treasury Ministers' approval will be needed. HM Treasury Classification Team (and the Office for National Statistics) also have an interest in the classification of public bodies for National Account purposes.

CHECKLIST FOR AGREEING A NEW NON-DEPARTMENTAL PUBLIC BODY

If you are considering setting up a new NDPB, you must ensure you have completed the following steps:

Initial scoping

1. Spoken to your departmental public bodies team about your proposals. They should be your first point of call, and will be able to offer departmental specific advice.
2. Spoken to the Cabinet Office Public Bodies Reform Sponsorship and Governance team. Where the proposal has cost implications you should also be liaising with your spending team contact in HM Treasury.
3. Considered why the function needs to be delivered, and completed an analysis of all the potential delivery models, including whether there is scope for an existing body to undertake the function.

4. Contacted the Commercial Models team in Cabinet Office to explore whether there are new and/or more innovative models that could effectively deliver the function.

Approval

5. Developed a fully costed Business Case in line with the criteria set out in the main body of this guidance.
6. Consulted on the Business Case at an official level with Cabinet Office (and HM Treasury where appropriate).
7. Sought Ministerial approval to the Business Case from the Minister for the Cabinet Office (and, where appropriate, the Chief Secretary to the Treasury). This approval must be sought before any decision is taken, or announcement made, on the creation of a new NDPB.