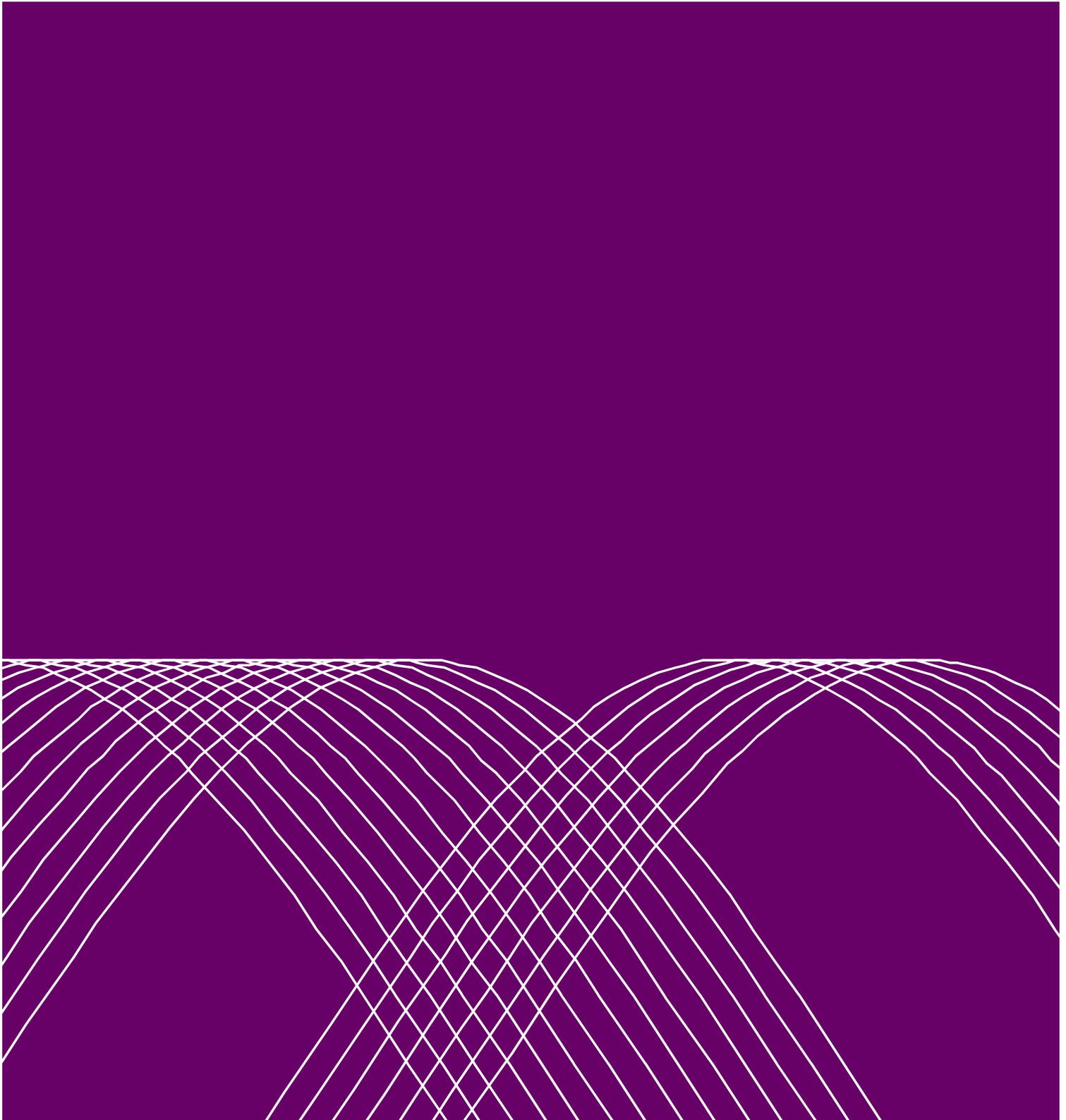




# Public Bodies: A Guide for Departments

## Chapter 8: Policy – Openness and Accountability



## **POLICY - OPENNESS AND ACCOUNTABILITY**

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## 1. Introduction

It is important for departments and the bodies they sponsor to be open and accountable in all that they do, as part of a wider role in serving the public, their customers. Set out below are a number of ways in which departments and the bodies they sponsor can aim to be more open and transparent. Given the diverse circumstances of public bodies, not all the following guidance may be appropriate in every case, but best practice principles should be observed as far as possible.

## 2. Information

### 2.1 The Freedom of Information Act 2000

2.1.1 The [Freedom of Information Act 2000](#) came into force on 1 January 2005. Under the Act anybody may request information from a public authority which has functions in England, Wales and/or Northern Ireland, similar legislation applies in Scotland. The Act confers two statutory rights on applicants:

- To be told whether or not the public authority holds that information; and if so,
- To have that information communicated to them.

2.1.2 The Act requires all public authorities to make information available proactively by virtue of the Publication Scheme provisions set out in section 19 of the Act. A publication scheme, which has to be submitted to the Information Commissioner for approval, commits a department or public body to publish information in accordance with the scheme which must be reviewed from time to time. Each scheme must specify:

2.1.2.1 The classes of information which a department or public body publishes or intends to publish;

2.1.2.2 The manner in which information of each class is, or will be, published; and

2.1.2.3 Whether the information is intended to be available free of charge.

2.1.3 In adopting a scheme for the proactive release of information, due regard has to be given to the public interest in allowing access to the information being held and in the publication of the reasons for decisions made by a department or public body.

2.1.4 Detailed guidance on the implementation of the Act and Publication schemes is available from the Department for Constitutional Affairs at <http://www.foi.gov.uk/index.htm> and the Information Commissioner at: <http://www.ico.gov.uk/eventual.aspx>

2.1.5 Queries regarding the FOIA should in the first instance be directed to departmental Openness contacts.

## **2.2 Access to Environmental Information**

Any request for environmental information held by or on behalf of a public authority, or a body carrying out a public function, must be dealt with under the Environmental Information Regulations 2004. The Regulations are the responsibility of the Information Commissioner's Office. Please see the following website for detailed advice:

<http://www.ico.gov.uk/eventual.aspx?id=36>

## **2.3 The Data Protection Act 1998**

2.3.1 The Data Protection Act 1998 came into force on 1 March 2000 and applies to the processing of information (personal data) about identifiable, living individuals. The Act applies to personal data contained in structured manual records as defined in the Act as well as computerised records. For public authorities covered by the Freedom of Information Act, it also extends to other manual data held by the public authority for the purposes of the Act. The DPA works in two ways:

2.3.1.1 It gives individuals certain rights;

2.3.1.2 It stipulates that those who record and use personal information must be open about how the information is used and must follow good information handling practices.

2.3.2 The Act requires all organisations processing personal data to comply with the data protection principles (i.e. enforceable code of practice on good data handling). Subject to some exemptions, it provides a right for individuals to see their own records (subject access). Personal data must not be disclosed to third parties without lawful authority.

2.3.3 Queries, subject access requests and complaints should be directed to departmental Data Protection Officers in the first instance. A data subject may complain to the Information Commissioner about a department's or body's response to an enquiry. Further information on the role, responsibilities and powers of the Commissioner can be obtained from the Information Commissioner's web site at:

<http://www.informationcommissioner.gov.uk>.

## **2.4 The Re-use of Public Sector Information Regulations 2005**

2.4.1 The Re-use of Public Sector Information Regulations 2005 <http://www.opsi.gov.uk/si/si2005/20051515.htm> came into force on 1 July 2005. The Regulations provide a framework that is designed to encourage the re-use of public sector information. The main aim of the Regulations is to improve transparency, fairness and consistency in the field of public sector information. In doing so it will help stimulate the development of innovative new information products and services, so boosting the publishing and information industry.

2.4.2 The Regulations apply to most parts of the public sector across the United Kingdom including central government, local government and the health service. The main responsibilities facing public sector organisations under the Regulations are:

- dealing with applications to re-use within 20 working days;
- dealing with requests in a fair and non-discriminatory way;
- to publish terms of re-use;
- not to set up exclusive agreements other than in exceptional circumstances. Where exclusive agreements are made, details should be made public;
- to provide an internal complaints procedure. Public sector organisations can deal with complaints about re-use under existing general complaints processes if they wish;
- to provide information asset lists of information that is available for re-use.

2.4.3 The policy responsibility for the re-use of public sector information rests with the Office of Public Sector Information (OPSI) OPSI<sup>1</sup> has published a Guide to the Regulations and Best Practice <http://www.opsi.gov.uk/advice/psi-regulations/advice-and-guidance/guide-to-psi-regulations-and-best-practice.doc> that explain the Regulations and provides information about existing best practice and sources of help.

### **3. Openness**

#### **3.1 Annual report and accounts**

3.1.1 Departments and public bodies should produce and distribute widely information on their role and achievements, making full use of the internet. Annual reports and accounts are the main vehicles by which departments and public bodies regularly inform parliament and the public about their activities and expenditure. They should be used to explain not only the facts of what departments and bodies have done, but also information about the impact of their policies and actions.

#### **3.2 Management Statement and Financial Memorandum (MS/ FM)**

The MS/ FM should be publicly available and published and placed on the relevant web site. Practice on publications should always lean in favour of publication, except where the contents of documents are sensitive or confidential.

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<sup>1</sup> The National Archives and the Office of Public Sector Information, which is currently attached to the Cabinet Office, are to merge. This merger will take effect in October 2006.

### **3.3 Open meetings**

3.3.1 Departments and public bodies are encouraged to hold open meetings at least annually. They should also consider holding other meetings in public where it is felt that these would be a useful means of consultation or would help the public have a greater understanding of the work of the body.

3.3.2 This recognises that there is a balance between the needs of transparency and the most effective operating methods for departments and the bodies they sponsor. Departments and public bodies may hold annual open meetings, for example to explain to the general public the reasons for the decisions they have taken, or when they publish particular reports. Exceptionally, where the nature of the business is sensitive, commercial or political, an open meeting would not be appropriate.

3.3.3 The same considerations would apply to holding other public meetings. However, this is not to be used as an excuse for avoiding public scrutiny of other aspects of the body's work. The type of meetings which a body might hold in public could include those which foster a greater understanding of the body's objectives; provide a valuable mechanism for consultation; discuss the future strategy of the body; and discuss particular current issues.

3.3.4 Open meetings should be advertised widely to stakeholders and other interested parties. Papers for the meetings should be easy to obtain and written in plain English, and should not contain jargon.

3.3.5 Where practicable and appropriate, departments and public bodies should release summary reports of meetings, through publication or posting on an appropriate web site, although information of a confidential or sensitive nature need not be included. Alternatively, publicly available minutes would serve the same purpose. The summary reports or minutes should be written in plain English.

### **3.4 Codes of Practice for Board Members**

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. Further guidance and Model Codes of Practice for Board Members of Executive and Advisory NDPBs can be obtained from the Public Appointments Unit website:

<http://www.publicappointments.gov.uk/>

### **3.5 Code of Conduct for Staff of Executive NDPBs**

NDPBs should adopt a Code of Conduct for staff of Executive NDPBs. Further guidance can be found in Paragraph 7 and Annex A of Chapter 5: Public Body Staff.

### **3.6 Office of the Commissioner for Public Appointments**

3.6.1 The Commissioner for Public Appointments regulates, monitors and advises on ministerial appointments to public bodies comprising executive and

advisory NDPBs, NHS Bodies, public corporations, nationalised industries, and utility regulators. The Commissioner issues a Code of Practice setting out the principles and practice of selecting and appointing board members to public bodies. Departments must follow this Code. The Commissioner, through his/her office and independent assessors, monitors compliance with the procedures and produces an annual report.

3.6.2 The Commissioner is charged with responsibility for investigating complaints about the public appointments processes for posts within his/her remit. The Commissioner will examine the process used to make an appointment for the manner in which an application for appointment was handled, but will only investigate reasons for non-selection if s/he feels that the Code has been breached. Complainants are required to direct their concerns firstly to the relevant government department. However, if after receiving a comprehensive response the complainant is still concerned, they can write to the Commissioner.

3.6.3 Further information about the Commissioner, his/her role, responsibilities and the Code of Practice can be found on the Office of the Commissioner for Public Appointments web-site: <http://www.ocpa.gov.uk/>

## **4. Customer Focus**

### **4.1 Consultation**

4.1.1 Departments and public bodies should aim to consult their users and stakeholders on a wide range of issues by means of questionnaires, public meetings or other forms of consultation to ensure that they are responsive to and meeting the needs of their customers. Consultation should be proportionate to the size and resources of the body concerned. The Government's '[Code of Practice on Consultation](#)'<sup>2</sup> should be followed in all cases.

4.2.2 Departments and public bodies should invite comment from members of the public for those meetings to be held in public (see Open Meetings), in order to discuss matters of public concern. Public bodies will be best placed to decide the way in which views should be invited for public meetings, for example in writing, or via the internet.

### **4.2 Complaints procedures**

4.2.1 Complaints provide a valuable source of feedback on how an organisation is performing, and in identifying potential weaknesses and problems. Departments and NDPBs should have established and published procedures for dealing with complaints from members of the public.

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<sup>2</sup> <http://www.cabinetoffice.gov.uk/regulation/consultation/code/>

4.2.2 It is important for public sector organisations that deal with members of the public to handle complaints effectively. Key principles include: keeping procedures simple and avoiding long forms; giving personal and specific replies; being clear about what remedies can be offered, including in terms of disciplinary action for staff; and letting customers know about improvements as a result of their complaint.

4.2.3 Complaints relating to decisions or action taken by a body should be referred to that body for response. Complaints should firstly be subject to internal review, which should not involve staff involved in the initial decision or action. If the decision or action is upheld, the complainant may wish to ask their MP to refer the matter to the Parliamentary Ombudsman or the Health Service Ombudsman (if the body concerned is within the Ombudsman's jurisdiction).

4.2.4 Ministers should only deal with complaints about a body when the complaint raises concern about government policy or its implementation. Exceptions might occur where the complaints received on a particular issue are so numerous, or the subject sufficiently high profile and/or sensitive as to make departmental involvement appropriate.

4.2.5 In circumstances where complainants have exhausted a body's internal complaints procedures, and remain dissatisfied with the outcome, they should be advised of any external avenues available to them to enable them to pursue the matter further, including, if appropriate, referring the matter to the Parliamentary Ombudsman via an MP (see section 4.3 below).

4.2.6 Departments may wish the public bodies they sponsor to establish complaints procedures similar to their own. Differences may be necessary in some circumstances, such as where the recourse open to one may not be open to the other.

### **4.3 Parliamentary Commissioner for Administration**

4.3.1 The Parliamentary Commissioner for Administration (also referred to as the Parliamentary Ombudsman) investigates complaints of maladministration against Government departments and certain other public bodies within the Ombudsman's jurisdiction. Complaints must be referred to the Ombudsman by a MP.

4.3.2 The Parliamentary Commissioner for Administration operates under the provisions of the Parliamentary Commissioner Act 1967. The 1967 Act sets out what the Ombudsman can and can not investigate.

4.3.3 The Ombudsman cannot investigate:

- 4.3.3.1 complaints about government policy or the content of legislation;
- 4.3.3.2 crime, judges' decisions or matters relating to national security;

4.3.3.3 decisions about whether to begin court proceedings or how they are conducted;

4.3.3.4 contractual or commercial transactions;

4.3.3.5 complaints about public service personnel matters; and

4.3.3.6 complaints about something for which remedy is available through an independent tribunal.

4.3.4 A full list of organisations falling within the Ombudsman's remit, and further information about the role, remit and powers of the Ombudsman are available on the web site, at <http://www.ombudsman.org.uk>.

4.3.5 Departments and public bodies should co-operate fully with any Ombudsman investigation. Guidance on handling Ombudsman cases is published by the Cabinet Office which can be accessed on-line at: [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/parliamentary\\_ombudsman/handling.asp](http://www.cabinetoffice.gov.uk/propriety_and_ethics/parliamentary_ombudsman/handling.asp)

## **5. Parliamentary**

### **5.1 Parliamentary Questions**

5.1.1 MPs may often seek information about policies, decisions and actions taken by ministers in respect of their department or the public bodies it sponsors. Information can be sought formally by way of Parliamentary Questions (PQs) or MPs' correspondence.

5.1.2 Where a question or letter relates to the day to day operation of a sponsored public body, the matter should be referred to the Chief Executive Officer (CEO) of that body for reply. Ministers may therefore respond to PQs by saying they will ask the relevant CEO to write to the questioning MP. Correspondence received by the minister relating to the operation of or action taken by a sponsored body should be referred to the CEO for response. Exceptions might occur where the queries raised on a particular issue are so numerous, or the subject of the query sufficiently sensitive and/or high profile to make a ministerial response more appropriate.

5.1.3 If it is concluded that the information which the PQ requested must be withheld and the PQ or CEO letter cannot be fully answered as a result, draft an answer which makes this clear and explains the reasons, such as disproportionate cost or the information not being available, or explains in terms similar to those in the Freedom of Information Act (without resorting to explicit reference to the Act itself or to section numbers) the reason for the refusal. For example, "The release of this information would prejudice commercial interests". Take care to avoid draft answers which are literally true but likely to give rise to misleading inferences. This is set out in the Cabinet Office's *Guidance to Officials on drafting answers to Parliamentary Questions*.

5.1.4 Following a PQ to the Leader of the House of Commons, the guidance in Paragraph 5.1.5 was issued concerning publishing replies to formal PQs that have been made by the Chair or the CEO of a body writing to the questioning MP. This advice does not apply to other letters sent by an MP to a Minister and forwarded to the agency or public body for reply, nor to replies to letters an MP sends directly to the body. The term agencies in this context should be taken to include other public bodies. The advice should also be taken to apply to PQs asked in the House of Lords:

5.1.5 All letters from Government Agencies in response to parliamentary questions should be sent to the *Official Report* for printing, unless they contain personal or confidential information. It is the responsibility of the relevant Parliamentary Branch to send the letters to the Official Reporter or Library. If the letter is longer than the *Official Report* would normally publish (a maximum of four A4 pages in length in material received), notification will be printed that the response is available in the Library of the House. The response will be available to Members in the Library and on application to the House of Commons Information Office.<sup>3</sup>

## 5.2 MPs' correspondence

5.2.1 Ministers themselves should answer questions or correspondence relating to policies about sponsored bodies and the frameworks within such bodies operate. Where a MP/Peer has written about the day to day operations of a NDPB, Ministers may authorise the appropriate Chief Executive/Chairman to reply.

5.2.2 The government is committed to ensuring that the handling of correspondence is given the highest priority and that all correspondence is handled efficiently and effectively. Guidance for departments on the handling of correspondence is issued by the Propriety and Ethics Team in the Cabinet Office and can be viewed at:

[http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/handling\\_members\\_correspondence/guidance\\_for\\_departments.asp](http://www.cabinetoffice.gov.uk/propriety_and_ethics/handling_members_correspondence/guidance_for_departments.asp)

The advice covers key areas such as target times, monitoring performance, tracking and transferring correspondence and content of replies.

5.2.3 Correspondence from MPs/Peers that is considered to be requests for information under the Freedom of Information Act should be handled in accordance with the requirements of the Act.

## 5.3 Select Committees

5.3.1 Departmental Select Committees are entitled to examine the expenditure, administration and policy of the 'associated public bodies' of the departments concerned (see House of Commons Standing Orders). The term

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<sup>3</sup> The link to the Hansard extract is:

[http://www.publications.parliament.uk/pa/cm200405/cmhansrd/cm050126/text/50126w05.htm#50126w05.html\\_sbhd3](http://www.publications.parliament.uk/pa/cm200405/cmhansrd/cm050126/text/50126w05.htm#50126w05.html_sbhd3)

‘associated public bodies’ is not defined in Standing Orders, but the then Chancellor of the Duchy of Lancaster said on 25 June 1979 (Commons Hansard, column 44):

‘The test in every case will be whether there is a significant degree of ministerial responsibility for the body concerned’.

5.3.2 NDPBs which fall within the remit of a Departmental Select Committee may find it helpful to see Departmental Evidence and Response to Select Committees (issued by the Cabinet Office and can be viewed at [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/civil\\_service/select\\_committees/](http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/select_committees/)). This gives general advice on the powers of Select Committees and the procedures and conventions relating to the release of official and classified official information.

5.3.3 Similarly, the Chief Executive, as Accounting Officer, may be summoned to give evidence before the Public Accounts Committee. In this respect there is additional guidance in the Accounting Officer Memorandum, which should be passed to incoming Chief Executives of NDPBs. Further advice about Accounting Officers appearing before Select Committees can be obtained from the Treasury.

## **5.4 Machinery of government changes**

5.4.1 The Prime Minister’s approval is required for any proposal to transfer existing functions:

- a) between ministers in charge of departments;
- b) between a minister and a NDPB, if it is likely to be politically sensitive or to raise wider issues of policy or organisation; or
- c) between junior ministers within a department, if it involves a major reallocation of work or a change in ministerial titles, including courtesy titles.

5.4.2 The Prime Minister’s approval is also required for the allocation of new functions which do not fall wholly within the responsibility of one minister. These requirements apply whether the functions in question derive from statute or from the exercise of royal prerogative, or are general administrative responsibilities.

5.4.3 At an early stage of any proposal which may involve a machinery of government change, including in cases of doubt, or where it appears that the Prime Minister’s approval is not required, departments should consult:

- a) the Economic and Domestic Affairs Secretariat, Cabinet Office (tel. 020 7276 2469), who will advise on the application of the general principles to a particular case;

- b) departmental legal advisers, who will advise on the need for legal procedures; and/or
- c) any other department whose interests may be affected, including where applicable the Treasury, the Scotland, Wales and Northern Ireland Offices and the devolved administrations.

## **6. Publication**

### **6.1 Publications (including to the parliamentary libraries) and advertising**

6.1.1 It is extremely important that members of the public can obtain copies of government publications as far as possible, except in the case of sensitive or confidential information, or that which may jeopardise national security.

6.1.2 Publishing is not just the act of arranging printing, but includes the sale and distribution of documents. It also ensures that the details are included in the official bibliographical database of UK Official Publications (<http://www.ukop.co.uk/info/index.html>) and fulfils the requirements for legal deposit at major libraries within the UK.

6.1.3 The Office of Public Sector Information provides advice on official publishing issues: <http://www.opsi.gov.uk/>

6.1.4 The Conventions of government publicity and advertising, set out at <http://www.comms.gov.uk/guidance/propriety/default.htm> do not formally apply to NDPBs and in certain limited circumstances an NDPB may be able to justify expenditure on publicity which would not be appropriate for a government department. Nevertheless, the general principles of value for money and propriety which are set out in the Conventions are applicable to NDPBs, and they should ensure in particular that any publicity they issue is:

- a) relevant to their responsibilities;
- b) objective and explanatory, not tendentious or polemical;
- c) not party political and not liable to misrepresentation as being party political; and
- d) produced and distributed in an economic and relevant way, having regard to the need to justify the costs as proper expenditure of public funds.

6.1.5 It may be appropriate, in some circumstances, for NDPBs to employ public relations or other consultants in developing public representation of their work. Any tasks for which PR consultants are engaged need to be closely defined and controlled, and adequate arrangements should be put in place to keep the consultancy to its brief. It will always be an improper use of public funds for NDPBs to employ PR or other consultants to lobby parliament

or government departments in an attempt to influence government policy or obtain higher funding.

6.1.6 A NDPB should seek further advice from its sponsor department where the use of publicity and advertising might be regarded as novel or contentious, and in all cases before employing PR consultants. Departments may wish to consider issuing additional guidance on publicity and advertising to their NDPBs, based on relevant parts of the Conventions issued to departments. Guidance on this issue can be obtained from the Propriety and Ethics Team, Cabinet Office (tel. 020 7276 2473).

## **6.2 ‘Public Bodies’**

Since 1980 information about public bodies and the people that serve on them has been brought together and included in the annual Cabinet Office directory *Public Bodies*. The most recent editions of the publication provide details of all UK Government sponsored bodies, including task forces, ad hoc advisory groups and reviews, in operation as at 31 March each year. The information provided about these bodies includes terms of reference, membership and expenditure. Summary information about public appointments, including statistics on gender, ethnicity and disability of members is also included.