

# 7

## Working with Others

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It often makes sense for public sector organisations to work with partners to deliver public services. This Chapter outlines how departments should work in partnership with their agencies and Arm's Length Bodies (ALBs), and where necessary control their activities. It is important that the public interest, value for public resources and the need to keep the Assembly informed are given priority in setting up and operating these relationships.

### 7.1 The case for working in partnership

**7.1.1** Public sector organisations may be able to deliver public services more successfully if they work with another body. Central government departments may find it advantageous to delegate certain functions to agencies or ALBs that can be free to concentrate on them without conflict of interest. Or it may be helpful to harness the expertise of a commercial or voluntary and community sector organisation with skills and leverage not available to the public sector.

**7.1.2** Any such relationship can inevitably entail tensions as well as opportunities. The autonomy of each organisation needs to be buttressed by sufficient accountability to give the Assembly and the public confidence that public resources are used wisely.

**7.1.3** It can be important that an agency or ALB is demonstrably independent. This in itself does not determine the agency's or ALB's form or structure. Independence is achieved by specifying how the agency or ALB is to operate. Functional or policy independence is compatible with financial oversight by the agency or ALB's sponsor department and with accountability for the use of public resources.

**7.1.4** It is generally helpful to deal with any potential conflicts head on by deciding at the outset how the relationship(s) between the parties should work. Departments and ALBs should work together to develop constructive and effective relationships/partnerships taking account of the principles set out in the *Partnerships between Departments and Arm's Length Bodies: NI Code of Good Practice* (the Code) published in 2019 which is available on the Accountability and Financial Management section of the DoF website. The Code contains five high level principles which are expected to act as a set of common standards for departments and their ALBs to live by and measure their relationships against. The key issues to tackle are set out in Box 7.1.

### **Box 7.1: Issues for partnerships with public sector members**

- The decision to engage with a partner should rest on evaluation of a business case assessed against a number of alternatives, including doing nothing;
- Conflicts of interest should be identified so that handling strategies can be agreed, e.g. by establishing early warning processes or safeguards;
- The cultural fit of the partners should be close enough to give each confidence to trust the other; and
- Accountability for use of public funds should not be weakened.

The terms of engagement, including governance, should be documented in a relationship document e.g. a Framework Document (see outline terms in Box 7.2) for an agency or a Partnership Agreement or equivalent for an ALB.

## **7.2 Setting up new Arm's Length Bodies**

**7.2.1** When a department sets up a new agency or ALB, the nature of the new body will need to be determined. It is sensible for the functions of the new body to help determine this choice. Annex 7.1 offers advice and sources of guidance on setting up a new body and compares the characteristics of agencies, Non-Departmental Public Bodies (NDPBs) and Non-Ministerial Departments (NMDs). Departments should consult DoF about making the choice. When setting up a new body, departments should ensure the proper classification process is followed as the sector classification will dictate the budgeting treatment of the body. The Office of National Statistics (ONS) is responsible for the sector classification of bodies. However, more straightforward decisions may be taken by DoF or HM Treasury with ONS being informed. Departments should engage with DoF Supply in the early stages of establishing a new body. DoF will then liaise with ONS/HMT as appropriate.

**7.2.2** In general, each new agency or ALB should have a specific purpose, distinct from its sponsor department. There should be clear perceived advantage in establishing a new organisation, such as separating implementation from policy making; demonstrating the integrity of independent assessment; establishing a specialist identity for a professional skill; or introducing a measure of commercial discipline. It is sensible to be sceptical about setting up a new agency or ALB, since it will often add to costs.

**7.2.3** Agencies or ALBs cannot be given authority to make decisions proper to Ministers, nor to perform functions proper to departments. Only rarely is a NMD the right choice as NMDs have limited accountability to the Assembly<sup>1</sup>.

**7.2.4** Nor is it acceptable to seek to use a Royal Charter to establish a public sector body since such arrangements deny Assembly control and accountability.

**7.2.5** A sponsor department cannot relinquish all responsibility for the business of its agencies or ALBs by delegation. It should have oversight arrangements appropriate to the importance, quality and range of the agency's or ALB's business. Normally new, large, experimental or innovative agencies or ALBs need more attention from the sponsor department than established or small agencies or ALBs doing familiar or low risk business. And the sponsor department always needs sufficient reserve powers to reconstitute the management of each agency or ALB should events require it (see Section 3.9).

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<sup>1</sup> The sponsor department also has less control as each NMD has its own budget, Estimate and Annual Report and Accounts. So if a Ministerial department transfers work to an NMD, there is a greater risk of Excess Votes in each.

**7.2.6** The sponsor department should plan carefully to make sure that its oversight arrangements and the internal governance of any new agency or ALB are designed to work together harmoniously without unnecessary intrusion. The agency or ALB also needs effective internal controls and budgetary discipline so that it can live within its budget allocation and deliver its objectives. And the sponsor department must have sufficient assurance to be able to consolidate its agency's and ALB's accounts with its own.

**7.2.7** There is a good deal of flexibility about form and structure. It may be expedient, for example, to set up an organisation which is eventually to be sold as a Companies Act company. Or certain NDPBs may operate most effectively when constituted as charities. Mutual structures can also be attractive. Innovation often makes sense. The standard models are all capable of a good deal of customisation. Additional DoF approval for any innovative development will also be required.

**7.2.8** If the PAC decides to investigate an agency or ALB, the Accounting Officers of both the agency/ALB and its sponsor department should expect to be called as witnesses. The Chair of the Board may also be called as a witness. The PAC will seek to be satisfied that the sponsor's oversight is adequate. The role of PAC is examined further in Chapter 3.

## **7.3 What to clarify**

**7.3.1** When documenting a relationship document (Framework Agreement/Partnership Agreement or equivalent document) with a delivery partner, public sector organisations taking cognisance of the Code, should analyse the relationship and consider how it might evolve. The relationship document should then be kept up to date as the partnership develops.

**7.3.2** Partnership Agreement templates for use with NDPBs and other relevant bodies are available on the Accountability and Financial Management section of the DoF website. It is important that such documents are tailored to fit the business to which they relate (rather than following precedent or rigidly following the template). When drawing up individual Partnership Agreements (or equivalent documents), reference should be made to DoF's guidance on *Proportionate Autonomy for arm's length bodies* also available on the above section of the DoF website. Further information is provided in Annex 7.2.

**7.3.3** In framing founding documentation, the partners should adopt a proportionate approach. The Assembly expects that public funds will be used in a way that gives reasonable assurance that public resources will be used to deliver the intended objectives.

**7.3.4** In this process the aim should be to put the Accounting Officers of the parties in a position to take a well informed view on the current status of the relationship, enabling timely adjustments to be made as necessary. The Engagement Plan within the Partnership Agreement is an important element, as it is good practice to develop structured arrangements for regular dialogue between the parties to avoid misunderstandings and surprises and develop a partnership working approach.

## **7.4 Agencies**

**7.4.1** Each agency is either part of a central government department or a department in its own right. Agencies are intended to bring professionalism and customer focus to the management and delivery of central government services, operating with a degree of independence from the centre of their home departments. Some could also be trading funds (see Section 7.9).

**7.4.2** Each agency is established with a framework document on the lines sketched out in Box 7.2. With the exception of those agencies which are trading funds (see Section 7.9), they are normally funded through public expenditure estimates process. DoF approval is required for agency relationship documents and departments should consult DoF at an early stage in the preparation of their framework document.

### **Box 7.2: Outline for Agency Framework documents**

1. Purpose of document
2. Objectives
3. Classification

#### **Purposes, aims and duties**

4. Purposes
5. Powers and duties
6. Aims

#### **Governance and accountability**

7. Governance and accountability

#### **[The Agency] governance structure**

8. The Chief Executive
9. Board (if appropriate)/senior management structure

#### **Management and financial responsibilities and controls**

10. Delegations/spending authorities
11. Banking and managing cash
12. Procurement
13. Risk management
14. Counter fraud and theft

#### **Business plans, financial reporting and management information**

15. Corporate and business plans
16. Budgeting procedures
17. Annual report and accounts
18. Reporting performance to the department

#### **Audit**

19. Internal audit
20. External audit

#### **Reviews and winding up arrangements**

21. Review of Agency's status
22. Arrangements in the event that the Agency is wound up

#### **Role of the department**

23. The responsible Minister
24. The principal Accounting Officer
25. Oversight arrangements

**7.4.3** Depending on the scale and nature of an agency's responsibilities, it may be appropriate for a senior official of an agency to be a member of the sponsor department's

departmental board. It may also be appropriate for a representative of the sponsor department to join the agency's board, as part of the sponsor department's responsibilities for strategy, performance, risk taking and delivery within the department.

## **7.5 Shared services and departments pooling resources**

**7.5.1** To promote better delivery and enhance efficiency, departments often find it useful to work with other government departments (agencies or ALBs). This can make sense where responsibilities overlap, or both operate in the same geographical areas or with the same client groups - arrangements loosely categorised as joined up government. Such arrangements can offer opportunities for departments to reduce costs overall while each partner plays to its strengths.

**7.5.2** Such relationships can be constituted in a number of different ways. Some models are sketched in Box 7.3. The list is not exhaustive.

### **Box 7.3: Examples of joined up activities in central government**

- one partner can act as lead provider delivering/selling services (such as IT, HR, finance functions) to other(s) as customers, operating under Memorandum of Understanding (MOU)/Service Level Agreements (SLA);
- cost sharing arrangements for common services (e.g. in a single building), allocated in line with an indicator such as numbers of staff employed or areas of office space occupied;
- joint procurement using a collaborative protocol;
- a joint venture project with its own governance, e.g. an agency or wholly owned company, selling services to a number of organisations, some or all of which may be public sector; and
- an outsourced service, delivering to several public sector customers.

**7.5.3** Shared services often need funding to set up infrastructure, e.g. to procure IT. This could be agreed through the Executive's Budget process, or customers could buy in to the partnership by transferring budget provision to the lead provider. Each of the Accounting Officers involved should be satisfied that the project offers value for money for the public sector as a whole. The provider's charges should be at cost, following the standard fees and charges rules (see Chapter 6).

**7.5.4** In any joint activity, there must be a single Accounting Officer to ensure that the lines of responsibility and accountability are clear. If the PAC decides to investigate, the Accounting Officers of each of the participants should expect to be summoned as witnesses.

## **7.6 Joint working and delivering cross-cutting programmes**

**7.6.1** Sometimes an Accounting Officer decision involves several public sector organisations. There are a number of different potential models for joint working, as set out below.

**7.6.2** It is good practice for participating bodies to document their respective responsibilities via a memorandum of understanding.

### **Box 7.4: Models for joint working**

#### **Model 1: Collaboration**

- Departments may collaborate in the development of policy in which they respectively have an interest.
- Accounting Officer responsibilities rest personally with the Accounting Officer whose department's resources are being used.

#### **Model 2: One department leads, whilst formally accessing the expertise of other government departments or ALBs**

- The Accounting Officer responsibilities rest personally with the Accounting Officer whose department's resources are being used.
- However, the Accounting Officer may require expertise, analysis or insights from another department or public body, in order to support their decision making.

The Accounting Officer may require the supporting organisation to provide written assurances of the robustness of any analysis provided and underlying methodologies.

- The ultimate judgement and accountability lies with the Accounting Officer incurring expenditure against their resources.

#### **Model 3: Departments individually fund elements of a joint project or plan**

- Departments individually contribute funding from their own Estimate and ambits to their own individual projects which make up the overarching plan.
- Accounting Officer responsibilities rest personally with the Accounting Officer of the department whose resources are being used for each element of the cross-cutting project or programme.
- Joint governance processes may be established (e.g. joint governance boards) to oversee co-ordination and delivery of the overarching plan.
- As in model two, Accounting Officers may rely upon expertise provided by other departments.
- Ministerial responsibility for the overarching plan is shared, with each minister having responsibility for their respective policy area.

#### **Model 4: One department leads at programme level, with accountability and responsibility for individual projects sitting with different departments and ALBs**

- An overall Senior Responsible Owner (SRO) at the programme level is responsible for the delivery of the programme as a whole.
- Individual project SROs are accountable to both the Accounting Officer of their department and the programme level SRO.

- Accounting Officer responsibilities rest personally with the Accounting Officer of the department whose resources are being used for each element of the cross-cutting project or programme (as with Model 3).

- Timely and high-quality information flows between the SROs and Accounting Officers are required to ensure the Accounting Officer can consider value for money of their projects in the context of the programme and the public sector as a whole.

#### **Model 5: Support via budget cover transfers**

- One department with an aim in common with another may transfer budget cover to the other department, in order to undertake activities that align with their respective objectives.

- The Accounting Officer transferring the budget cover cannot abdicate all their Accounting Officer responsibilities. The transferring AO must be confident that the budget cover will be used in line with the Assembly's expectations and the intent of the joint policy, and in compliance with the rules set out in MPMNI. This can be achieved through the use of Memoranda of Understanding or other governance documents between Accounting Officers.

- More elaborate governance structures may be appropriate if these transfers occur as part of a joint programme (as per Model 4 above).

- Accounting Officer responsibilities ultimately rest personally with the Accounting Officer of the department receiving the budget cover who incurs the spending.

- The recipient department must have appropriate ambit and vires to undertake the work.

#### **Model 6: Machinery of government change**

- Policy responsibility and funding transfer from one department to another by order of the relevant legislation (e.g. a transfer of functions order) which should prescribe the terms of any such transfers.

- Accounting Officer responsibilities rest with the Accounting Officer of the department receiving the policy responsibility, who will use their resources.

- In order to meet the requirements of regularity and propriety it may be necessary for the receiving department to:

- amend their ambit to ensure they have Assembly authority to incur spending on the new activity (see 2.2).
- bring forward primary legislation to ensure compliance with the new services rule (see 2.6).

## **7.7 Non-Departmental Public Bodies (NDPBs)**

**7.7.1** NDPBs may take a number of legal forms, including corporates and charities. Most executive NDPBs have a bespoke structure set out in legislation or its equivalent. This may specify in some detail what task(s) the NDPB is to perform, what its powers are, and how it should be financed. Sometimes primary legislation contains powers for secondary legislation to set or vary the detail of the NDPB's structure. Annex 7.1 has more information about NDPBs.

**7.7.2** Each NDPB is a special purpose body charged with responsibility for part of the process of government. Each has a sponsor department with general oversight of its activity. The sponsor department's report and accounts consolidates its NDPBs financial performance.

**7.7.3** NDPBs show considerable variety of structures and working methods, with scope for innovation and customisation. Some NDPBs may also need to work with other organisations as well as with their sponsor. All this should be documented in a Partnership Agreement or equivalent document.

**7.7.4** NDPBs' sources of finance vary according to their constitution and function. Box 7.5 shows the main options available.

#### **Box 7.5: Sources of finance for NDPBs**

- one partner can act as lead provider delivering/selling services (such as IT, HR, finance functions) to other(s) as customers, operating under Service Level Agreement(s);
- specific conditional grant(s) from the sponsor department (and/or other departments);
- general (less conditional) grant-in-aid from the sponsor department;
- income from charges for any goods or services the NDPB may deliver/sell;
- income from other dedicated sources, e.g. lottery funding; and
- Public Dividend Capital (PDC).

**7.7.5** In practice NDPBs always operate with some independence and are not under day-to-day Ministerial control. Nevertheless, Ministers are ultimately accountable to the Assembly for NDPBs' efficiency and effectiveness. This is because Ministers are responsible for NDPBs' founding legislation; have influence over NDPBs' strategic direction; (usually) appoint their boards; and retain the ultimate sanction of winding up unsatisfactory NDPBs.

## **7.8 Public corporations**

**7.8.1** Some departments own controlling shareholdings in public corporations or Companies Act companies, perhaps (but not necessarily) as a step toward disposal. Public corporations' powers are usually defined in statute; but otherwise all the disciplines of corporate legislation apply. Advice on shareholdings of this kind can be obtained from DoF.

**7.8.2** Sponsor departments should define any contractual relationship with a public corporation in a relationship document adapted to suit the corporate context while delivering public sector disciplines. The financial performance expected should give the shareholder department a fair return on the public funds invested in the business. Box 7.6 offers suggestions. This approach may also be appropriate for a trading fund, especially if it is to become a Companies Act company in time.

**7.8.3** A shareholder department may also use a company it owns as a contractor or supplier of goods or services. It is a good discipline to separate decisions about the company's commercial performance from its contractual commitments, so avoiding confusion about objectives. So there should be clear arm's length contracts between the company and its customer departments defining the customer-supplier relationship(s). Advice should be taken from Construction and Procurement Delivery or a relevant Centre of Procurement Expertise before contracting for services from a company owned to ensure the contract is compliant with the relevant procurement legislation.

### **Box 7.6: Outline terms for a relationship with a public corporation**

- the shareholder's strategic vision for the business, including the rationale for public ownership and the public sector remit of the business;
- the capital structure of the business and the agreed dividend regime, with suitable incentives for business performance;
- the business objectives the enterprise is expected to meet, balancing policy, customer, shareholder and any regulatory interests;
- the department's rights and duties as shareholder, including:
  - governance of the business;
  - procedure for appointments (and un-appointments);
  - financial and performance monitoring;
  - any necessary approvals processes;
  - the circumstances of, and rights upon, intervention; and
- details of any other relationships with any other parts of government.

## **7.9 Trading funds**

**7.9.1** All trading funds are established under the Trading Funds Act 1973 and most are public corporations. Their activities are not consolidated with their sponsor department's business. They must finance their operations primarily from trading activity.

**7.9.2** Each trading fund is set up through an Order subject to affirmative resolution. Before an Order can be laid in the Assembly, DoF needs to be satisfied that a proposed trading fund can satisfy the statutory requirement that its business plan is sustainable without additional funding in the medium term. A period of shadow operation as a pilot trading fund may help inform this assessment.

**7.9.3** Each trading fund must be financed primarily from its trading income. In particular, each trading fund is expected to generate a financial return commensurate with the risk of the business in which it is engaged. In practice this means the target rate of return should be no lower than its cost of capital. The actual return achieved may vary a little from one year to the next, reflecting the market in which the trading fund operates.

**7.9.4** The possible sources of capital for trading funds are shown in Box 7.7. They are designed to give trading funds freedom from the discipline of annual funding through the Estimates process. The actual mix for a given trading fund must be agreed with the sponsor department (if there is one) and with DoF, subject to any agreed limits e.g. on borrowing.

**7.9.5** Further detail about trading funds is in Annex 7.3. Guidance on setting charges for the goods and services trading funds sell is in Chapter 6.

### **Box 7.7: Sources of capital for trading funds**

- Public Dividend Capital (equivalent to equity, bearing dividends – see Annex 7.4);
- reserves built up from trading surpluses;
- long or short term borrowing (either voted from a sponsor department or borrowed from the Northern Ireland Consolidated Fund if the trading fund is a department in its own right);
- temporary subsidy from a sponsor department, voted in Supply Estimates; and
- finance leases.

## **7.10 Non-Ministerial Departments (NMDs)**

**7.10.1** A very few central government organisations are NMDs. It is important that there is some clear rationale for this status in each case.

**7.10.2** NMDs do not answer directly to any Executive Minister. They have their own Accounting Officers, their own Estimates and Annual Reports and Accounts, and settle their budgets directly with the Executive through DoF/ relevant Assembly Committee. However, some Ministerial departments must maintain a watching brief over some NMDs so that a Minister of that department can answer for the NMD's business in the Assembly; and if necessary take action to adjust the legislation under which it operates. A framework document should define such a relationship.

**7.10.3** This limited degree of Assembly accountability must be carefully justified. It can be suitable for a public sector organisation with professional duties where Ministerial input would be inappropriate or detrimental to its integrity. But the need for independence is rarely enough to justify NMD status. It is possible to craft arrangements for NDPBs which confer robust independence. Where this is possible it provides better Assembly accountability, and so is to be preferred.

## **7.11 Local Government**

**7.11.1** A number of central government departments make significant grants to local authorities. Some of these are for specific earmarked purposes. Some are not, allowing local authorities to set out their own priorities.

**7.11.2** Nevertheless the Assembly expects assurances that such decentralised funds are used appropriately, i.e. that they are spent with economy, efficiency and effectiveness, and not wasted nor misused. The quality of the assurance available differs from that expected of central government organisations because local authorities' prime accountability is to their electorates.

**7.11.3** For these relationships a framework document is not usually the most fruitful approach. Instead, central government departments shall draw up an annual account of how their Accounting Officers assure themselves that grants to local government are distributed and spent appropriately; and how underperformance can be dealt with. This account forms part of the governance statement in the report and accounts of each department affected (see Annex 3.1).

## **7.12 Innovative structures**

**7.12.1** Sometimes central government departments have objectives which more easily fit into bespoke structures suited to the business in hand, or to longer range plans for the

future of the business. Such structures might, for example, include various types of mutual or partnership.

**7.12.2** Proposals of this kind are by definition novel and thus require explicit DoF consent. In each case, proposals are judged on their merits against the standard public sector principles after examining the alternatives, taking account of any relevant experience. DoF will always need to understand why one of the existing structures will not serve: e.g. the NDPB format has considerable elasticity in practice. Box 4.8 may help with this analysis.

## 7.13 Outsourcing

**7.13.1** Public sector organisations often find it satisfactory and cost effective to outsource some services or functions to a third party supplier rather than delivering these internally. Outsourcing examples have included cleaning, security, catering, citizen contact services and grounds maintenance.

**7.13.2** The first step in setting up any outsourcing agreement should be to specify the service(s) to be provided and the length of contract to be sought. At that stage it is usually desirable to draw up an outline business case to help evaluate whether outsourcing makes financial and operational sense. Any decision to outsource should then be made to achieve value for money for the public sector as a whole.

**7.13.3** Outsourcing services will be subject to the normal procurement rules.

**7.13.4** Contracting out does not dissolve public bodies from their responsibilities. Public sector organisations using a contractor should set in place systems to track and manage performance under the contract. It may be appropriate to plan for service credits or other contractual mechanisms to withhold payment or seek damages for disruption and/or failure if the contractor's performance falls below the standard expected. Organisations should be satisfied that the arrangements for contracting out entail sufficient accountability for the use of public funds.

## 7.14 Private finance

**7.14.1** Until 2012, Public Finance Initiatives (PFI) was the government's preferred model of Public Private Partnership (PPP). Since 2012, the use of PFI has declined significantly due to concerns about value for money. Where properly constructed and managed, public sector organisations can use private finance arrangements to construct assets and/or deliver services effectively and efficiently. Structured arrangements where the private sector puts its own funds at risk can provide better incentivisation to ensure projects are delivered on time and within budget.

**7.14.2** PPPs are long-term contractual arrangements between a public sector entity and a private sector provider.

**7.14.3** The private sector provider is engaged to design, build, finance, maintain and operate infrastructure assets and related services. The risks associated with construction delay, cost overrun and maintenance of the asset are transferred to the private sector partner.

**7.14.4** The public sector entity does not pay for the asset during construction, as the associated costs of construction are financed by the private sector. Once the asset is operational and services are being provided the public sector entity pays a monthly fee – sometimes referred to as a 'unitary charge' – to the private sector provider. This payment

includes the costs of construction, financing costs, lifecycle replacement expenditure, maintenance and services.

**7.14.5** The payment is subject to performance, which means that payments are reduced if services are not delivered to the standards set out in the contract. This form of payment mechanism provides an incentive for the private sector provider to meet their performance obligations and underpins the transfer of risk to the private sector.

**7.14.6** PPPs have been used to deliver investment in infrastructure across a wide range of sectors including hospitals, schools, roads, prisons, waste management and energy-from-waste infrastructure, housing, and military accommodation and equipment.

**7.14.7** Managing the risks associated with PPPs requires specific skills and expertise to ensure the arrangements remain affordable over their expected duration or to avoid prohibitive exit provisions.

**7.14.8** Advice should be sought from the Strategic Investment Board to assist with any business case where PPP is being explored as an option.

## **7.15 Commercial activity**

**7.15.1** When public bodies have assets which are not fully used but are to be retained, it is good practice to consider exploiting the spare capacity to generate a commercial return in the public interest. This is essentially part of good asset management.

**7.15.2** Any kind of public sector asset can and should be considered. This includes both physical and intangible assets, for example land, buildings, equipment, software and intellectual property (see Annex 4.15). A great variety of business models is possible.

**7.15.3** Such commercial services always go beyond the public sector supplier's core duties. Because these assets concerned have been acquired with public funds, it is important that services are priced fairly: see Chapter 6. It is also important to respect the rules on Subsidy controls/State aids: see Annex 4.7. Central government organisations should work through the checklist at Box 7.8. DoF's advice should be sought and further advice can be obtained from Economic Strategy Group in DfE.

### **Box 7.8: Planning commercial exploitation of existing assets**

- define the asset to be exploited;
- establish that any necessary vires and (if necessary) Estimate provision exist;
- identify any prospective business partners and run a selection process;
- if the proposed activity is novel, contentious, or likely to set a precedent elsewhere, obtain DoF approval; and
- take account of the normal requirements for propriety, regularity, procurement rules and value for money.

**7.15.4** While it makes sense to make full use of assets acquired with public resources, such activity should not squeeze out, or risk damaging, a public sector organisation's main objectives and activities. Similarly, it is not acceptable to acquire assets just for the purpose of engaging in, or extending, commercial activity. If a public sector supplier's commercial activity demands further investment to keep it viable, reappraisal is usually appropriate. This should consider alternatives such as selling the business, licensing it, bringing in

private sector capital, or seeking other way(s) of exploiting the underused potential in the assets or business.

**7.15.5** It is a matter of judgement when departments should inform the Assembly of the existence, or growth, of significant commercial ventures. It is good practice to consult DoF in good time on this point so that the Assembly can be kept properly informed and not misled.

## **7.16 Working with the voluntary and community sector**

**7.16.1** Central government organisations may find they can deliver their objectives effectively through relationships with the voluntary and community sector bodies: i.e. charities, social, voluntary or community institutions, mutual organisations, social enterprises or other not-for-profit organisations. Such partnerships can achieve more than either the public or the voluntary and community sector can deliver alone. For example, using a voluntary and community sector organisation can provide better insight into demand for, and suitable means of delivery of public services.

**7.16.2** In this kind of relationship a public sector organisation may fund activities, make grants, lend assets, or arrange other transfers to a voluntary and community sector body performing or facilitating delivery of services. It is desirable to build in safeguards to ensure that resources are used as intended (see Annex 5.2). This gives the Assembly confidence that voted resources are used for the purposes it has approved.

**7.16.3** The safeguards to be applied should be agreed at the start of the relationship. Customisation is nearly always essential. It is often right to require clawback, i.e. to agree terms in which public sector donors reclaim the proceeds if former publicly owned assets are sold.

**7.16.4** The Concordat between the Voluntary and Community Sector and the Northern Ireland Government (“the Concordat”) (available at [Concordat between the voluntary and community sector and the NI government | Department for Communities \(communities-ni.gov.uk\)](#)) formally sets out a shared vision on how the voluntary and community sector and government will work together as social partners to build a participative, peaceful, equitable and inclusive community in Northern Ireland. Progress against agreed objectives is formally reported to the Assembly each year.

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Annex 7.1	Forming and reforming agencies and Arm’s Length Bodies
Annex 7.2	Drawing up relationship documents
Annex 7.3	Government companies, Public Corporations and Trading funds
Annex 7.4	Using private finance

# A7.1

## Annex 7.1 Forming and reforming agencies and Arm's Length Bodies

This Annex covers the processes of setting up new agencies and Arm's Length Bodies (ALBs) and reshaping existing ones, either by merger, dissolution or other transformation. While the processes are flexible, there are some common themes centring on accountability and streamlining government processes.

### Rationale for agencies and ALBs

**A7.1.1** The Executive works through agencies and ALBs when there is a good reason to do so, usually when it is helpful for a specialist body to carry out a function where independence is important. Each agency or ALB has its own bespoke reason for existing and many are established under specific legislation determining their form, functions and powers.

**A7.1.2** The two main kinds of ALBs are NDPBs and NMDs. Each has its strengths and is appropriate for a range of functions. Agencies and these two kinds of ALBs are compared in Box A7.1A.

### Setting up a new agency or ALB

**A7.1.3** It is good practice to decide early which kind of body is most appropriate when setting up a new agency/ALB (sources of guidance on setting up agencies/ALBs are in Box A7.1B). Hiving off functions into an agency/ALB should not diminish accountability. For that reason NMDs are rarely the right solution.

**A7.1.4** It is important to remember that effective functional independence does not necessarily require a specific structure. Ministers can choose to stand back from the decisions made or opinions published by any ALB while maintaining financial control and oversight.

**A7.1.5** The next step is to develop a relationship document setting out the relationship between the new agency/ALB and its sponsor department. Advice on this is in Annex 7.2. These should be periodically reviewed to keep abreast of experience and the changing context.

**A7.1.6** Decisions on the form of any particular agency/ALB must ultimately be for Ministers. They will depend in part on perceptions of the function in question, and on the extent to which Ministers think it right to take a day to day interest in its affairs. Generally, the closer the ALB's functions are to the centre of government, the more likely it is to be an agency; while NMD status is appropriate for organisations of some size carrying out professional functions. The form and structure of the NDPB is very flexible, suiting specific and technical functions.

**A7.1.7** When an agency/ALB is planned, it is essential to consult DoF about its powers, status and funding.

**Box A7.1A: Comparison of agencies and the two main kinds of ALB in central government**

Feature	Agency	Non-Departmental Public Body (NDPB)	Non-Ministerial Department (NMD)
Status	Part of a department	Independent organisation. May be a company and/or a charity	Department in its own right
Crown body	Yes	Not usually	Yes
Established by	Administrative action (usually quick and easy)	Usually bespoke primary legislation (may take time).	Administrative action, often supplemented by primary legislation (if needed, may take time)
Governance	CEO supported by a board	Independent board led by non-executive Chair	Accounting Officer supported by a board
Ministerial accountability	A Minister in the sponsor department makes key decisions on the agency's affairs	A Minister in the sponsor department decides key matters, e.g. whether to adjust functions, whether to wind up or replace	Rarely needed, but when necessary, a Minister in the sponsor department decides
Sponsor department	Has direct control	Subject to formally agreed memorandum, may be light touch	Remote
Funding	Supply Estimates and/or fee income	Grant(s) from department(s), and / or income from fees or levies	Supply Estimates and/or fee income
Employees	NICS Civil servants	Not NICS civil servants	Not NICS civil servants
Annual Report and Accounts	Publishes plans and accounts as part of sponsor department's central accounts	Publishes own plans and accounts Usually consolidated into sponsor departments	Publishes own plans and accounts
Assembly Accountability	CEO is agency Accounting Officer, oversight by departmental Accounting Officer	CEO is normally the Accounting Officer, oversight by departmental Accounting Officer	CEO is normally the Accounting Officer, In some cases a sponsor department's Accounting Officer could step in if required

**A7.1.8** It is worth remembering that the two kinds of ALB (NDPBs and NMDs) in Box A7.1A are only the most common. Others are possible. DoF guidance on the categories of Public Bodies explains in more detail (see for example the *Public Bodies: A guide for NI Departments* available at [Public bodies guidance including On Board Guide and public bodies guides | Department of Finance \(finance-ni.gov.uk\)](https://www.finance-ni.gov.uk/public-bodies-guidance-including-on-board-guide-and-public-bodies-guides)). They include public corporations and various kinds of co-operative arrangements with the private or voluntary sector, some fairly loose. And there is scope to establish one-off arrangements for special bodies where circumstances demand something different. Special structures must of

course be evaluated carefully, on the strength of a comparative business case, to make sure that they will deliver value for money to the public purse.

**A7.1.9** Whatever the legal status of an ALB, its sponsor department should have a mechanism for asserting an appropriate degree of control over it, especially in financial matters and in relation to issues of ethics in the use of public funds. In general, the greater the extent of public funding, the greater the degree of control called for.

**A7.1.10** If legislation is required to set up an ALB, it is important to observe the new services rules (Section 2.7). Strictly this means that Royal Assent is required before resources can be committed to setting up the organisation. However, departments should engage with DoF should any issues arise.

**A7.1.11** Whatever the approach taken to setting up the new organisation, it is often desirable to operate a period of shadow running before it starts in earnest. And do be aware that the process of preparation can take time – e.g. often a couple of years or more for an NDPB.

### **Box A7.1B: Sources of guidance**

#### **Accountability and Financial Management section of the DoF Website:**

- **Public bodies and executive agencies – consideration of options for delivery, setting up, governance and accountability of NDPBs and executive agencies, their review and dissolution.**
- **Guide to the Establishment and Operation of Trading Funds.**
- **Corporate Governance in Central Government Departments:** extant version of *Code of Good Practice NI* includes references to NDPBs and agencies.

#### **Commissioner for Public Appointments for Northern Ireland website:**

- **Code of Practice for Ministerial Public Appointments in Northern Ireland.**

#### **Gov.uk website:**

- **Government Financial Reporting Manual (FReM)** – includes guidance for NDPBs and agencies, including form of Annual Reports and Accounts.
- **Consolidated Budgeting Guidance** – includes guidance in relation to NDPBs and public corporations.

## **Reforming ALBs**

**A7.1.12** Valuable as they can be, proliferation of ALBs is not good practice. It adds to administrative costs generally and can fragment accountability. So it can be necessary or desirable to wind up or merge ALBs in the light of experience.

**A7.1.13** The process of decision making is similar to that for setting up a new ALB if there is to be a successor organisation. It is good practice to decide on a suitable shape for the new organisation and then plan legislation, if necessary, to achieve it.

**A7.1.14** The predecessor organisation(s) must be wound up in an orderly fashion, with final Annual Report and Accounts to close its affairs (including a comprehensive list of assets and liabilities). If a closing organisation has no staff by the time the final Annual Report and Accounts are drawn up, it is usual for the Accounting Officer of the successor organisation, if there is one, to take responsibility for signing them off. If this is not possible, for example if there is no successor, the Accounting Officer of the sponsor department should sign them off.

**A7.1.15** When staff are to be migrated into a new organisation, it is important to respect their statutory employment rights. Planning for this should form a key part of the transition preparations. Mistakes can be costly.

## A7.2

# Annex 7.2

## Drawing up relationship documents

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Departments need arrangements to monitor and understand their executive agencies' and ALBs' strategy, performance and delivery. This Annex offers a general outline of how relationship documents can be drawn up.

DAO guidance issued by DoF specifically provides a template for Partnership Agreements for use with NDPBs and a template for Corporate Sole type organisations. The main template may also be a useful starting point for developing relationship documents for other types of ALBs. Box 7.2 provides an outline for developing a framework document for Agencies.

**A7.2.1** This Annex provides guidance on the framework documents for Agencies, NDPBs and Corporate Soles/Statutory Office holders and other ALBs. Each body will need a bespoke specification suited to its specific structure and responsibilities. The document should focus clearly on its relationship with the sponsor department, and with any other departments with interest(s) in the Agency's/ALB's business.

**A7.2.2** Terminology may differ and while the majority will be referred to as Partnership Agreements it may be these documents are referred to as a memorandum of understanding, framework agreement etc depending on the nature of the document. While the content of documents should follow the specimen templates as far as possible, at the same time, they should be adapted as necessary to suit individual circumstances. The process set out below applies irrespective of the name of the document.

**A7.2.3** An outline for a framework document between a Department and an Agency is provided at Box 7.2. This is to be used as a guide and covers the necessary areas to consider when drawing up such documents.

**A7.2.4** DoF has published a Partnership Agreement template on the Accountability and Financial Management section of the DoF website which should be used for the majority of ALBs, adapted as necessary to suit individual circumstances. A specific template for use for bodies such as Corporate Soles or Statutory Office holders is also available. These templates are broadly similar representing consistent standards of accountability and governance and will be updated from time to time.

**A7.2.5** A Partnership Agreement should explain the overall governance framework within which an individual ALB operates, including the framework through which the necessary assurances will be provided to stakeholders. Roles/responsibilities of partners within the overall governance framework are also outlined. Partnerships should be based on a mutual understanding of strategic aims and objectives; clear accountability; and a recognition of the distinct roles each party contributes. Underpinning the arrangements to be set out in Partnership Agreements, are the principles set out in the "*Partnerships between Departments and Arm's Length Bodies: NI Code of Good Practice*" which should be read in conjunction with the template, and is included as an Annex to the template.

**A7.2.6** When drawing up Partnership Agreements, departments and ALBs should also consider DoF's guidance on Proportionate Autonomy for ALBs. The guidance is intended to help departments and ALBs assess the nature of their relationship when completing their individual Partnership Agreements. It is an important piece of complementary guidance that will focus on the challenges of achieving an appropriate balance between Departments and ALBs regarding the optimum level of autonomy, while taking account of the salient factors.

**A7.2.7** The guidance on Proportionate Autonomy provides guiding principles, rather than being detailed and prescriptive, due to the different nature and challenges across all ALBs. It will therefore be for individual Departments and ALBs to develop their relationship and approach to Partnership Working, and associated departmental activities in a way that is consistent with the principles set out in the guidance, whilst focusing on the delivery of agreed outcomes. The agreed approach and level of autonomy should be reflected in the Engagement Plan within the Partnership Agreement.

**A7.2.8** Framework documents are public documents which:

- shall be published online on the Agency/ALB departmental website; and
- placed in the Assembly Library.

**A7.2.9** Where departments are of the view that departures from the templates are necessary these should be carefully considered, and it may be appropriate to seek advice from DoF.

**A7.2.10** Framework documents/Partnership Agreements should be reviewed and updated as appropriate at least every 3 years unless there are exceptional reasons. It may be appropriate to update a framework document/Partnership Agreement sooner if there are significant changes to the ALB, e.g. reclassification, or the body taking on additional functions or being subject to a machinery of government change.

**A7.2.11** Framework documents constitute a core constitutional document of ALB's and it is imperative that Accounting Officers, Board members and senior officials are familiar with them, ensure they are kept up to date and use them as guide to govern the partnership relationship between the ALB, the sponsor department and the rest of government.

# A7.3

## Annex 7.3

### Government Companies, Public Corporations and Trading Funds

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Companies are used across government as a way of delivering on government objectives which are better met by a more discrete legal entity with a clear accountability and governance structure. Government companies' objectives are diverse and as such their characteristics are equally diverse. The risk of such diversity is that it can lead to inconsistency in spending controls, governance arrangements and accountability. This annex is intended to consolidate existing guidance in relation to their responsibilities for public money and to provide some advice on common issues that arise.

#### What is a government company?

**A7.3.1** A Government Company (often informally referred to as a "GovCo") is one in which the government is the majority or only shareholder. It can include situations both where the government has purposely set up the company up as a GovCo or where the government has acquired majority shareholder status of an existing company.

**A7.3.2** Government may also have interests in companies where it does not hold majority shareholder status. This may be where the government is the sole or majority customer, where it holds preference shares, where the company is closely governed by a regulatory regime or where the company is provided support by the government such that government is deemed to hold significant control. Given this diversity, it is helpful to consider companies through more clearly defined criteria than the high-level label of "GovCo".

#### What is a government company?

**A7.3.3** The initial question for determining what kind of controls and governance apply is whether the company is formally classified as public or private sector. Most GovCos will be public sector but government also has interests in private sector companies.

**A7.3.4** Companies are classified to the public or private sector based on ONS criteria. The 'public sector' is defined by the Office of National Statistics ('ONS') with reference to the European System of Accounts 2010 in accordance with EU requirements for Governments to produce accurate public sector finances and national accounts. The National Accounts (or Sectoral) classification of entities as public or private depends on the level of government control over the general corporate policy of the entity being classified. This can be direct or indirect and may be evidenced by indicators that include:

- the ability to appoint those in control, or those who determine the policy of the entity;
- a right to be consulted over such appointments, or to have a veto over appointments;
- the provision of funding accompanied by rights of control over how that funding is spent; and
- a general right to control the day-to-day running of the body.

**A7.3.5** ONS decisions on classification are definitive and are informed by common European standards. These classifications are published. ONS may take some time to

consider the classification of a particular government entity, in the meantime advice should be sought from DoF. Pending review by the ONS, the DoF view of classification, which may include engagement with HM Treasury, should be regarded as definitive and should inform the body's governance, reporting and accountability structures.

## **Classification of Government companies – central, local or public corporation?**

**A7.3.6** Once the ONS has classified a body as public sector it is classified to a sub-sector based on its characteristics. These sub-sectors in respect of companies are:

- Central Government Company (CGC)
- Local Government Company (LGC)
- Public Corporation (PC)

### **Central and Local Government companies**

**A7.3.7** Government companies which are classified by the Office of National Statistics (ONS) for the purposes of National Accounts as 'central government' are then administratively classified by DoF (usually as NDPBs).

**A7.3.8** CGC's receive income wholly or in the majority from central government via grants or contracts, or receive the majority of their income by virtue of levies or taxation or funded by the recovery of their costs through the charging of fees.

**A7.3.9** Central Government Companies should:

- be subject to Managing Public Money Northern Ireland;
- have an Accounting Officer appointed by the principal Accounting Officer of the sponsor department;
- have clear delegated spending authorities from the department agreed by DoF;
- follow government standards in governance, recruitment, procurement and transparency;
- appropriate board make-up and the balance of executive and non-executive functions; and
- have consolidated financial reporting.

**A7.3.10** It is important to ensure that provisions in the Framework Document for any government company are consistent with the company's Articles of Association. If there are obligations that need to be legally imposed on the company (e.g. matter reserved for the Shareholder), these need to be included in the Articles (which are legally binding on the Company). Advice should be sought from DoF when drawing up such documents.

**A7.3.11** Local Government Companies are outside the scope of Managing Public Money Northern Ireland.

### **Public Corporations**

**A7.3.12** Companies established by government that meet the "market body test" are classified by the ONS as Public Corporations. The "market body test" requires that the company derives more than 50 per cent of its production cost from the sale of goods or services at economically significant prices (that is, prices that have a substantial influence

on the amounts of products that producers are willing to supply and on the amounts of products that purchasers wish to acquire) for all or most of the goods and services they produce. Note that classification tests above refer primarily to Non-Financial Corporations. The classification rules for Financial Corporations are complex.

**A7.3.13** Public Corporations' powers are usually defined in statute, but otherwise all the disciplines of corporate legislation apply. Sponsor departments should define any contractual relationship with a public corporation in a framework document adapted to suit the corporate context while delivering public sector disciplines. Public corporations do not have Accounting Officers and are not subject to Managing Public Money Northern Ireland as a matter of course.

**A7.3.14** They should instead be subject to levels of control and governance that are deemed appropriate by the sponsor department and agreed in the context of the framework document. It may be the nature of the body is such that it would be appropriate to consider if a requirement for compliance with the principles of Managing Public Money Northern Ireland should be imposed. This should be achieved through the exercise of shareholder rights and is not the default position. If this outcome is sought it may be appropriate to appoint the Chief Executive as an accountable person mirroring the role of the Accounting Officer for central government bodies to ensure the Shareholder expectations in this regard are met.

**A7.3.15** Public Corporations are subject to Consolidated Budgeting Guidance and in particular are expected to provide a return to government in respect of capital employed. In the case of PCs performing essentially government-type functions, 3.5% real will normally be appropriate. A PC competing in the market should typically be expected to return a higher rate to reflect the prevailing market rate.

## Trading Funds

**A7.3.16** Trading Funds are established under the Trading Funds Act 1973. Most trading funds are public corporations, but some may be central government companies. It is rare for new trading funds to be created and requires DoF consent. Unlike Public Corporations in general, trading funds have Accounting Officers appointed by DoF and are subject to Managing Public Money Northern Ireland by default. In addition, Departments should have careful regard to Consolidated Budgeting Guidance particularly regarding expected rates of return from trading funds.

**A7.3.17** Further guidance may be found in DoF's *Northern Ireland Guide to the Establishment and Operation of Trading Funds* which is available on the Accountability and Financial Management section of the DoF website.

## Legal status of Companies

**A7.3.18** In addition to the classification decisions above, companies can be constituted either as companies limited by shares or as companies limited by guarantee. When planning on setting up a government company, officials should discuss with their legal advisors and with DoF the appropriate legal status for incorporation.

**A7.3.19** A profit-making company will generally be better incorporated by shares and non-profit by guarantee. A company limited by shares may also be preferable in joint ventures where there is significant disparity between the capital contributed or the support provided through income or otherwise. Different levels of share capital can reflect such variation and further provide flexibility in the levels of control exercised by shareholders.

**A7.3.20** Alternate legal structures are also available such as charities, community interest companies and mutual. If further advice is required, for example from the Commercial Models Team in Cabinet Office, departments should engage with DoF in the first instance. It is important that the model used follows the policy objective rather than seeking to force policy objectives to fit a model.

## **Framework Documents**

**A7.3.21** It is important to ensure that provisions in the framework document for any government company are consistent with the company's Articles of Association. If there are obligations that need to be legally imposed on the company (e.g. matter reserved for the Shareholder), these may need to be included in the Articles (which are legally binding on the Company).

## **Creation of new companies**

**A7.3.22** Companies are relatively easy to create by government departments through simple incorporation under existing legislation. However, departments should be wary of falling foul of the new services rules (see MPMNI 2.7). This is particularly likely to be the case if the company is due to perform functions that are not already part of the department's ambit of activity.

**A7.3.23** Even where the new company performs pre-existing functions, it may be that the new delivery mechanism for that service is such that the new services rules may be engaged. This should be considered on a case by case basis.

**A7.3.24** Creating a new company will generally be novel and as such will require DoF consent.

**A7.3.25** It will also be appropriate to share relationship documents with DoF to set out proposed governance arrangements.

**A7.3.26** As with the creation of all ALBs, departments should consider the guidance as set out in Annex 7.1.

## **Subsidiary companies**

**A7.3.27** Where ALBs establish subsidiary companies, the Accounting Officer of the parent ALB shall have meaningful oversight of the subsidiary. It is not acceptable to establish subsidiaries to ALBs in order to avoid or weaken Assembly scrutiny.

**A7.3.28** For subsidiary companies classified as central government companies (CGCs), the responsibilities of the Accounting Officer of the parent ALB will also apply to any subsidiaries set-up by the ALB. Subsidiaries cannot have a different Accounting Officer to the Accounting Officer of the parent ALB.

**A7.3.29** For subsidiaries classified as CGCs, the default position is that all the ALB's controls and delegations' cascade down to the subsidiary. These arrangements should be set out in the framework document between the ALB and the sponsor department, and in a separate document between the ALB and the subsidiary.

**A7.3.30** ALBs can agree delegations to their subsidiary which are within their own delegations, issued to them by their sponsor department. The ultimate test in these cases will be whether the AO of the parent ALB would be comfortable defending the approach taken in the Assembly.

**A7.3.31** Where the subsidiary companies are classified as a PC rather than CGC, the position is that the ALB's own delegations and controls do not apply by default, and the controls set out in A7.3.12 onwards apply.

**A7.3.32** There are some commitments which can never be able to be delegated to subsidiaries, regardless of their classification. These are commitments which incur liabilities which would impact the ALB, and therefore engage the Accounting Officer's responsibilities, if they crystallised.

#### **Box A7.3A: DoF consent for new subsidiaries**

- If the subsidiary is being established to deliver the ALB's existing activities within its existing statutory powers and ambit, DoF consent will not be required – save where the expenditure undertaken breaches the department's delegations or other provisions of Managing Public Money Northern Ireland.
- Where subsidiaries are established to deliver additional activities, potentially outside of the ALB's existing statutory powers or ambit, DoF consent will always be required. Such expenditure is likely to be novel, contentious or repercussive and might engage the New Services Rule (see 2.7) or securing adequate legal authority (see 2.5).

## **Audit**

**A7.3.33** Companies in general are required by statute to have their accounts audited. It is expected that companies classified as NDPBs will be audited by the Comptroller and Auditor General. If the company is not for profit and the C&AG is appointed as Auditor by an order under the Government Resources and Accounts Act NI then the company is exempted from the requirement for a Companies Act audit. If the C&AG is appointed as auditor of the company by agreement between the company and the departmental Minister or by virtue of statute then any Audit must also fulfil the requirements of a Companies Act audit.

**A7.3.34** Audit arrangements for Public Corporations, companies not classified as NDPBs or companies where the auditor is not appointed automatically by statute should be agreed with DoF. It will generally be good practice for the sponsor department to seek the views of NIAO as to whether they think it appropriate to take on the role of auditor. It should be noted that where a body is consolidated into a department's group accounts all elements of the group will be subject to the C&AG's opinion on regularity.

# A7.4

## Annex 7.4 Using private finance

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Some public services are delivered in partnership with private sector providers, using some carefully controlled private finance. Because the private sector contractor puts its own funds at risk, it can incentivise delivery of assets and services to time and cost, and can offer value for money where the benefits of risk transfer and private sector delivery offset the additional cost of private finance. Such deals are not appropriate for every project. Private Finance Initiative (PFI) policy in NI is contained in “*Working Together in Financing our Future: Policy Framework for Public Private Partnerships in Northern Ireland*”.

**A7.4.1** Although the use of private finance in the delivery of public sector assets and services is one method of procurement, it is not suited to all types. Where it is used effectively it can offer a number of strengths in delivering public assets (see Box A7.4A). These stem from:

- sharing risk in delivering public projects within a structure in which the private sector contractor puts its own capital at risk;
- payment to the private sector being structured in such a way as to ensure the private sector is incentivised to deliver the required services or obligations under the arrangement; and
- the private sector being incentivised to grow market share in the joint delivery of services, or to grow the value in the joint management of assets.

**A7.4.2** Contracts using private finance may include the ongoing maintenance and operation of the asset and the delivery of associated services to outcome specifications set by the public sector. Generally they are long term arrangements between the parties.

### **Box A7.4A: Strengths of using private finance to deliver public sector assets and services**

- getting projects built to time and to budget;
- improving whole-of-life risk allocation and management, creating disciplines and incentives on the private sector to manage risk effectively;
- securing a greater focus on due diligence;
- securing better integration of design, construction and operational skills; and
- securing a greater focus on growing market share or value of a joint asset or business.

**A7.4.3** Private finance does not suit every project. It should only be used after the rigorous scrutiny of all alternative procurement options, where:

- the use of private finance offers better value for money for the public sector compared with other forms of procurement. Annex 4.6 gives additional

guidance on the value for money analysis that is required alongside the assurance and approval process;

- the structure of the project allows the public sector to define its needs after construction as service outputs that can be adequately contracted for in a way that ensures an effective and accountable delivery of long-term public services; and
- the public sector partner is able to predict the nature and level of its long term service requirements with a reasonable degree of certainty.

**A7.4.4** Conversely, private finance is not usually suitable for:

- individual projects too small to justify the transaction costs; or
- large innovative IT projects, or other services where it is not practical to specify the requirements sufficiently firmly in advance or over the long time-frame of the prospective contract life.

**A7.4.5** The main procurement principles continue to apply when using private finance. It is important that the output to be achieved is clearly specified rather than the method to be used in carrying out the contract, so that the supplier can innovate and manage risk effectively. However, it is sensible to clarify key areas of design early on, to prevent false starts and later misunderstandings.

**A7.4.6** Public sector organisations should not, however, use standard contracts automatically. They should be intelligent customers, providing incentives to stimulate enough competition to achieve good value in procurement costs. They should also be aware that their own reputations may be at risk when privately financed contracts are carried out. Where contracts include the ongoing maintenance and operation of assets, public sector organisations need to commit sufficient resource to effective long term contract management, including monitoring performance and managing any service variation requirements or other contract delivery issues over the project life. Any organisation considering using private finance should consult with the Strategic Investment Board (SIB) about issues to be addressed.

**A7.4.7** Once a major asset has been constructed, it may be possible for the private sector partner to refinance the project debt on more favourable terms than achieved at financial close. The contract should specify how the financial benefit of any refinancing should be shared with the public sector purchaser. HM Treasury has produced a standard refinancing protocol to achieve this.