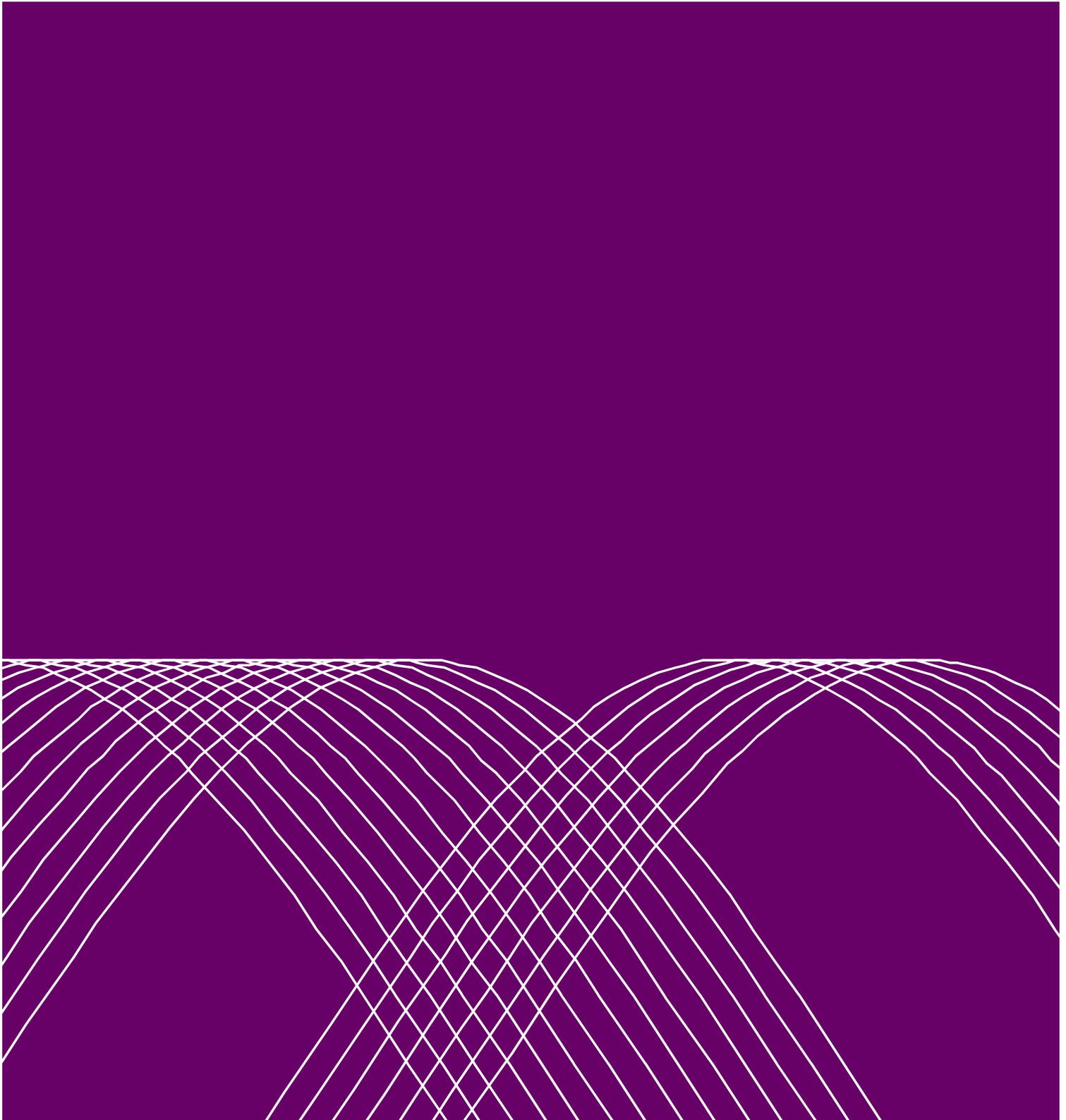




Public Bodies: A Guide for Departments

Chapter 4: Setting up a New Executive NDPB – The Practical Tasks



SETTING UP A NEW EXECUTIVE NDPB - THE PRACTICAL TASKS

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1. Project management

1.1 Establish a time frame

1.1.1 This is often easier to do in reverse, ie. by establishing the date at which the NDPB will begin to exercise its functions (the “vesting” date). You should allow enough time in the plan for consultation with the Cabinet Office and the Treasury and for clearing issues with ministers.

1.1.2 The way in which the timetable is managed will also have implications for the public perception of the new NDPB. In particular, it will be important to manage expectations of when the NDPB will become operational as opposed to becoming established.

1.1.3 It will also be important to bear in mind the impact of the founding legislation on the start-up phase of the NDPB. Consideration will need to be given as to how much of a lead in time will be needed between Royal Assent and full commencement of the Act. Much will depend on whether secondary legislation must be prepared under the Act before full commencement and what other steps (e.g. hiring of staff) are needed before the Act can fully be brought into force. In some cases, partial commencement of the Act (e.g. the provisions which establish the NDPB) may be an option. Section 13 of the Interpretation Act (anticipatory exercise of powers conferred by an Act which has not yet been brought into force) may also be invoked. In other cases, consideration will have to be given to Section 2.3 of *Government Accounting*.

1.2 Establish a project team/ sponsor team

1.2.1 You will need people with project management skills rather than those primarily having an in-depth knowledge of the business area and processes. The project will need to be closely monitored and all those involved will need to work to set deadlines if the plan is to stay on track. The project team will need resources and a dedicated project manager.

1.2.2 The core skills and experience which might be required within the team include: previous experience of setting up a new body and experience of infrastructure/ building projects. Additionally the following skills and experience should be available to the team: IT skills, procurement, finance skills, accountancy, legal advice and personnel management.

1.2.3 Early on the project team should establish links with the department’s finance unit, legal advisers and relevant outside organisations. Working groups (internal and/or involving outside interests) can be formed to address and discuss specific topics (e.g. pensions, finance, etc).

2. NDPB Arrangements

2.1 Establish the parameters of the NDPB

Having decided that a new NDPB offers the best means of doing the job, you will need to start drawing up the basic proposals for the body and often the parameters will be set out in the founding legislation. These should:

- 2.1.1 define the functions, aims and objectives;
- 2.1.2 define the relationship with the sponsor department and accountability to the minister;
- 2.1.3 consider how it should be constituted and whether statutory authority would be needed;
- 2.1.4 consider its financial management requirements (accountability, planning, funding and control);
- 2.1.5 ensure that the NDPB has adequate accounting and reporting systems to enable it to produce auditable accounts from the day of establishment;
- 2.1.6 for NDPBs with executive functions employing staff, consider pension arrangements for staff. Note that pensions for Board Members are set separately from those for staff and subject to specific Treasury guidance (see 2.7.4 below);
- 2.1.7 consider where it will be located;
- 2.1.8 agree an accommodation strategy;
- 2.1.9 determine how performance against objectives will be measured; and decide on arrangements for monitoring;
- 2.1.10 consider the extent of its delegated responsibilities;
- 2.1.11 consider the size and balance of the board;
- 2.1.12 establish what assets are to be transferred/acquired; and
- 2.1.13 consider when the NDPB should be subject to a review or, for bodies with a finite remit, when and how they might be wound up.

2.2 Accommodation and Location

2.2.1 When a new NDPB is set up, the sponsor department may provide it with temporary accommodation in buildings it occupies itself and provide other services (furniture, stationery etc.) from its own resources, but longer-term arrangements should be introduced as soon as possible. Allowing a new NDPB free access to departmental accommodation or equipment will

trigger the need for parliamentary approval (either through Estimates or through the Minute Procedure) if the 'gift' is worth more than £250,000. Please see the Treasury guidance *Government Accounting* 25.2 'Gifts made by Departments' for detailed information.

2.2.2 It is important that the impacts of accommodation on the environment and surrounding communities are taken into account, and that Government procurement policies are followed, including requirements on timber, paper, waste services and energy efficiency. Please refer to paragraph 4 below.

2.2.3 Sponsor departments should consult the Office for Government Commerce (www.ogc.gov.uk) for help and advice on matters to do with government property, including sustainable construction, refurbishment and procurement.

2.2.4 On 9 February 2006 the former ODPM, the Office for Government Commerce and HM Treasury published 'Guidance on Location Choice'. This Guidance flows from Sir Michael Lyons' report, 'Well Placed to Deliver? – Shaping the Pattern of Government Service' and provides Government Departments, their Executive Agencies and NDPBs with a practical tool to integrate wider economic and regional policy objectives into their location choice. A copy of the guidance can be found on the following site:
<http://www.odpm.gov.uk/index.asp?id=1163255>

2.3 Resource Planning and Management Arrangements

2.3.1 An Executive NDPB should have clear internal financial and management arrangements. NDPB managers should have: clear objectives and the means to measure output and performance against them, clear responsibility for best use of resources including output and value for money; and access to the necessary management information, training and expert advice.

2.3.2 How these functions are dealt with should be left to the NDPB; but it is important that the sponsor department's Accounting Officer should ensure that adequate arrangements are in place. These will include proper systems of financial management delegation, risk management and control and reporting, effective procurement procedures (including controls over the use and appointment of consultants and the acquisition of accommodation), target setting, performance monitoring, review, security systems (including whistle-blowing procedures), staff recruitment systems, payroll systems, accounting and banking arrangements.

2.4 Financial Management Requirements

Detailed Guidance can be found in Chapters 6 and 7

2.4.1. Designation of Accounting Officer

The decision to appoint a Chief Executive of an Executive NDPB normally rests with the Board. In making the appointment, the Board will be acting in the

knowledge that the chief executive will have to carry the responsibilities of the Accounting Officer, but the decision to designate the Chief Executive as the NDPB Accounting Officer is the responsibility of the sponsor department's Accounting Officer alone. For this reason it is highly desirable that the departmental Accounting Officer, or his representative, should be involved in the process of appointing the Chief Executive and consulted about any actions which might lead to his or her removal as such. Please see Chapter 6 (Financial Management: Accountability) for further information.

2.4.2 Annual Reports and Accounts

The authority e.g. legislation establishing the Executive NDPB will normally provide for the accounts to be in a form directed by the relevant Secretary of State with the approval of the Treasury. As a matter of policy NDPBs should produce a combined report and accounts. Please refer to Chapter 6 (Financial Management: Accountability) for detailed guidance concerning the content and procedure for presenting the report and accounts to Parliament and publishing.

2.4.3 Preparation of Management Statement and Financial Memorandum

The terms and conditions which a sponsor department attaches to the funding of an Executive NDPB and the arrangements for setting its financial and other performance targets should be clearly set out in its management Statement and Financial Memorandum.

2.4.4 Preparation of Corporate Plan

The Corporate Plan is the main output for the first two stages of strategic planning addressing (1) a strategic analysis of the environment in which the NDPB operates and (2) the identification of strategic options.

2.4.5 Preparation of Annual Operating/Business Plan

The annual Business/Corporate Plan is primarily concerned with the third stage of strategic planning, i.e. implementation of the approved corporate plan once the NDPB's financial and quality of service targets, the resources which will be made available to the NDPB and the key elements of the NDPB's corporate strategy are agreed.

2.4.6 Preparation of budgets

NDPB expenditure scores in departmental budgets and as such the same principles apply to NDPB budgets as departmental budgets.

2.4.7 Performance Targets

These should be incorporated in the overall planning process and in the budgeting and management information systems.

2.4.8 Government Accounting

Chapter 8 of Government Accounting (in particular Box 8.1) describes the extent to which Government Accounting applies to NDPBs. Interim advice is provided by 'Dear Accounting Officer' letters and the guidance should be disseminated to the bodies as necessary.

2.5 Audit Requirements

2.5.1 Internal Audit

Executive NDPBs should make arrangements for internal audit in accordance with the Treasury's Government Internal Audit Standards. Unless agreed otherwise by the sponsor department, all Executive NDPBs should set up an Audit Committee as a committee of the Board with a primary reporting line to the Board. Sponsor Departments should have a right of access to details of the internal audit arrangements, strategy, programme and reports.

2.5.2 Appointment of external auditors

For new Executive NDPBs with their own founding legislation, the statute should provide for the appointment of the Comptroller and Auditor General as the external auditor. For NDPBs which are established under the Companies Acts and which therefore for the time being appoint their own external auditors, the MS/ FM needs to provide for audit reports to be supplied to the sponsoring department.

2.6 Risk Management

2.6.1 The Sponsor Department must assure itself that the NDPB is handling shared risks adequately. Access to information on risks and handling strategies should be agreed, particularly on those risks that cannot be fully transferred to a NDPB, such as reputational risk.

2.6.2 An overall risk management strategy and systems for ensuring continuing communication between the Sponsor Department and NDPB on shared risks is recommended. The following Treasury website provides detailed guidance about risk management in government and information on the implementation of recommendations from the Strategy Unit report '[Risk: Improving government's capability to handle risk and uncertainty](#)' :

http://www.hm-treasury.gov.uk/Documents/Public_Spending_and_Services/Risk/pss_risk_index.cfm

2.7 Board Members

2.7.1 Ministerial appointments to the Boards of Public Bodies should be made in accordance with the Commissioner for Public Appointments' Code of Practice. The Public Appointments Unit in the Cabinet Office publishes policy and best practice guidance on the appointment and management of board members for public bodies. "*Making and Managing Public Appointments*" is available at www.publicappointments.gov.uk

2.7.2 All NDPBs are required to have in place a Code of Practice to which members must adhere. The Code should be publicly available and should set out the conduct expected of board members. Guidance on Codes of Practice for Board Members of Public Bodies and Model Codes of Practice for

Board Members of Executive and Advisory NDPBs are available at: www.publicappointments.gov.uk.

2.7.3 The sponsor department should ensure that it approves the Code of Practice for Board Members and the terms of reference, composition, and membership for the audit committee, taking account of the *Treasury Audit Committee Handbook*.

2.7.4 In addition, the Treasury publishes separate guidance on the setting up and management of pension and compensation arrangements for Board members, 'Board Members and Public Appointees: Pensions and Compensation Guidance Notes', which is available at:

www.hm-treasury.gov.uk/media/36F/03/pensions_board_mem_230604.pdf

2.8 Staff

Detailed Guidance can be found in Chapter 5.

2.8.1 NDPBs set up to perform executive, regulatory or commercial functions should normally be given powers to employ their own staff in the legislation establishing the body.

2.8.2 Guidance on the initial staffing structure for a new NDPB, and on other staffing issues, including pension and compensation arrangements, should be sought early in the setting up process. The Treasury publishes separate guidance 'NDPBs: Pensions and Compensation Guidance Notes' which is available at:

http://www.hm-treasury.gov.uk/media/70B/09/ndpb_pensions.pdf

2.8.3 Recruitment to new posts should be by fair and open competition. Good practice can be found in the Civil Service Management Code, which can be seen at:

http://www.civilservice.gov.uk/management_of_the_civil_service/management_guidance/management_code/index.asp

2.8.4 The Chief Executive and Finance Director are key posts and early appointment to both of these posts is important. Departments will wish to ensure that selection of staff is on merit. Chapter 5 (Public Body Staff) provides detailed guidance on staffing matters including a draft model contract of employment for senior posts.

2.8.5 NDPBs should adopt a staff Code of Conduct in line with the Model Code for Staff of Executive NDPBs.

2.9 Openness

2.9.1 The records of new NDPBs should be made subject to the provisions of the Public Records Acts 1958 and 1967. Once it has been established that the Public Records Acts should apply to the body, and the NDPB is a statutory body, this would normally be effected by amendment to Schedule 1 to the Public Records Act 1958. Where the NDPB is established by

legislation, the enabling legislation can make the necessary amendment. Otherwise, it is possible to amend the Public Records Act by an Order in Council. Any cases of doubt should be referred to the Department for Constitutional Affairs through the National Archives: <http://www.nationalarchives.gov.uk/>

2.9.2 Each NDPB covered by Freedom of Information Act 2000 (FOIA) is required to have its own publication scheme. Virtually all existing NDPBs are covered by FOIA and new NDPBs should also be covered. Bodies subject to the FOIA are listed in Schedule 1 to that Act. When setting up a NDPB, you should notify the unit in your department that is responsible for FOI, for them to make arrangements for the new NDPB to be listed in the FOIA, where necessary.

2.9.3 Public bodies are encouraged to hold open meetings at least annually. Exceptionally where the nature of the business is commercial or politically sensitive, an open meeting may not be deemed appropriate. Public meetings should be considered if it would be a useful means of consultation and enhancing public understanding of the body and its decisions. Summary reports or minutes if meetings should be publicly available.

2.9.4 Further guidance on openness in relation to providing information covered by the Environmental Information Regulations 2004, the main responsibilities for public bodies under the Re-use of Public Sector Information Regulations 2005, customer focus, parliamentary issues and publication issues is provided in Chapter 8: Policy – Openness and Accountability.

2.10 Parliamentary Commissioner for Administration

2.10.1 All new NDPBs set up by statute or administratively should be made subject to the jurisdiction of the Parliamentary Commissioner for Administration (also known as the Parliamentary Ombudsman), unless there are exceptional circumstances for not doing so. The Parliamentary Ombudsman can investigate complaints from the public about alleged 'maladministration' leading to injustice. The necessary provisions should be included in the statute. Further guidance on the role of the Ombudsman can be found at Paragraph 4.3 in Chapter 8: Policy – Openness and Accountability.

2.10.2 When considering whether a NDPB should be brought within the Ombudsman's jurisdiction and the process in doing so, further advice should be sought from the Propriety and Ethics Team in the Cabinet Office who can be contacted on 020 7276 2473.

3. Shadow NDPBs

3.1 By definition, statutory bodies (which require legislation to be established) cannot have a corporate legal existence until the enabling legislation has been brought into force. From time to time, however, the question arises whether departments may designate prospective members of the proposed board and bring them together on an informal basis, for example as an

organising committee, in advance of legislation. The rationale for establishing a “shadow” body is that it allows individuals who will have a future role in the running of the NDPB to contribute to decisions which will have a bearing on its role, responsibilities and management.

3.2 A shadow body may be set up as a corporate body with its own legal existence under specific legislation (paving or other). Alternatively, and more usually, it may be set up as a non-statutory body which has no separate legal existence, is unable to enter into contracts on its own behalf and is thus technically part of the department. As a consequence of the rules applying to expenditure on “new services” (see paragraph 3.5 below) prior to the passing of the relevant legislation, non-statutory shadow bodies will be far more constrained in the preparatory work which they can carry out than shadow bodies which have been established under paving legislation giving them specific statutory powers to prepare for the creation of the new body. The timing of the establishment of a shadow body will depend on the legislative timetable, and the anticipated work programme to set up the new body. The advice offered here only applies once Second Reading has passed.

3.3 Relevant advice is provided in *Government Accounting* section 2.3 which makes it clear that expenditure on the new body, including the costs associated with the recruitment and appointment of board members and the Chair, should normally be delayed until the relevant Bill has received Royal Assent. It is, however, possible in exceptional cases for such expenditure to be incurred after Second Reading in the House of Commons has been successfully completed through the use of a Contingencies Fund advance (*Government Accounting* section 11.6). To obtain such an advance from the Treasury the department would be required to justify the expenditure in terms of urgency in the public interest; and there should be near certainty that the Bill would receive Royal Assent.

3.4 It is important to note that shadow arrangements have, in the past, been subject to some criticism in Parliament, especially where the proposal to set up the NDPB is controversial on the grounds that such action can be interpreted as prejudging Parliament’s intention.

3.5 The sponsor department must consider carefully with the Treasury any proposals to set up a shadow board in light of the “new services” rules in *Government Accounting* section 2.3. After enactment, Section 13 of the Interpretation Act can be used to appoint members of an NDPB in advance of a Commencement Order.

3.6 In the case of a non-statutory shadow body, these appointments will be on a consultancy basis and, prior to appointment, consideration will need to be given to: the terms of reference for the shadow body; the terms and conditions of appointment, including fees and time commitment expected; and making it clear from the outset to the individuals concerned (so that the prospect of compensation does not arise) that, if, for any reason, the legislation were to fail, the appointments would probably have to be cancelled.

3.7 It should be noted that if the body falls within OCPA's remit and if the intention is that the board members of the shadow body will automatically sit on the final board, OCPA procedures will need to be followed for shadow ministerial appointments.

3.8 The terms of reference should be clear and should cover: in the case of a non-statutory shadow body the essentially advisory role of the body in its shadow form; the constraints on its work and expenditure imposed by the constitutional proprieties; the balance of the work between policy issues connected with the work of the future NDPB and the organisational issues in setting it up; a clear timetable of expected work and the outputs; the relationship between the department and the shadow body; and the arrangements for the secretariat to support it.

3.9 The following issues might be covered by the shadow body: consultation on the strategic framework for the NDPB (aims and objectives, management statement, financial memorandum etc); the initial corporate plan; the overall shape of the future organisation (including the staff structure, pay and grading system, terms and conditions of staff, pensions and any transfer arrangements); assessment of financial issues, including accounting systems; assessment of IT requirements (and any inherited systems); the approach and procedures for recruiting staff; and an assessment of the accommodation requirements and the possible options for meeting them.

3.10 The size and composition of the secretariat supporting a shadow body will vary according to the nature of the NDPB. If it is a non-statutory body, the secretariat will normally be employed by the sponsor department, but should be serving the interests of the shadow body and the future NDPB. Staff seconded from the sponsor department to the secretariat should be separate from staff in the sponsor unit involved in setting up the NDPB and advising ministers.

3.11 Departments will wish to make the key personnel appointments at an early stage; appoint a Chief Executive; put together a briefing pack for the Chief Executive on the background issues; and appoint the Chief Executive's support staff. It will also be necessary to establish the requirement for in-house skilled personnel e.g. an accountant/finance manager; IT manager; legal adviser; head of operations; and human resources manager.

3.12 Draw up an organisation chart identifying senior posts, post holders (where possible) and responsibilities and accountability for each senior post; and establish committees and sub-committees and appoint members, if necessary.

3.13 The work of the shadow body will be carried on by the skeleton body and the NDPB Board. The secretariat can be wound up once the body has taken on sufficient staff of its own.

4. Sustainable Development

4.1 Executive NDPBs must consider the responsibilities they have for meeting the government's commitment to sustainable development. When the body is established, sustainable development principles should be embedded in the strategic framework of the body as well as in its day-to-day policy making and operational practices. Advisory NDPBs must similarly be aware of the commitment and take it into account when giving advice.

4.2 Provisions should be made to ensure that all staff have an appropriate understanding of sustainable development and its role within the new body, and that key staff have the necessary training and skills to deliver sustainable development.

4.3 NDPBs should also seek to meet the Government's Framework for Sustainable Development on the Government Estate which sets out targets for sound management of land and buildings.

4.4 For information on sustainable development issues, please see the website: <http://www.sustainable-development.gov.uk/sdig/index.htm>.

5. Engagement with the Voluntary and Community Sector

5.1 The work of the voluntary and community Sector is central to the development of strong communities and the delivery of better public services. It is important for public bodies to work in partnership with the Sector to help them engage with communities and deliver more responsive and user-driven services. The Compact on Relations between Government and the Voluntary and Community Sector in England (the Compact) is the framework agreement that is the basis for partnership working between public sector bodies and the Sector. Introduced in 1998, it sets out the principles and undertakings, or rules for engagement, to ensure understanding of what they should expect from each other. It applies to Government Departments in England and its scope includes Government Offices for the Regions, Executive Agencies and NDPBs.

5.2 The Compact is underpinned by five Codes of Good Practice: on Funding and Procurement, Consultation and Policy Appraisal, Volunteering, Black and Minority Ethnic Voluntary and Community Organisations and on Community Groups. Local Compacts support and strengthen partnership working between public bodies and the Sector at local level. Local Compacts are in place or under development across 98% of local authority areas.

5.3 NDPBs should implement the requirements of the Compact and Codes to improve engagement and partnership working with the voluntary and community Sector. Departments need to ensure this is reflected in NDPBs' Business Plans and Annual Grant letters or equivalent, where they have dealings with the voluntary and community Sector (or have identified a potential relationship with the Sector). NDPBs should in turn ensure that the Compact is covered in terms and conditions used in contracts or grants with the Sector as appropriate.

5.4 The Compact and Codes and other information can be found at <http://www.thecompact.org.uk/>. Steps are being taken to strengthen the Compact following consultation in 2005. These will involve work to distil the Compact and Codes into a clear and succinct set of commitments, backed by an opt-in accreditation scheme and the appointment of an Office of Compact Commissioner to oversee effective partnership working between public sector bodies and the Voluntary and Community Sector through the Compact.

6. Regulatory Impact Assessments

Public Bodies which perform a regulatory function should produce Regulatory Impact Assessments (RIAs) for any major new policies or initiatives which they wish to initiate, and which may have consequences for the business, charity or voluntary sector, the NDPB should consult those likely to be affected, and make the RIAs available for public scrutiny (e.g. on the NDPB's website). [Guidance](#)¹ is available from the Cabinet Office's Better Regulation Executive.

7. Enforcement Concordat

7.1 Public Bodies with enforcement powers are encouraged to adopt the Government's [Enforcement Concordat](#).² Adoption of the Concordat should be publicised in the body's enforcement material and on its website.

8. Corporate Governance

8.1 Sponsoring departments should be aware of the 'Code of Good Practice for Corporate Governance in Central Government Departments' (dated July 2005) issued by the Treasury. Chapter 6 in particular addresses arm's length bodies (ALBs) and this term is used to include a department's NDPBs and public corporations. The underlying principle stated in the guidance is that 'where part of the business of the department is conducted with and through ALBs, the department's board should ensure that there are robust governance arrangements with each ALB board, setting out the terms of their relationship, in order to promote high performance and safeguard propriety and regularity'. Please refer to the following Treasury site for further information:

http://www.hm-treasury.gov.uk/documents/financial_management/governance_government/ps_s_audit_corporategovernance.cfm

8.2 The Government is committed to improving standards of good governance in public service organisations and sponsor departments and public bodies should be aware of the various self assessment tools available to assist self-analysis. For example, the Audit Commission's self-assessment tool

¹ <http://www.cabinetoffice.gov.uk/regulation/>

² <http://www.cabinetoffice.gov.uk/REGULATION/documents/pst/pdf/concord.pdf>

'Changing Organisational Culture Audit' has been specially designed to help embed a good conduct culture and further information can be obtained as follows:

www.audit-commission.gov.uk

Head of Good Conduct & Counter Fraud Network

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