

Public Bodies: A Guide for NI Departments

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OVERVIEW OF GUIDANCE DOCUMENTS - CONTENTS

This guidance is designed to help all those who are involved in establishing and sponsoring a central government public body. For the purposes of this guidance document, the term central government public bodies includes non departmental public bodies (NDPBs), Health and Personal Social Services bodies and public corporations. The document opens with a short contextual summary. The following chapters relate specifically to the creation and management of central government public bodies (collectively referred to as public bodies and NDPBs) in Northern Ireland:

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The guidance is based on the Cabinet Office publication “Public Bodies: A Guide for Departments.” A contextual summary is provided at the beginning of the document and each chapter begins with a chapter summary.

The document has been created jointly by Accountability and Accountancy Services Division (AASD) and the Public Service Improvement Unit (PSIU) within the Department of Finance and Personnel (DFP).

It is available from the AASD and PSIU websites at www.aasdni.gov.uk and www.psruni.gov.uk

Any queries on the format and content of this guidance should be addressed to:

- for accounting issues – Brigitte Worth, AASD 028 91085 8025 (GTN 68025) email: Brigitte.Worth@dfpni.gov.uk
- for accountability issues - Paddy Hoey, AASD 028 91085 8208 (GTN 68208) email: paddy.hoey@dfpni.gov.uk
- for policy and planning issues - Angela Dullaghan, PSIU 028 9081 6025 (GTN 140 76025) email: angela.dullaghan@dfpni.gov.uk

This guidance **does not** include information on public appointments and managing boards. Guidance on all matters concerning public appointments can be found in the Central Appointments Unit's publication: 'Making Public Appointments – A Best Practice Guide for Departments in Northern Ireland' available on the Knowledge Network Central or see The Commissioner for Public Appointments for Northern Ireland Code of Practice for Ministerial Appointments to Public Bodies at: www.OCPA_NI.gov.uk/codeofpracticemay07.pdf

This guidance has been written in terms of a devolved administration in Northern Ireland. In the event of the Assembly being suspended, references to the Assembly should be taken to mean the UK Parliament at Westminster and all references to "the Minister" should be taken to mean the relevant Direct Rule Minister with responsibility for the Northern Ireland department.

If you have any comments on this guidance, please e-mail martin.Ireland@dfpni.gov.uk. Your suggestions will help ensure that the guidance is improved and updated to continually provide current guidance to assist all those involved in the creation and through life management of NDPBs.

Public Bodies: A Guide for NI Departments

CONTEXTUAL SUMMARY

Welcome to the 'Public Bodies: A Guide for Northern Ireland Departments', a comprehensive guidance manual for Northern Ireland Departments who sponsor or intend to sponsor central government public bodies.

The Review of Public Administration (RPA) provides an important context although it is recognized that the New Executive will develop this policy over time. It is important that we focus on the need to streamline public administration, clarify accountability and ensure services are easily accessible and customer-focused. Departments will be aware of paragraph 27 of the Committee on the Programme for Government Report on the Review of Public Administration and Rural Planning (January 2007) which states:

'The sub-group agreed by consensus that the reduction in the number of Quangos had not gone far enough. Members considered further significant reductions, based on an assessment of each body, should be made and that clear lines of democratic accountability to either central or local government should be established within a devolved administration for those bodies to be retained.'

It is essential that departments consider the need to create another public body. For those bodies in place, it is essential that accountability is clear. This guidance is designed to help departments consider all the options available for service delivery and that where public bodies need to exist, they have in place all the relevant accountability and governance arrangements in place to safeguard the use of public money.

When a public body is no longer required, it should be dissolved. This document also provides guidance on how to review public bodies and the steps to take to dissolve a body no longer required.

The recent Northern Ireland Audit Office report “Good Governance - Effective Relationships between Departments and their Arms Length Bodies” is another useful source of guidance and includes best practice examples including from public corporations and is available at <http://www.niauditoffice.gov.uk/pubs/onereport.asp?arc=False&id=195&dm=0&dy=0>.

Advice and guidance is also available in Government Accounting Northern Ireland (GANI), and appropriate references to GANI are included in this document. HM Treasury has recently replaced the GB version of Government Accounting with a shorter document, Managing Public Money (MPM), which focuses on the essence of what is required when handling public funds. DFP is currently reviewing MPM, with a view to issuing a version of MPM in Northern Ireland, amended or supplemented as necessary for the Northern Ireland context, in April 2008.

Public Bodies: A Guide for NI Departments

SUMMARY

1. When considering the most effective and efficient way of delivering a service or function to the citizen, it is vital that departments think through all the possible options and types of organisations that can exist in order to ensure the most appropriate approach. Departments should be aware of the conclusions of the Review of Public Administration and the views of the Committee on the Programme for Government Report (detailed in this chapter) about the number of public bodies in Northern Ireland; in short the establishment of a public body should be a last resort.

Specifically chapter 1 outlines some of the common principles and questions departments should consider when setting up new bodies or reviewing existing ones.

Also in chapter 1 departments will find information on what they need to do and who they should consult if they do decide to create a public body or when seeking the most appropriate classification for new or existing bodies.

Annex 1A contains a list of the guidance available to departments to assist them in establishing or reviewing public bodies, including the guidance developed to help departments decide on the most appropriate classification for the public bodies sponsored by them.

2. There are occasions where bodies carrying out public functions should be at arm's length from Ministers. Chapter 2 gives examples of the variety of reasons where a greater degree of independence for a body may be appropriate. In this chapter what is meant by a Central Government Public Body is explained. It gives a definition of a Non-departmental Public Body (NDPB), explains when an NDPB is the most appropriate model for service delivery and outlines the government's policy in relation to these types of body.

Chapter 2 also outlines some of the main characteristics of the different types of public bodies in existence.

3. Having decided that a new NDPB offers the best means of doing the job, departments need to start drawing up the basic proposals for the body. Chapter 3 details what these should include.

Once the basic proposals are drawn up the need for legislation must be addressed. Chapter 3 explains when statutory authority is required and the general principles to be drawn upon in legislation to set up a public body to ensure the correct balance between enabling the Minister to fulfil his or her responsibilities to the Assembly and giving the Public Body the desired degree of independence.

Chapter 3 details the type of powers often conferred on a public body through legislation, including appointment and dismissal powers, the provision for winding up and the execution of documents by affixation of seal.

In some circumstances the main legislation setting up a new NDPB may be preceded by 'paving' legislation. Chapter 3 explains what is meant by 'paving' legislation and when it should be considered. It also explains

when it may be appropriate to set up a 'shadow' organisation and what financial guidance departments are required to follow if such an organisation is set up.

4. Chapter 4 details the practical steps departments should take to set up an Executive NDPB and is based around the sound principles of project management. It covers establishing a time frame, putting together a project or sponsor team. There is detailed guidance on establishing the parameters of the NDPB, what to do about the location and accommodation for the body, what to put in place in terms of good practice with regard to resource planning and management arrangements.

Chapter 4 gives guidance on the initial financial management requirements such as the designation of the Accounting Officer and the preparation of a corporate plan and annual operating business plans and the Management Statement/Financial Memorandum. It also covers audit and risk management requirements, appointing board members and staff and the requirements of openness under the Public Records Act, the Freedom of Information Act and the jurisdiction of the Northern Ireland Ombudsman. There is also guidance on Sustainable Development, engaging with the voluntary and community sector, Regulatory Impact Assessments, the government's Enforcement Concordat, Fraud and Internal Audit and the Code of Good Practice for Corporate Governance.

In chapter 4 departments will also find guidance on the practical steps involved in setting up a 'Shadow' NDPB.

5. Departments need to decide early on at the planning stage whether a new Public Body will recruit its own staff and if so arrange for the necessary powers to be given in the legislation that establishes them.

Chapter 5 outlines some of the issues to be addressed in relation to the establishment of HR systems, including terms and conditions of employment, a Code of Conduct, disciplinary procedures and performance management and appraisal.

In addition it draws attention to obligations under the Data Protection Act (1998), the Freedom of Information Act (2000), Equality and Health and Safety legislation.

6. The Board of a Public Body has a collective responsibility for the proper conduct of the body's affairs and must ensure compliance with any appropriate financial requirement laid upon them by the sponsor department in the management statement/ financial memorandum (MS/FM) or by other means. The Chief Executive of the NDPB is normally designated as its Accounting Officer and must therefore sign the accounts.

Chapter 6 outlines the need for proper systems of accountability within Public Bodies explaining the appointment and role of the Board, Accounting Officer and other senior posts. It includes information on Annual Reports and Accounts, Performance Targets and Internal and External Audit arrangements.

7. Chapter 7 provides guidance on the responsibilities of sponsor departments and Public Bodies for ensuring the approach in terms of financial management reflects best practice in public sector financial management. It explains how departments should deal with the expenditure and finance of Public Bodies in terms of their resource accounts and budgets.

Advice is provided amongst other things on corporate, operating or business plans, Management Statement/Financial Memorandum (MSFM), performance targets and funding arrangements.

8. 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.

Chapter 8 highlights the requirement to produce and distribute widely information on the role and achievements of a body through a variety of vehicles, primarily, annual reports and accounts. It explains the various types of document to be made available and why and draws attention to obligations under Section 75 of the Northern Ireland Act 1998, the [Freedom of Information Act 2000](#) (FOIA), the Environmental Information Regulations 2004, the Data Protection Act 1998 and the Re-use of Public Sector Information Regulations 2005.

Also in chapter 8, departments will find information relating to Codes of Practice and Conduct and procedures for dealing with complaints.

9. The Government is committed to quality and continuous improvement. As part of this it is important to regularly review whether individual NDPBs continue to be the best way to deliver the services for which they are responsible, and if they are how delivery of these services can be improved.

Chapter 9 provides guidance on how to carry out a light touch review of NDPBs without lead responsibility for, or a key role in, delivering departmental PSA targets. It provides information on where to obtain further guidance on carrying out Landscape Reviews and end-to-end reviews.

The guidance consists of some of the key issues to be addressed when reviewing an NDPB supplemented by a number of fact sheets providing more detailed guidance on particular aspects of a review, such as performance, partnership working and making the best use of technology.

10. In the light of the Government's aim to streamline public administration it is important that Public Bodies that are no longer required are dissolved.

Chapter 10 highlights some of the issues that departments should consider when terminating a Public Body, for example is legislation required, what happens to staff, pensions, assets and accounts? It also provides contacts who can provide advice.

11. Chapter 11 explains that whilst the Public Bodies Guide is not written specifically for PCs or GOCOS they are nevertheless types of Public Body and the advice contained within this document will be relevant in many cases and provides details where other advice might be sought.

Public Bodies: A Guide for NI Departments

Chapter 1: Case assessment and classification of a public body

1. CASE ASSESSMENT AND CLASSIFICATION OF A PUBLIC BODY

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Annex 1A – Existing guidance

SUMMARY

When considering the most effective and efficient way of delivering a service or function to the citizen, it is vital that departments think through all the possible options and types of organisations that can exist in order to ensure the most appropriate approach. Departments should be aware of the conclusions of the Review of Public Administration and the views of the Committee on the Programme for Government Report (detailed in this chapter) about the number of public bodies in Northern Ireland; in short the establishment of a public body should be a last resort.

Specifically this chapter outlines some of the common principles and questions departments should consider when setting up new bodies or reviewing existing ones.

Also in this chapter departments will find information on what they need to do and who they should consult if they do decide to create a public body or when seeking the most appropriate classification for new or existing bodies.

Annex 1A contains a list of the guidance available to departments to assist them in establishing or reviewing public bodies, including the guidance developed to help departments decide on the most appropriate classification for the public bodies sponsored by them.

1.1 THE OPTIONS

- 1.1.1 Before setting up a public body, it is important that you think through all the possible options for the most effective and efficient way of delivering the required service or function. The classification guidance at 1.2.3 includes the purpose and key characteristics of each type of public body and some examples already set up under each classification.
- 1.1.2 The Review of Public Administration, which reached a conclusion in March 2006, was a comprehensive examination of the arrangements for the administration and delivery of public services in Northern Ireland. Implementation is now underway aimed at streamlining the public sector in order to improve service delivery and make accountability lines clearer.
- 1.1.3 The establishment of a new public body should therefore be a last resort. Departments should be aware of paragraph 27 of the Committee on the Programme for Government Report on the Review of Public Administration and Rural Planning (January 2007) which states:

“The sub-group agreed by consensus that the reduction in the number of Quangos had not gone far enough. Members considered further significant reductions, based on an assessment of each body, should be made and that clear lines of democratic accountability to either central or local government should be established within a devolved administration for those bodies to be retained.”

DFP advice should be sought at an early stage in the development of proposals to create a public body. A list of existing guidance designed to assist departments in establishing new agencies or public bodies or in reviewing and/or reorganising or abolishing such bodies is attached at Annex 1A.

1.1.4 A systematic approach to establishing a new body will involve a number of stages:

1.1.4.1 Whether the service or function needs to be delivered at all?

- a. is it essential to the Government's and the departmental policy objectives? (Ministerial approval should, of course, always be sought before considering the creation of a public body)
- b. is there sufficient demand from customers?
- c. would providing the service be a justifiable use of taxpayers' money?
- d. what would be the costs and other effects of not providing the service?
- e. what are the potential risks associated with delivering the service?
- f. whether the tasks can be performed within the department or by an existing NDPB or Agency, or other public body.

1.1.4.2 Is the function assigned by statute to a minister, office holder or local authority? If so, the power in part II of the Deregulation and Contracting Act 1994 may need to be used. Departments should seek legal advice in such cases.

- a. is the market capable of providing the service? Who would bid? If the market is not particularly mature, does it show signs of developing and expanding to meet the challenge of market testing and contracting out?

- b. where there are workload fluctuations and the potential for rapid technological change, can the private sector offer economies of scale and sufficient flexibility?
- c. is expertise required which the private sector is better able to offer and develop because of specialisation and differences in size?
- d. would the private sector be better at managing the risks associated with delivering the service?
- e. is capital investment needed? If so, the Private Finance Initiative should be considered¹.

1.1.4.3 Whether a Public Private Partnership would be the best option² :

- a. what skills, assets and capabilities would the private sector be able to contribute to a joint partnership?
- b. is there scope for private sector innovation in delivering the desired outcomes?
- c. can the risks associated with achieving the desired outcomes be managed better by a public private partnership?

1.1.4.4 Whether the work could be undertaken by a voluntary organisation (government could provide limited support initially).

¹ Further guidance on PFIs can be found at: www.ppp-ni.gov.uk

² Further guidance on PPPs can be found at: www.ppp-ni.gov.uk

1.1.5 If you have decided that the function is necessary and that it cannot be carried out by the private or voluntary sector or within an existing departmental structure, you will need to think about what type of public body would be most appropriate (see 1.2.3).

1.2 OBTAINING A CLASSIFICATION DECISION

1.2.1 Bodies need to be classified correctly in order that they can be easily identified in the department's overall landscape. Proper classification ensures that each body has an open, accountable structure. Of course very few bodies fit neatly into specific categories, therefore it is important that you consult with others in order to arrive at a consensus opinion.

1.2.2 Those who can help you are:

- your departmental public bodies coordinator (PSIU within DFP has a list of coordinators by department)
- PSIU
- Your department's finance branch
- DFP Supply Officer responsible for your department

1.2.3 Below we have added a link to classification guidance which sets out the purpose of each type of public body and its key characteristics. This also provides some examples of bodies which are already set up under that classification, as well as some additional comments which should help you decide whether that type of body is appropriate to your need.

<http://www.dfpni.gov.uk/classifying-public-bodies.doc>

1.3 CONSULTATION

1.3.1 Departmental NDPB/Public Body co-ordinators

1.3.1.1 Your departmental co-ordinator should be your first port of call. Co-ordinators have knowledge of all the public bodies which populate the departmental landscape and should be able to advise you on where there is read across with similar work areas in the department.

1.3.2 The Public Service Improvement UNIT (PSIU)

1.3.2.1 PSIU within DFP can advise on the classification of the body so should be consulted at the earliest opportunity for advice. Their address is Clare House, 303 Airport Road West, Belfast, BT3 9ED, or e-mail angela.dullaghan@dfpni.gov.uk

1.3.3 The department's DFP Supply Officer

1.3.3.1 DFP Supply must be consulted when a department is considering setting up a new NDPB. They also require a Full Business Case to be submitted in accordance with the guidance contained in the Northern Ireland Practical Guide to the Green Book which is available at www.dfpni.gov.uk/economic_appraisal_guidance .

1.3.3.2 PSIU and DFP will require answers to the following questions:

- What is the name of the proposed body?
- What are its proposed powers, responsibilities and remit?
- How will the new body fit with existing bodies?
- How is the body to be funded, managed and administered?

- Where is the Board membership to be drawn from?
- Who will appoint the members and Chair of the Board?
- Will the Board members and the Chair be remunerated?
- Will the body produce some kind of end product or report, or will its function be ongoing?
- To whom will the body report/be accountable?
- What is the intended lifespan of the body?
- What classification does the department envisage for the body?

1.3.4 Departmental Public Appointments Contacts, the Office of the Commissioner for Public Appointments for Northern Ireland (OCPA NI) and the Central Appointments Unit (OFMDFM)

1.3.4.1 Once classification of the public body has been agreed and it is an NDPB, you should consult your departmental public appointments contact and OCPA NI about making ministerial appointments. Government departments are required to follow the OCPA NI Code of Practice when making appointments to public bodies regulated by the Commissioner. You should also advise the Central Appointments Unit (CAU) in OFMDFM so that appointments to the NDPB are included in the Public Appointments Annual Report.

1.3.4.2 OCPA NI's Code of Practice can be found at www.OCPA.NI.gov.uk . The CAU Best Practice Guide is available on Knowledge Network Central.

1.3.5 Civil Service Pensions

1.3.5.1 Civil Service Pensions (DFP) should be consulted about pension arrangements for staff employed by the NDPB. They can provide advice on the schemes applicable to various groups of staff including initial advice on those eligible for the Northern Ireland Local Government Officer's Superannuation Committee scheme (NILGOSC). They can be contacted on 028 7131 9000 or through their website at www.civilservicepensions-ni.gov.uk .

1.3.6 Trade Unions

1.3.6.1 When it is proposed that work and/or staff should be transferred from departments to NDPBs, you should consult both staff and unions at the appropriate stages in accordance with Whitley procedures.

ANNEX 1A

EXISTING GUIDANCE

This Annex summarises the range of guidance, rules and resources available to departments to assist them in establishing new agencies or public bodies, or in reviewing and/or reorganising or abolishing such bodies.

The principal guidance documents are set out below and cover:

- Background to the public sector classification system, and key characteristics of different types of body;
- Considerations in deciding what type of body is most appropriate to the task;
- Legislative and organisational requirements for the setting up of the new body;
- Appropriate governance and accountability issues to be addressed;
- Making Public Appointments – A Best Practice Guide for Departments in Northern Ireland;
- Budgeting, accounting and financial reporting requirements;
- Review arrangements;
- Dissolution arrangements

The principal guidance documents are:

CLASSIFICATION OF PUBLIC BODIES GUIDANCE FOR DEPARTMENTS (DFP) – explains the public sector classification system and the purpose and key characteristics of different organizational categories
<http://www.dfpni.gov.uk/classifying-public-bodies.doc>

EXECUTIVE AGENCIES: A GUIDE FOR DEPARTMENTS (CabOff) – covers identification of candidates for EA status, preparation for and launch of EA, review, merger, transfer and dissolution of EAs, and advice on preparation of Framework Documents

http://www.civilservice.gov.uk/other/agencies/publications/pdf/exec_agencies_guidance_oct06.pdf

SETTING KEY TARGETS FOR EXECUTIVE AGENCIES: A GUIDE

(HMT/CabOff/NAO)

<http://www.civilservice.gov.uk/other/agencies/publications/pdf/setting-targets.pdf>

BETTER GOVERNMENT SERVICES IN THE 21st CENTURY: THE ALEXANDER REPORT (CabOff) – the 2002 Agency Review

<http://civilservice.gov.uk/other/agencies/publications/pdf/opsr-agencies.pdf>

LANDSCAPE AND END-TO-END REVIEWS – IMPROVING THE CAPACITY TO DELIVER (CabOff) – guidance on the new approach to reviewing, reforming and improving departments' delivery mechanisms

MAKING PUBLIC APPOINTMENTS – A BEST PRACTICE GUIDE FOR DEPARTMENTS IN NORTHERN IRELAND (Central Appointments Unit) available on the Knowledge Network Central.

GOVERNMENT ACCOUNTING NORTHERN IRELAND (GANI) (DFP)

<http://www.aasdni.gov.uk/frab/browse.asp?branch=1&category=2&maxres=20&start=0&orderby=3>

Code of Good Practice for Corporate Governance in Central Government Departments (HMT)

www.aasdni.gov.uk/pubs/DAOs/dao1805att.pdf .

GOVERNMENT FINANCIAL REPORTING MANUAL (FReM) (HMT)

<http://www.aasdni.gov.uk/frab/browse.asp?branch=1&category=23&maxres=20&start=0&orderby=2>

CONSOLIDATED BUDGETING GUIDANCE (HMT) – includes guidance in relation to NDPBs and public corporations

http://www.hm-treasury.gsi.gov.uk/psd/resource_budgeting/rb_consolidated_guidance/cbg0cont.htm

Public Bodies: A Guide for NI Departments

Chapter 2: Policy and characteristics of a Public Body

2. POLICY AND CHARACTERISTICS OF A PUBLIC BODY

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SUMMARY

There are occasions where bodies carrying out public functions should be at arm's length from Ministers. This chapter gives examples of the variety of reasons where a greater degree of independence for a body may be appropriate. In this chapter what is meant by a Central Government Public Body is explained. It gives a definition of a Non-departmental Public Body (NDPB), explains when an NDPB is the most appropriate model for service delivery and outlines the government's policy in relation to these types of body.

This chapter also outlines some of the main characteristics of the different types of public bodies in existence.

2.1 Definition of a Central Government Public Body

2.1.1 There are occasions where bodies carrying out public functions should be further removed from Ministers, operating more at 'arm's length'. The greater degree of independence may be appropriate for a variety of reasons. This can be to provide independent advice and expertise on technical, scientific or other complex issues and take this outside the party political arena e.g. on ethical issues, or funding decisions. Tribunals and other quasi-judicial bodies are set up to meet specific requirements for separation of decision-making and appeals. Public bodies carry out a wide range of functions such as independent regulation, advice, investigation, adjudication, ombudsman services, appeal, funding, partnership, commercial and health services.

2.1.2 Such “arms length bodies” focus in depth on clear and specific functions and purposes. As separate legal entities, they can operate more flexibly than executive agencies, entering into partnerships and taking commercial and entrepreneurial decisions. These bodies have grown up over time and in response to particular needs and situations. This flexibility and responsiveness means that the landscape of public bodies is necessarily both complex and diverse.

2.1.3 Firstly, in order to be classified in its own right a body must be a separate institutional unit. A body fulfilling *executive* functions needs to be able to lead a separate existence. So, for example, it needs to be able to:

- Make decisions in an autonomous way
- Enter into contracts

- Own assets and dispose of them
- Employ staff
- Make payments from its own bank account
- Draw up accounts.³

2.1.5 Bodies are set up for specific purposes and there is no set template of what a public body should look like. However, over the past thirty years, a workable taxonomy of public bodies has emerged. This is used by Government to classify public bodies. This classification has important implications for accountability, funding and reporting arrangements (see 1.2.3).

2.2 What is a Non-Departmental Public Body (NDPB)?

2.2.1 The term 'NDPB' has been in existence since 1980 when it was coined by Sir Leo Pliatsky in his 'Report on Non Departmental Public Bodies'. An NDPB is described as:

“ A body which has a role in the processes of national government, but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm’s length from ministers.”⁴

2.2.2 NDPBs have a national or regional remit and carry out a wide range of important functions. Their distance from government means that the day-

³ Taken from HM Treasury's 'Classification of Expenditure Public and Private Sectors: New Bodies, Partnerships, Joint Ventures, Privatisation and Nationalisation' November 2000.
<http://www.wga.gov.uk/pages/classification.html>

⁴ In the past NDPBs have also been referred to as 'Quangos' – Quasi-Autonomous Non Government Organisations. There is no commonly agreed definition of what the term 'quango' means and the term is often used to include local bodies such as universities, research bodies or housing associations to which the government gives grants. In addition the term is misleading as NDPBs for example are governmental rather than non-governmental organisations.

to-day decisions they make are independent as they are removed from ministers and Civil Servants. Ministers are however ultimately responsible to the Assembly for a NDPB's independence, its effectiveness and efficiency.

2.3 Government policy on NDPBs

2.3.1 The main principles are that:

- the function of the NDPB is in line with Departmental/Government objectives
- a new NDPB should only be set up where it can be demonstrated that this is the most appropriate and cost-effective means of carrying out the given function;
- NDPBs should be accountable to the Assembly and to the public for the way in which they carry out their functions i.e. through their Annual Report and Accounts;
- the relationship between each NDPB and its sponsor department must be clearly defined in a way which supports the appropriate degree of delegation and independence of the NDPB, while assuring the accountable minister and department that financial management arrangements ensure propriety, regularity and value for money, and that risks will be managed;
- all NDPBs should be reviewed regularly (see Chapter 9) to ensure that the functions of the body are still required; and if so, if they are still best undertaken by the NDPB; and

- bodies which have completed their tasks or are no longer needed should be wound up.

2.4 When is a NDPB the appropriate model?

2.4.1 A NDPB may be the appropriate model:

- if the function needs to be carried out at arm's length from ministers eg. regulatory functions, decisions on funding;
- when expert advice is required by ministers on technical/ specialised issues;
- if a body needs to be set up to deal with appeals. Tribunal NDPBs are often a suitable structure for the resolution of conflicts in certain areas between the citizen and the state, or between individuals. They are generally simpler in structure, less formal and less expensive to run than the more formal parts of the court system. The tribunal body will need to comply with the Human Rights Act 1998 and, on most occasions, with Article 6 of the European Convention on Human Rights. Where Article 6 (right to a fair trial) does apply, the tribunal must be and seen to be, independent of the state. Article 6 has a broad application and applies to any determination of civil rights and obligations.

Please refer to paragraph 2.7.3 for further information on the wider government policy concerning tribunals;

- when a partnership needs to be formed between government and other interests. This is done, in some instances, by enabling other bodies to nominate members;

- when a body is required to carry out a range of commercial activities where board members need a degree of independence from government to make decisions.

2.4.2 Departments will need to consider their obligations under Section 75 of the Northern Ireland Act 1998 when making a policy decision on whether to establish a NDPB.

2.5 Counting the cost

2.5.1 Before choosing or setting up a NDPB, you will need to consider the cost implications:

- compare, against other models, items such as the total costs including board members' fees and expenses; staff costs; superannuation; accommodation; depreciation or amortisation of fixed assets and other overheads;
- think about offsetting savings in central government or other public bodies,
- look at the extra costs in central government or other public bodies arising from setting up the NDPB e.g. new requirements for policy or financial advice to ministers and new appeals machinery to safeguard the rights of those affected by the NDPB's decisions;
- examine transitional costs, e.g. the cost of legislation and the one-off extra overheads, redundancy payments and so on.

2.5.2 Before setting up an NDPB, departments should be aware that DFP Supply requires a Full Business Case to be presented for their approval.

Departments should follow the guidance contained in the Northern Ireland Practical guide to the Green Book which is available at www.dfpni.gov.uk/economic_appraisal_guidance.

2.6 Questions of accountability

2.6.1 Whilst NDPBs are distanced from government, the responsible minister is accountable to the Assembly for the degree of independence which a NDPB enjoys; for its usefulness as an instrument of government policy; and so ultimately for the overall effectiveness and efficiency with which it carries out its functions. Ministers also remain accountable to the Assembly for public money spent by a NDPB, even though bodies operate at arm's length with their own designated accounting officers. NDPBs are also accountable to the public for the services which they provide.

2.6.2 Departments will need to identify whether, in the circumstances of a particular NDPB, Ministers will need to retain control over and so be accountable to the Assembly for certain aspects of the NDPB's activities. For example:

- whether questions of policy can be left to the NDPB acting in accordance with the functions and responsibilities conferred by the instrument establishing it, or whether Ministers will need to be able to direct or modify policy;
- whether decisions in individual cases can be left to the NDPB subject only to appeal to the courts or a tribunal, or whether appeal to Ministers is needed on some matters;
- whether income will derive substantially from levies, fees or charges, whether their level needs to be specifically approved by Ministers or the Assembly, or whether this can be left to the NDPB (subject to the

restrictions set out in the NDPB's management statement or financial memorandum).

2.6.3 It is unlikely that all of the risks related to delivering a service will be transferred to the NDPB. The Minister's accountability means that some kind of assurance that risks are being well managed within the NDPB will be necessary.

2.7 The different types of Public Bodies – key characteristics

2.7.1 Executive NDPBs

2.7.1.1 Main features:

- are set up by Ministers to carry out administrative, commercial, executive or regulatory functions on behalf of the Government;
- are legally incorporated and have their own legal identity. This means that they are established by legislation, by Royal Charter, under the Royal Prerogative, or incorporated under Companies(Northern Ireland) Order 1986;
- employ their own staff;
- are allocated their own budgets;
- are not Crown bodies and do not have Crown status (apart from the few exceptions where the NDPB is specifically afforded Crown status e.g. Health and Safety Executive for Northern Ireland);
- appointments to the boards of the bodies are made by Ministers or by departments. Some may be made by the bodies themselves;

- Ministers are ultimately answerable for the performance of the bodies and for their continued existence, e.g. ministers/departments have the power (subject to Assembly approval if necessary) to wind the bodies up.

Note: There are a number of bodies that display all of the above characteristics but are not classified as NDPBs, e.g. Health and Social Services trusts. Such bodies have their own classification, i.e. Health and Personal Social Services Bodies.

2.7.1.2 Legislation is normally required to establish any new Executive NDPB that will require continuing government funding. It may also be needed to provide for particular powers or obligations.

2.7.1.3 Where there is existing legislation and Assembly authority already exists for the funding of a particular programme and it is subsequently decided to change the delivery mechanism by setting up a company limited by guarantee, which is then classified as an Executive NDPB, such legislation may not be required.

2.7.1.4 A body established under the Companies Acts, which is a Public Corporation, may be classified as central government public body and accordingly fulfil the criteria of an Executive NDPB for governance and accountability purposes. Please see Chapter 3 (Setting up a new Public Body – The Legislative Requirements) for further guidance about incorporation as a company.

2.7.2 Advisory NDPBs

2.7.2.1 Main features:

- are established by Ministers, or departments, to provide independent expert advice or to provide input into the policy-making process;
- do not usually have staff but are supported by staff from their sponsoring department;
- do not usually have their own budget, as costs incurred come within the department's expenditure;
- are formal bodies with defined membership and clear terms of reference;
- meet on a regular basis (at least once a year);
- are standing bodies (i.e. in existence for more than twelve months);
- are not part of a department or agency, or part of some other organisation;
- appointments to the bodies are made by Ministers or by officials on behalf of Ministers. Some may be made by the bodies themselves;
- those appointed to the body are independent of government and drawn from outside the public sector. (A body made up of more than two-thirds public servants is unlikely to be classified as a NDPB.); and
- Ministers are ultimately answerable for the performance of the bodies and for their continued existence.

2.7.2.2 It is likely that if the body has the above characteristics, it may be deemed to be part of the Crown. Exceptionally, advisory NDPBs can be established through primary legislation or through Companies Acts if the department intends to give the body its own legal personality. Please refer to Chapter 3 of the Guide for further detailed advice. In terms of governance and accountability, Advisory NDPBs with their own legal identity are in most respects akin to Executive NDPBs.

2.7.2.3 Before setting up an Advisory NDPB, check whether an ad hoc consultation with appropriate experts or stakeholder organisations is more suited to your needs, or whether the remit of an existing body could be expanded. Task forces, ad hoc advisory groups and reviews may display the same characteristics as those above, however the key difference is that such a group is set up at short notice (to investigate a particular issue of concern) and should be in existence for not longer than two years

2.7.2.4 If an Advisory NDPB is the most appropriate type of body, ensure that there is a clear understanding with the chair and other members about their remit and the broad time-scale for their work. This should be set out in formal terms of reference. Public bodies should be subject to regular review (see chapter 9) and disbanded when their function is no longer required.

2.7.3 Tribunal NDPBs

Guidance is being developed in respect of Tribunal NDPBs. In the meantime queries should be addressed to Neill Jackson in Machinery of Government Division, OFMDFM, tele. 88155.

2.7.4 Independent Monitoring Boards of Penal Establishments and Immigration Removal Centres (the fourth type of NDPB)

2.7.4.1 This is currently a reserved matter i.e. the responsibility of the Northern Ireland Office (NIO) as it falls within their remit of constitutional and security issues, in particular, law and order, political affairs, policing and criminal justice. Please refer to the NIO for further information.

2.7.5 Public Corporations

2.7.5.1 Main features:

- Public corporations are market bodies that derive more than 50% of their income from the sale of goods and services⁵;
- Some charge for regulatory activities where these provide a significant benefit to the person paying the fee;
- They are owned or controlled by central government⁶;
- They have substantial day to day operating independence so that they should be seen as institutional units separate from their sponsor departments.

2.7.5.2 Otherwise may have similar features to Executive NDPBs as detailed above.

⁵ ONS classify Executive Agencies that have trading fund status as public corporations. Executive Agencies are excluded from this Guidance as in administrative terms they are a constituent part of their sponsor department and are not public bodies for Cabinet Office purposes. They are subject to separate governance arrangements.

⁶ Public Corporations in national accounts includes local authority public corporations. The Agencies and Public Bodies Team is specifically concerned with central government public bodies and therefore local authority bodies are excluded.

2.7.5.3 The independent Office for National Statistics determines whether a body is classified as a Public Corporation or not. Public Corporations are defined as government controlled market bodies and can be controlled by either Central or Local Government.

2.7.5.4 A government controlled (over 50% government ownership or control by government) market body is one which produces goods and services for sale and at least 50% of its income is derived from sales rather than from grants or voted supply. The 50% criterion should be applied by looking over a range of years to avoid frequent reclassifications through minor fluctuations in one year which are not repeated or expected to be repeated in the future. Sales are defined as payments for goods and services at economically significant prices. Please refer to the following Treasury Guidance for detailed information: Classification of Expenditure Public and Private sectors: New Bodies, Partnership, Joint Ventures, Privatisation & Nationalisation.

<http://www.wga.gov.uk/pages/classification.html>

2.7.5.5 In terms of governance, Public Corporations are in most respects akin to an Executive NDPB. Generally Public Corporations are governed in accordance with their constitutional documents. However, HM Treasury require that a certain degree of information is provided to maintain an audit trail for public spending and to input data into the Whole of Government Accounts. Public Corporations will prepare their accounts in accordance with Generally Accepted Accounting Practice (GAAP). There is no requirement for Public Corporations to follow the Government Financial Reporting Manual ("FReM") although, as information will be required for the purposes of the Whole of Government Accounts, departments should encourage their Public Corporations to have regard to the requirements of the FReM in, for example, the use of modified historical cost accounting.

2.7.6 Health and Personal Social Services Bodies

2.7.6.1 Main Features:

- Established under the Health and Personal Social Services (Northern Ireland) Order 1972, 1991 or the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990;
- Monitored by Department of Health, Social Services and Public Safety;
- Chief executive accountable to a management board;
- Chair and members appointed by Ministers;
- All appointments to boards are made in line with the Office of the Commissioner for Public Appointments for Northern Ireland Code of Practice;

2.7.6.2 In terms of governance, they are in most respects akin to an Executive NDPB.

Public Bodies: A Guide for NI Departments

Chapter 3: Setting up a new Public Body – The Legislative Requirements

3. SETTING UP A NEW PUBLIC BODY - THE LEGISLATIVE REQUIREMENTS

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SUMMARY

Having decided that a new NDPB offers the best means of doing the job, departments need to start drawing up the basic proposals for the body. This chapter details what these should include.

Once the basic proposals are drawn up the need for legislation must be addressed. This chapter explains when statutory authority is required and the general principles to be drawn upon in legislation to set up a public body to ensure the correct balance between enabling the Minister to fulfil his or her responsibilities to the Assembly and giving the Public Body the desired degree of independence.

This chapter details the type of powers often conferred on a public body through legislation, including appointment and dismissal powers, the provision for winding up and the execution of documents by affixation of seal.

In some circumstances the main legislation setting up a new NDPB may be preceded by 'paving' legislation. This chapter explains what is meant by 'paving' legislation and when it should be considered. It also explains when it may be appropriate to set up a 'shadow' organisation and what financial guidance departments are required to follow if such an organisation is set up.

3.1 Introduction

3.1.1 Having decided that a new NDPB offers the best means of doing the job, you will need to start drawing up the basic proposals for the body. These should:

- define the NDPB's functions, aims and objectives;
- define the relationship with the sponsor department and accountability to the minister;
- consider how it should be constituted and whether statutory authority would be needed;
- consider its resourcing, arrangements for financial planning and control and, where appropriate, for staffing;
- for executive NDPBs employing staff, consider pension arrangements for staff;
- consider where the NDPB will be located;
- determine how performance against objectives will be measured; and decide on arrangements for monitoring;
- consider the extent of its delegated responsibilities;
- consider the size and skills required by the board; and
- consider when the body should be subject to a review or, for bodies with a finite remit, when and how the body might be wound up.

- 3.1.2 Having drawn up the basic proposals for a new Public Body and having consulted with others and established that a Public Body should be set up, you will need to explore the need for legislation to establish the body.
- 3.1.3 As a sponsor department you must first establish that you have the legal power to set up a new Public Body or you must legislate to acquire that power. In some cases the power may already exist but if, as is usually the case for Executive NDPBs, primary legislation is needed Assembly time must be secured. There may be a considerable period of time between deciding to proceed and enactment of the necessary legislation. If you plan to set up a Public Body as a company or for it to have charitable status, advice should be sought from the legal and accountancy units in your department and your Supply Officer in DFP.
- 3.1.4 The constitutional arrangements appropriate for a new Public Body will depend on its functions and the intended degree of independence from ministerial and Assembly control. If you are considering establishing a new Public Body, you should discuss these arrangements with your legal advisers at an early stage. You should also consult PSIU in Delivery and Innovation Division, your Supply Officer in DFP and (where established) your Review of Public Administration (RPA) team.

3.2 Is legislation necessary for all new NDPBs?

3.2.1 Statutory Authority

- 3.2.1.1 Where the Public Body is to be funded by the sponsoring department it is likely that statutory authority will be required. Specific statutory authority is generally required for new and continuing (i.e. lasting for more than two years) expenditure by government departments which is not *de minimis*. The current *de minimis* threshold for these purposes below which statutory authority is not required is expenditure under £0.9 million a year, but

departments must make sure that they obtain DFP approval that the *de minimis* exemption applies to any new body being set up. Any proposals for new Public Bodies of whatever type should be considered against these requirements. DFP should be consulted in any cases of doubt.

3.2.1.2 In addition, statutory authority may be needed to confer the relevant functions on the Public Body. In particular, where a department is hiving off one of its own statutory functions, legislation will usually be needed to amend the underlying legislation. The underlying principle - that departments should not generally hive off their functions to Public Bodies without specific statutory authority – applies generally to all types of hiving off and irrespective of whether the body is a new or an existing Public Body. Departments should discuss all such proposals with their legal advisers.

3.2.1.3 There are a number of other features of a Public Body which will require legislation. For example, if the body is to have powers to impose charges or fees (otherwise than charges for services provided) legislation will be needed. Similarly, if the body is to have any powers over and above those of a normal company e.g. powers of entry, power to require the provision of information, legislation will generally be needed. If the body is to have powers to make binding judgements in a dispute, legislation will also be needed in the vast majority of cases.

3.3 Executive NDPBs and Public Corporations

3.3.1 Primary legislation

3.3.1.1 Most Executive NDPBs require legislation, in order to confer functions on the body, and also for reasons of government accounting. Where the body is created by legislation it will usually be incorporated as a body

corporate by the founding legislation, although sometimes functions are conferred onto a body that is incorporated in a different way.

3.3.1.2 It should be noted that it is the Office of National Statistics who are responsible for determining whether a public body (irrespective of its legal status) fulfils the criteria of a Public Corporation. Please see Paragraph 2.7.5 for further information.

3.3.2 Incorporation under the Companies (NI) Order 1986

3.3.2.1 An executive NDPB may be incorporated as a company by registration under the Companies (NI) Order 1986. Companies may be limited by guarantee or by shares, or they may be unlimited. Supervision of companies is the responsibility of the Department of Enterprise, Trade and Investment (DETI), who can advise departments on the features and requirements of alternative forms of incorporation. Examples of NDPBs which are companies limited by guarantee include the Strategic Investment Board Limited, Ulster Supported Employment Limited and Ilex Urban Regeneration Company.

3.3.2.2 In general terms the advantages of incorporation are that a body corporate is an independent legal entity, separate from its shareholders or members, and the liability of the members to repay debts of the company is limited.

3.3.2.3 The Sponsor Department may provide personal liability for Board Members/Directors and should issue suitable indemnities consistent with the approved text provided in the “Code of Practice for Board Members of Public Bodies” issued under cover of FD (DFP) 03/06.

3.3.2.4 Public Bodies incorporated as companies limited by shares are rare and are set up expressly for trading purposes. Companies limited by

guarantee are normally formed for charitable or for other non-trading purposes, although they may carry out some trading activities. Many Public Bodies constituted in this way are financially self-sufficient and do not receive grants-in-aid. Setting up a Public Body as either a limited company or a charity may have tax implications. Departments should therefore consult HM Revenue and Customs on the tax implications before establishing Public Bodies as limited companies or charities.

3.3.2.5 Where specific legislation is not required, incorporating a body as a company can be relatively easy and straightforward. It is likely to be appropriate where:

- a Public Body requires corporate status to give it legal personality but departmental expenditure is insufficient to justify new legislation;
- a corporate body is needed temporarily (eg for a short-term task such as a collaborative promotional venture which would not warrant legislation) or provisionally pending a decision whether it should continue on a statutory basis; or
- a body is set up as a limited company prior to privatisation, with assets transferred to it by enabling legislation.

3.3.2.6 Incorporation imposes certain statutory obligations: i.e. the Companies Acts require registration of a Memorandum and Articles of Association with the Registrar of Companies, and the making of an annual return. Statutory requirements also govern the form of the accounts, the holding of an annual general meeting and other matters. Failure to comply with many of the statutory obligations constitutes an offence on the part of the company and each of its officers who was knowingly party to the default. Basic guidance on the registration requirements for forming a new

company can be found in the *Guidance Booklet on Company Formation (NIF1)* available at www.detini.gov.uk/cgi-bin/moreutil?utilid=75.

- 3.3.2.7 Until the relevant sections of the Companies Act 2006 come into force – expected in April 2008 – Public Bodies established under the Companies (NI) Order will continue to appoint their own external auditors in accordance with the requirements of the Companies (NI) Order. In the current circumstances, the Management Statement and Financial Memorandum should provide for the audit reports to be supplied to the sponsor department.
- 3.3.2.8 However, once the Companies Act 2006 comes fully into force, the Comptroller & Auditor General (C&AG) will become eligible to audit all Public Bodies established under the Companies (NI) Order. Profit making companies will be able to appoint the C&AG as auditor and non-profit making companies will have the C&AG formally designated as auditor under a proposed amendment to the Audit and Accountability (NI) Order 2003. DFP will be in touch with sponsor departments in due course explaining the procedures and processes in detail.
- 3.3.2.9 Departments will need to devise suitable formal arrangements to ensure that ministers have sufficient information about, and as necessary control over, the company's activities. Suitable methods are: agreement on the terms of the Memorandum and Articles, ministerial appointments to the board of directors, departmental representation in company membership and conditions attaching to a grant-in-aid. In addition, a Management Statement/Financial Memorandum should be drawn up and agreed, setting out the respective responsibilities, rights and obligations of the minister and the company.
- 3.3.2.10 Departments considering incorporation should seek legal advice at an

early stage on such matters as the recovery of the value of publicly funded assets and the implications under companies' insolvency legislation of departmental control over the companies' activities.

3.3.2.11 Where a public body is set up under the Companies (NI) Order, its accounts must comply with UK GAAP and have regard to the guidance issued by the Treasury such as the Government Financial Reporting Manual, Government Accounting and Dear Accounting Officer letters. The accounts should be signed by both a director and the Accounting Officer of the body -unless the latter is also a director in which case he or she may act as a sole signatory. Please refer to Government Accounting Rules for detailed guidance. Sponsor Departments may wish to refer to the Government Financial Reporting Manual for further guidance in respect of interpretation of the Companies Acts' requirements.

3.4 Advisory NDPBs

3.4.1 Advisory bodies are normally set up by administrative action, although legislation will be required if its activity will involve continuing Government funding for which Assembly authority is needed. Their staff support and accommodation are normally provided by the departments whose Minister they advise and their expenses and other support costs are carried on the Estimate for the relevant departmental functions. The minister concerned should inform the Assembly of his or her action in establishing an advisory body; a ministerial statement is usually sufficient. Where, exceptionally, an advisory body needs to enter into legal relations with a third person (e.g. if it is to appoint staff or own property), it would be advisable to give it a legal personality. There are a number of ways to do this. Establishing the NDPB as a company will often be the most convenient approach (see 3.3.2).

3.4.2 Departments are advised to seek legal advice at an early stage on the legal status of their advisory bodies. Departments will need to determine if they wish to establish the body as part of the Crown or as an unincorporated/incorporated body with a separate legal personality. In terms of governance and accountability arrangements, Advisory NDPBs with a separate legal identity should comply with the guidance relating to Executive NDPBs.

Crown status and implications

3.4.3 If the body is established as a Crown body and it also forms part of the Home Civil Service (as clarified by legal advice in each particular case), the requirements of the Civil Service Order in Council must be complied with. Therefore if any new employees (rather than seconded employees from the sponsor department) are taken on, they should be recruited in accordance with the requirement of fair and open competition and the appointments should be on merit. The Board members would be office-holders (statutory or non-statutory) and it should expressly be made clear that they are not employees of the NDPB or sponsor department. Departments should take legal advice on the status of the Board members.

3.4.4 It should be noted that if the Advisory NDPB is to be part of the Crown, reports, documents and other works produced by the NDPB will be subject to Crown copyright. Responsibility for the management of Crown copyright rests with the Controller of Her Majesty's Stationery Office, who operates within the Office of Public Sector Information (OPSI). Further information of the management of how Crown copyright is managed can be found on OPSI's website at <http://www.opsi.gov.uk/click-use/index.htm>⁶

3.5 Tribunal NDPBs

- 3.5.1 Tribunals are generally statutory bodies usually set up in the context of a wider legal framework establishing citizens' rights and obligations.
- 3.5.2 Although tribunals exercise their functions entirely independently, a government department will normally be responsible for providing administrative support. The composition and procedure of tribunals vary greatly.
- 3.5.3 Current Government policy on Tribunals is detailed in Chapter 2 of this Guide.

3.6 Royal Commissions

- 3.6.1 New Public Bodies should not in general be established as Royal Commissions. Royal Commissions are set up under the Royal Prerogative and are more formal and prestigious than advisory bodies set up by ministerial administrative action.
- 3.6.2 They are set up by issuing to the Commissioners a Royal Warrant by the Sovereign, through the relevant Secretary of State. Whilst the Crown Office in the Department for Constitutional Affairs (Grant Bavister on 020 7219 2632) undertakes work on the Royal Warrants for setting up and amending Royal Commissions, it does not offer guidance on the practicalities of setting up Royal Commissions.
- 3.6.3 Although there are instances of standing Royal Commissions with executive functions, the Royal Commission approach to establishing a permanent, executive body can give rise to difficulty in establishing, for

⁶ 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.

instance, clear financial relationships between the Commission and its 'sponsor' department.

3.7 Royal Charter

3.7.1 A Royal Charter is a charter of incorporation which confers independent legal personality on a body and defines its objectives, constitution and powers to govern its own affairs. Incorporation by Royal Charter is a prestigious way of acquiring legal personality and reflects the status of a body. It is usually confined to universities and colleges, professional and regulatory bodies, and bodies like the BBC. The terms of the individual Charter determine how far a chartered body is independent from government. Disbanding a body established by Royal Charter will probably require an application from its members. The Privy Council Office should be consulted on procedure. (See <http://www.privycouncil.gov.uk/output/Page26.asp> or telephone 020 7210 1030).

3.7.2 A Royal Charter does not entitle the body concerned to a grant-in-aid from public funds and many receive none. Insofar as a body with a Royal Charter does receive such finance, the department giving the grant-in-aid should impose exactly the same conditions as apply to any other outside body which is similarly financed.

3.8 Crown Status

3.8.1 The Health and Safety Executive for Northern Ireland is the only NDPB with Crown Status in Northern Ireland. No new NDPBs should be designated 'Crown', and legislation to establish a new NDPB should make clear that the body is not part of the Crown. NDPBs not having Crown status means that their staff are not civil servants (see chapter 5).

3.8.2 NDPBs may not use the Royal Arms (or the Royal Crown which can be regarded as an equivalent, but simpler device) for official badges, on stationery, vehicles and official publications.

3.9 Charitable Status

3.9.1 It is hoped that the Northern Ireland Charity Commission (NICC) and the Northern Ireland Register of Charities (NIROC) will be established in 2007. The NICC may be set up in shadow form earlier, but will not have statutory powers until the legislation is passed. Until then, the charity authority for NI is the Department for Social Development (DSD) - the contact point is Charities Branch, address below.

Charities Branch
Voluntary & Community Unit
Department for Social Development
3rd Floor
Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB
Tel: 028 90 829 412

3.9.2 Guidance on charitable status is contained in the DSD leaflet "Northern Ireland Charities: A Guide For Trustees" available at http://www.dsdni.gov.uk/guide_for_trustees.doc.

3.9.3 Departments are advised to consult DSD at an early stage if they are considering the creation of an NDPB with charitable status.

3.10 General principles – powers of the body and ministerial powers

- 3.10.1 In setting up a Public Body, Departments should ensure that they strike the balance between a) enabling the minister to fulfil his or her responsibilities to the Assembly and b) giving the Public Body the desired degree of independence. The balance will depend largely on the nature of each Public Body's functions and on the reasons for distancing these from government.
- 3.10.2 Conferring functions on a Public Body involves recognition that a degree of independence from departments (in carrying out those functions) is appropriate. Nevertheless, ministers may be answerable to the Assembly for the failure to take controls that are necessary or advisable, especially in the case of a Public Body which is to receive public funds. Ministers may also be answerable if, having taken responsibility by establishing such controls, the department fails to use the controls properly.
- 3.10.3 It may be appropriate to provide for certain controls other than through legislation: for example, through conditions attached to the issue of grant-in-aid, or in a formal document of agreement between the department and the body such as a Management Statement and Financial Memorandum (MSFM). This is the normal course for detailed control arrangements likely to change over time. Such changes can be made more easily if detailed arrangements are not embodied in legislation. A general provision in a Bill to the effect that the sponsor department may, with the consent of DFP, pay grant-in-aid to the body subject to terms and conditions determined by the sponsor department, would be an effective way of achieving this.
- 3.10.4 Departmental powers over a Public Body (statutory or otherwise) should ideally rest with one sponsoring department. If two or more departments

are involved there is a risk of uncertainty about the precise division of responsibilities in serving two or more 'masters'. In certain cases, however, shared departmental responsibility may be unavoidable. Legal advice should be sought in all such cases.

- 3.10.5 Except where the minister is not a Secretary of State, statutory powers are normally vested in the Secretary of State at large. It will generally not be appropriate to name individual Secretaries of State in statute unless there is a particular reason for limiting performance to a named Secretary of State. The precise allocation of responsibilities should, however, be decided at an early stage and made clear during the passage of the legislation if there is any room for doubt.

3.11 Powers and Obligations of the Body

- 3.11.1 The legislation or instrument creating the Public Body, or conferring the relevant functions on it, should define clearly the Public Body's functions, the method of funding, and other specific powers and obligations. Provisions for the following are frequently included:

- power to appoint staff;
- power to pay salaries and allowances;
- pension provision e.g. admission to the Principal Civil Service Pension Scheme (Northern Ireland) (PCSPS(NI)) via Schedule 1 of Superannuation (Northern Ireland) Order 1972;
- power to raise money by levies or charges, and/or to borrow and lend;
- enforcement powers where appropriate;

- power to acquire property to accommodate the body's staff and activities;
- a general power for the sponsor department, with the approval of DFP, to pay grant-in-aid, subject to terms and conditions determined by the sponsor department;
- power to create subsidiary organisations;
- obligations to make suitable external audit arrangements (i.e. in line with the arrangements announced by the Government in the light of Lord Sharman's review of audit and accountability in central government – see Chapter 6) and the proposed Company Law Reform Bill to submit accounts by a certain date and to lay audited accounts before the Assembly and to publish them;
- the obligation to inform the Assembly of its activities through an annual report;
- a declaration of whether members of the body are disqualified from membership of the House of Commons or the Assembly;
- an obligation to comply with the provisions of the Public Records (NI) Act 1923;
- an obligation to comply with the provisions of the Freedom of Information Act 2000. If it is decided to make the body subject to the Freedom of Information Act 2000, an amendment to Schedule 1 of the Act will be needed;
- an obligation to set fees and charges for any facilities or services in accordance with the Treasury's Fees and Charges Guide: 'Selling into Wider Markets: A Policy Note for Public Bodies and Charges for

Information: When and How'. In setting fees for information requested under either the Freedom of Information Act, the Environmental Information Regulations or the Re-Use of Public Sector Information Regulations, bodies must follow the respective regulations and guidance notes issued for public bodies; and

- whether the body should be designated under the Official Secrets Act 1989. The Act makes unlawful disclosure of certain limited categories of information (for example security and intelligence, defence, international relations, and information which may lead to the commission of crime) a criminal offence. The Act applies explicitly to the staff of a small number of NDPBs that are listed in the Act.

3.12 Appointment and Dismissal powers

3.12.1 The statute or instrument creating the NDPB or conferring the relevant functions on it, should normally provide suitable powers of appointment and dismissal over the Chairman and board members. Grounds for dismissal normally include criminal behavior, poor performance and other grounds which make members unable or unfit to discharge the functions of the body. The latter may include repeated non-attendance at Board meetings without reasonable excuse, undischarged bankruptcy or sequestration of estate, a deed of arrangement with creditors, or being guilty of misbehavior or conflict of interest. (The legislation should not include a reference to incapacity by reason of physical or mental illness since this formulation has been criticised in the House of Lords as being offensive to people with disabilities.) Except in the case of Tribunal NDPBs, the statute should also provide for a power for the removal from office without assigning cause, on the giving of notice by the sponsor department, with an associated power for compensation to be paid. (Such

a provision will not generally be appropriate in the case of Tribunal NDPBs where it is likely to be incompatible with the independence and impartiality of the tribunal members for them to be dismissible at will by the sponsor department). Guidance on all matters concerning public appointments can be found in the Central Appointments Unit's publication: 'Making Public Appointments – A Best Practice Guide for Departments in Northern Ireland' available on Knowledge Network Central or see The Commissioner for Public Appointments for Northern Ireland Code of Practice for Ministerial Appointments to Public Bodies at: www.OCPANI.gov.uk/codemay07new.pdf

3.12.2 The following are some examples of additional provisions that may be needed:

- a requirement that the body exercise particular functions subject to guidance from the sponsor department, and/or in accordance with plans approved by the sponsor department;
- general or specific ministerial powers of direction;
- exercise of certain financial powers – e.g. borrowing or capital expenditure – to be subject to the approval or consent of the sponsor department and DFP;
- careful consideration should be given to the size and composition of the board – e.g. some posts may need to be classed as “expert posts”;
- staff numbers, terms and conditions, and pension arrangements to be subject to departmental and DFP approval where PCSPS(NI) applies; and

- powers to require the production of information which ministers need in order to answer satisfactorily for the body's affairs.

3.12.3 The nature of the controls will depend both on the NDPB's functions, and on the closeness of supervision which departments wish to exercise. In particular, the controls relating to staff numbers, terms and conditions and superannuation arrangements will not generally be appropriate for bodies which receive less than 50% of their funds from government. For all bodies in receipt of government funds, more detailed provisions for financial control and the provision of information are likely to be included in the conditions attached to the grant-in-aid.

3.12.4 Particular care must be taken when setting the terms of appointment and dismissal of members of a Tribunal NDPB which is subject to Article 6 of the European Convention of Human Rights so as to ensure that the independence of the body is not called into question. Legal advice should be sought on this point.

3.13 Paving legislation

3.13.1 In some circumstances the main legislation setting up a new NDPB may be preceded by 'paving' legislation. This legislation would be designed to allow or ensure that the necessary preparatory work is carried out in advance of Royal Assent to the main legislation. It would normally need to include powers for expenditure to be incurred by the department or other existing organisations (e.g. NDPBs, local authorities) for which statutory authority would not otherwise be available; and it might require organisations, which would not otherwise do so, to take certain preparatory steps to supply information and to safeguard assets. The paving legislation might also make provision for setting up a 'shadow body' in the form of a statutory advisory or preparatory Committee to assist and

advise on the preparations for setting up the NDPB. Please see Paragraph 3.14.2.

3.13.2 Paving legislation would, therefore, be worth considering where the proposals involve the transfer of functions, assets, liabilities or staff from existing organisations to the new NDPB; where there is the possibility that such organisations may not co-operate; and where early expenditure beyond current powers is required. Where paving legislation is not possible, the scope for incurring 'new services' expenditure on preparing for the establishment of the new body prior to Royal Assent to the main legislation will be limited. The finance unit of the sponsor department should consult DFP at an early stage in such cases.

3.14 Main legislation

3.14.1 The main legislation setting up a Public Body will normally come into force at Royal Assent or following a Commencement Order. Depending on the legislation, the Public Body will formally come into existence as soon as a quorum of Board members has been appointed and in some cases the body will then possess its full powers. In others it will take on its main functions and take over staff, assets, and liabilities at a later 'vesting' date (or dates) either stated in the main primary legislation or determined by secondary legislation (statutory instrument). This vesting process will normally be used where a new Public Body is taking over functions from one or more existing bodies (the department, another public body etc). A Public Body which has come into being but not yet reached vesting date, is referred to as a 'skeleton body'.

3.14.2 Whatever the exact legislative framework, prior to the Public Body having a legal existence it may be appropriate to establish, in the absence of

paving legislation, a non-statutory 'shadow' body to advise on the setting up of the body. Please refer to 4.3 for further information.

3.15 'Shadow' organisation

3.15.1 By definition, statutory bodies (which require legislation to be established) cannot have a corporate legal existence until the enabling legislation has been brought into force. From time to time, however, the question arises whether departments may designate prospective members of the proposed board and bring them together on an informal basis, for example as an organising committee, in advance of legislation. The rationale for establishing a 'shadow' body is that it allows individuals who will have a future role in the running of the NDPB to contribute to decisions which will have a bearing on its role, responsibilities and management.

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

3.15.3 Relevant advice is provided in *Government Accounting Northern Ireland* section 2.3 which makes it clear that expenditure on the new body,

including the costs associated with the recruitment and appointment of board members and the Chairperson should normally be delayed until the relevant Bill has received Royal Assent. It is, however, possible, in exceptional cases, for such expenditure to be incurred after Second Stage in the Assembly has been successfully completed through the use of an advance from the Northern Ireland Consolidated Fund (*Government Accounting Northern Ireland* section 11.6). To obtain such an advance from DFP the department would be required to justify the expenditure in terms of urgency in the public interest; and there should be near certainty that the Bill would receive Royal Assent. Departments should consult DFP about any proposals to set up a shadow organisation of this type.

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

3.16 Provision for winding-up

- 3.16.1 Departments may wish to consider if the legislation setting up a new Public Body should contain powers to permit winding up at a later date and for finalising and auditing the closing accounts, if a fixed lifetime is not established at the outset. Departmental legal advisers would need to be involved in this process. Difficulties have occurred in past cases where sponsor Departments have not been able to wind up statutory bodies when their work has been completed due to problems in securing a Parliamentary slot to amend the primary founding legislation. The bodies therefore continue to exist as legal entities even though there is no longer a requirement for them

3.17 Execution of documents by affixation of seal

- 3.17.1 Those drafting founding legislation for a Public Body should consider whether to include specific provision for the proposed body to have an official corporate seal. Seals can be said to be necessary because there are legal distinctions between documents entered into under seal such as deeds, and other documents not entered into under seal but entered into 'under hand'. With certain exceptions, all conveyances, transfers, mortgages, leases and surrenders of legal estates or interests in land must be by deed. The grant of a power of attorney must also be by deed. A deed is also necessary at common law in certain other cases, for example, a release or a discharge of a debt or liability.
- 3.17.2 Where a Public Body is incorporated by statute or royal charter, there remains a common law requirement to execute relevant documents under seal. There is, therefore, no necessity to provide for the Public Body to have a seal by express provision but such a provision may be considered desirable particularly so as to set out a procedure pursuant to which the seal is to be used. For example, that the seal should be authenticated by the Chief Executive or by a member of the Board or some other person who has been authorised for that purpose. Public Bodies registered under the Companies (NI) Order 1986 may, however, execute a document as a deed either by affixing its common seal or by signature of two officers (either two directors or a director and the company secretary). If desired, an express statutory provision to this effect could allow a Public Body that was not registered under the Companies (NI) Order 1986 to execute a document as a deed in a similar way.

Public Bodies: A Guide for NI Departments

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

4. SETTING UP A NEW EXECUTIVE NDPB - THE PRACTICAL TASKS

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SUMMARY

This chapter details the practical steps departments should take to set up an Executive NDPB and is based around the sound principles of project management. It covers establishing a time frame, putting together a project or sponsor team. There is detailed guidance on establishing the parameters of the NDPB, what to do about the location and accommodation for the body, what to put in place in terms of good practice with regard to resource planning and management arrangements.

This chapter gives guidance on the initial financial management requirements such as the designation of the Accounting Officer and the preparation of a corporate plan and annual operating business plans and the Management Statement/Financial Memorandum. It also covers audit and risk management requirements, appointing board members and staff and the requirements of openness under the Public Records Act, the Freedom of Information Act and the jurisdiction of the Northern Ireland Ombudsman. There is also guidance on Sustainable Development, engaging with the voluntary and community sector, Regulatory Impact Assessments, the government's Enforcement Concordat, Fraud and Internal Audit and the Code of Good Practice for Corporate Governance.

In this chapter departments will also find guidance on the practical steps involved in setting up a 'Shadow' NDPB.

4.1 Project management

4.1.1 Establish a time frame

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

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

4.1.1.3 It will also be important to bear in mind the impact of the founding legislation on the start-up phase of the NDPB. Consideration will need to be given as to how much of a lead in time will be needed between Royal Assent and full commencement of the Act. Much will depend on whether secondary legislation must be prepared under the Act before full commencement and what other steps (e.g. hiring of staff) are needed before the Act can fully be brought into force. In some cases, partial commencement of the Act (e.g. the provisions which establish the NDPB) may be an option. Section 16 of the Interpretation Act (Northern Ireland) 1954 (anticipatory exercise of powers conferred by an Act which has not yet been brought into force) may also be invoked. In other cases, consideration will have to be given to Section 2.3 of *Government Accounting Northern Ireland (GANI)*.

4.1.2 Establish a project team/ sponsor team

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

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

4.1.2.3 Early on the project team should establish links with the department's finance unit, legal advisers, the relevant DFP Supply Officer, PSIU in Delivery and Innovation Division in DFP, Internal Audit and relevant outside organisations. Working groups (internal and/or involving outside interests) can be formed to address and discuss specific topics (e.g. pensions, finance, the Management Statement/Financial Memorandum etc).

4.2 NDPB Arrangements

4.2.1 Establish the parameters of the NDPB

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

- define the functions, aims and objectives;
- define the relationship with the sponsor department and accountability to the minister;
- consider how it should be constituted and whether statutory authority would be needed;
- consider its financial management requirements (accountability, planning, funding and control);
- ensure that the NDPB has adequate accounting and reporting systems to enable it to produce auditable accounts from the day of establishment;
- for NDPBs with executive functions employing staff, consider pension arrangements for staff. Note that pensions for Board Members are set separately from those for staff and subject to specific Treasury guidance (see 4.2.7.5);
- consider where it will be located;
- agree an accommodation strategy;
- determine how performance against objectives will be measured and decide on arrangements for monitoring;
- consider the extent of its delegated responsibilities;
- consider the size and balance of the board;
- establish what assets are to be transferred/acquired; and
- consider when the NDPB should be subject to a review or, for bodies with a finite remit, when and how they might be wound up.

4.2.2 Accommodation and Location

4.2.2.1 When a new NDPB is set up, the sponsor department may provide it with temporary accommodation in buildings it occupies itself and provide other services (furniture, stationery etc.) from its own resources, but longer-term arrangements should be introduced as soon as possible. Allowing a new NDPB free access to departmental accommodation or equipment will trigger the need for Assembly approval (either through Estimates or through the Minute Procedure) if one or more elements of the 'gift' is worth more than £250,000 see DAO(DFP) 10/05 and *Government Accounting Northern Ireland* (GANI) 25.2 'Gifts made by Departments' for detailed information.

4.2.2.2 It is important that the impacts of accommodation on the environment and surrounding communities are taken into account, and that Government procurement policies are followed, including requirements on timber, paper, waste services and energy efficiency. Guidance on procurement policy can be found on the Central Procurement Directorate's (CPD) website at www.cpdni.gov.uk and chapter 22 of GANI.

4.2.2.3 Sponsor departments should consult DFP Office Estates and Building Standards Division (OBD) for help and advice on matters to do with government property, including sustainable construction, refurbishment and procurement.

4.2.3 Resource Planning and Management Arrangements

4.2.3.1 An Executive NDPB should have clear internal financial and management arrangements. NDPB managers should have: clear objectives and the means to measure output and performance against them, clear responsibility for best use of resources including output and value for

money; and access to the necessary management information, training and expert advice.

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

4.2.4 Financial Management Requirements (Detailed Guidance can be found in Chapters 6 and 7)

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

4.2.4.2 Annual Reports and Accounts - The authority e.g. legislation establishing the Executive NDPB will normally provide for the accounts to be in a form directed by the sponsor department with the approval of DFP. As a matter of policy NDPBs should produce a combined report and accounts. Please

refer to Chapter 6 (Financial Management: Accountability) for detailed guidance concerning the content and procedure for presenting the report and accounts to Parliament and publishing.

4.2.4.3 Preparation of Management Statement and Financial Memorandum - The terms and conditions which a sponsor department attaches to the funding of an Executive NDPB and the arrangements for setting its financial and other performance targets should be clearly set out in its Management Statement / Financial Memorandum (MSFM). A model MSFM has been produced to assist sponsor departments in devising a complete draft of a formal document that can be agreed between the department and the NDPB. This model is set out in GANI at annexes 8.4 and 8.5 available at www.aasdni.gov.uk/pubs/Gani/GANI_Chapter8v2.doc .

4.2.4.3.1 The **management statement** sets out the broad framework within which the NDPB will operate. It includes information on aims, objectives and targets of the NDPB; the respective roles and responsibilities of the department and the NDPB; the planning, budgeting and control arrangements; staff management; risk management arrangements; and how the NDPB is to account for its performance.

4.2.4.3.2 The **financial memorandum** complements the management statement and sets out the detailed financial framework within which the NDPB operates. The financial memorandum covers, among other things, the NDPB's funding arrangements (including the conditions attached to the receipt of grant-in-aid, and the handling of receipts from charges and other sources of revenue); the financial delegations within which the NDPB can spend; budgeting procedures; banking; and expenditure on staff.

4.2.4.3.3 The issues covered in the MSFM should be addressed at an early stage, and might initially be set out in draft form. The MSFM is normally drafted

by the sponsor unit in the department in close consultation with the NDPB. It should be approved by DFP and copied to PSIU.

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

4.2.4.4.1 The corporate plan is essential to the effective management of the NDPB and the focus of the sponsor department's operational relationship with an NDPB. The corporate plan serves as a focus for the discussion of strategic options; a means of setting targets and allocating resources; and a means of reviewing performance. It also provides the mechanism through which NDPBs may bid for additional resources through the public expenditure review process. The corporate plan should also include agreement on how the NDPB will provide assurance to its sponsor department that risks are being well managed.

4.2.4.4.2 New NDPBs starting up mid-year should have an interim corporate plan for the current and in some cases the immediately forthcoming financial year. Larger and more complex new NDPBs may take two to three years to develop their strategies fully across the whole range of their functions, and should therefore concentrate initially on tasks critical to their setting up, such as agreeing an interim budget.

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

NDPB's corporate strategy are agreed. DFP may wish to see and agree Corporate and Business Plans.

4.2.4.6 Preparation of budgets - NDPB expenditure scores in departmental budgets and as such the same principles apply to NDPB budgets as departmental budgets.

4.2.4.7 Performance Targets - These should be incorporated in the overall planning process and in the budgeting and management information systems.

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

4.2.5 Audit Requirements

4.2.5.1 Internal Audit - Executive NDPBs should make arrangements for internal audit in accordance with the Treasury's Government Internal Audit Standards issued under cover of DAO(DFP) 03/02. Unless agreed otherwise by the sponsor department, all Executive NDPBs should set up an Audit Committee as a committee of the Board with a primary reporting line to the Board. Sponsor Departments should have a right of access to details of the internal audit arrangements, strategy, programme and reports

4.2.5.2 Appointment of external auditors - For new Executive NDPBs with their own founding legislation, the statute should provide for the appointment of the Comptroller and Auditor General as the external auditor. For NDPBs

which are established under the Companies Order and which therefore for the time being appoint their own external auditors, the MS/ FM needs to provide for audit reports to be supplied to the sponsoring department.

4.2.6 Risk Management

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

4.2.6.2 NDPBs should follow the principles of Risk Management as set out in “Orange Book” issued under cover of DAO(DFP) 15/05.

4.2.7 Board Members

4.2.7.1 Appointments to the Boards of Public Bodies should be made in accordance with the Code of Practice issued by the Commissioner for Public Appointments for Northern Ireland and available at www.OCPANI.gov.uk/codemay07new.pdf

4.2.7.2 The Central Appointments Unit in OFMDFM publishes policy and best practice guidance for departments on the appointment and management of board members for public bodies. “*Making Public Appointments – A Best Practice Guide for Departments in Northern Ireland*” is available from Knowledge Network Central or the Central Appointments Unit - 028 9052 8193.

4.2.7.3 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. DFP formally referred to a revised Code of Practice for Board Members of Public Bodies issued by the Cabinet Office in FD(DFP) 03/06.

4.2.7.4 The sponsor department should ensure that it approves the Code of Practice for Board Members and the terms of reference, composition, and membership for the audit committee, taking account of the Treasury *Audit Committee Handbook* issued under cover of DAO(DFP) 07/07.

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

http://www.hm-treasury.gov.uk/media/8/0/pensions_board_mem_230604.pdf

4.2.8 Staff (Detailed Guidance can be found in Chapter 5)

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

4.2.8.2 Guidance on the initial staffing structure for a new NDPB, and on other staffing issues, including pension and compensation arrangements, should be sought early in the setting up process (Civil Service Pensions at DFP can provide advice).

4.2.8.3 Recruitment to new posts should be by fair and open competition. The policy on recruitment can be found at www.nicsrecruitment.gov.uk.

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

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

4.2.9 Openness

4.2.9.1 The Public Records (NI) Act 1923 declares the records of Northern Ireland Non-Departmental Public Bodies to be public records under the charge and superintendence of the Department of Culture, Arts and Leisure. This Act applies to “any authority or office in Northern Ireland with respect to which the Parliament of Northern Ireland has power to make laws”. Under devolution arrangements this means that new NDPBs – carrying out functions which concern “transferred” matters and also “reserved” matters with the Secretary of State’s consent – are automatically covered by the provisions of the Public Records Act (NI) 1923.

4.2.9.2 However, it is recommended that Orders-in-Council setting up new NDPBs make reference to the fact that they are covered by the provisions of the Public Records Act (NI) 1923.

4.2.9.3 Each NDPB covered by Freedom of Information Act 2000 (FOIA) is required to have its own publication scheme. Virtually all existing NDPBs are covered by FOIA and new NDPBs should also be covered. Bodies subject to the FOIA are listed in Schedule 1 to that Act. When setting up a

NDPB, you should notify the unit in your department that is responsible for FOI, for them to make arrangements for the new NDPB to be listed in the FOIA, where necessary.

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

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

4.2.10 Northern Ireland Ombudsman

4.2.10.1 All new NDPBs set up by statute should be made subject to the jurisdiction of the NI Ombudsman unless there are exceptional circumstances for not doing so. The NI Ombudsman can investigate complaints from the public about alleged ‘maladministration’ leading to injustice. The necessary provisions should be included in the statute. Further guidance on the role of the Ombudsman can be found at paragraph 8.4.3.

4.2.10.2 When considering whether a NDPB should be brought within the NI Ombudsman’s jurisdiction advice should be sought from the Ombudsman’s office regarding the appropriateness of bringing the body

under his remit. PSIU can also offer advice regarding the appropriate legislation.

4.3 Shadow NDPBs

4.3.1 By definition, statutory bodies (which require legislation to be established) cannot have a corporate legal existence until the enabling legislation has been brought into force. From time to time, however, the question arises whether departments may designate prospective members of the proposed board and bring them together on an informal basis, for example as an organising committee, in advance of legislation. The rationale for establishing a “shadow” body is that it allows individuals who will have a future role in the running of the NDPB to contribute to decisions which will have a bearing on its role, responsibilities and management.

4.3.2 A shadow body may be set up as a corporate body with its own legal existence under specific legislation (paving or other). Alternatively, and more usually, it may be set up as a non-statutory body which has no separate legal existence, is unable to enter into contracts on its own behalf and is thus technically part of the department. As a consequence of the rules applying to expenditure on ‘new services’ (see paragraph 4.3.5 below) prior to the passing of the relevant legislation, non-statutory shadow bodies will be far more constrained in the preparatory work which they can carry out than shadow bodies which have been established under paving legislation giving them specific statutory powers to prepare for the creation of the new body. The timing of the establishment of a shadow body will depend on the legislative timetable, and the anticipated work programme to set up the new body. The advice offered here only applies once there is a high degree of certainty at the Second Stage in the Assembly.

- 4.3.3 Relevant advice is provided in *Government Accounting* section 2.3 which makes it clear that expenditure on the new body, including the costs associated with the recruitment and appointment of board members and the Chair, should normally be delayed until the relevant Bill has received Royal Assent. It is, however, possible in exceptional cases for such expenditure to be incurred after the Second Stage in the Assembly through the use of an advance from the Northern Ireland Consolidated Fund (GANI section 11.6). To obtain such an advance from DFP the department would be required to justify the expenditure in terms of urgency in the public interest; and there should be near certainty that the Bill would receive Royal Assent. Departments should consult DFP about any proposals to set up a shadow organisation of this type.
- 4.3.4 It is important to note that shadow arrangements have, in the past, been subject to some criticism in Parliament, especially where the proposal to set up the NDPB is controversial on the grounds that such action can be interpreted as prejudging Parliament's intention.
- 4.3.5 The sponsor department must consider carefully with DFP any proposals to set up a shadow board in light of the 'new services' rules in GANI section 2.3. After enactment, Section 16 of the Interpretation Act (Northern Ireland) 1954 can be used to appoint members of an NDPB in advance of a Commencement Order.
- 4.3.6 In the case of a non-statutory shadow body, these appointments will be on a consultancy basis and, prior to appointment, consideration will need to be given to: the terms of reference for the shadow body; the terms and conditions of appointment, including fees and time commitment expected; and making it clear from the outset to the individuals concerned (so that the prospect of compensation does not arise) that, if, for any reason, the

legislation were to fail, the appointments would probably have to be cancelled.

- 4.3.7 It should be noted that if the body falls within the Office of the Commissioner for Public Appointments Northern Ireland's (OCPA NI), remit and if the intention is that the board members of the shadow body will automatically sit on the final board, it would be "best practice" to follow OCPA NI procedures when making shadow ministerial appointments even though OCPA NI has no remit until enactment of the legislation establishing the body.
- 4.3.8 The terms of reference should be clear and should cover: in the case of a non-statutory shadow body the essentially advisory role of the body in its shadow form; the constraints on its work and expenditure imposed by the constitutional proprieties; the balance of the work between policy issues connected with the work of the future NDPB and the organisational issues in setting it up; a clear timetable of expected work and the outputs; the relationship between the department and the shadow body; and the arrangements for the secretariat to support it.
- 4.3.9 The following issues might be covered by the shadow body: consultation on the strategic framework for the NDPB (aims and objectives, management statement, financial memorandum etc); the initial corporate plan; the overall shape of the future organisation (including the staff structure, pay and grading system, terms and conditions of staff, pensions and any transfer arrangements); assessment of financial issues, including accounting systems; assessment of IT requirements (and any inherited systems); the approach and procedures for recruiting staff; and an assessment of the accommodation requirements and the possible options for meeting them.

- 4.3.10 The size and composition of the secretariat supporting a shadow body will vary according to the nature of the NDPB. If it is a non-statutory body, the secretariat will normally be employed by the sponsor department, but should be serving the interests of the shadow body and the future NDPB. Staff seconded from the sponsor department to the secretariat should be separate from staff in the sponsor unit involved in setting up the NDPB and advising ministers.
- 4.3.11 Departments will wish to make the key personnel appointments at an early stage; appoint a Chief Executive; put together a briefing pack for the Chief Executive on the background issues; and appoint the Chief Executive's support staff. It will also be necessary to establish the requirement for in-house skilled personnel e.g. Finance Director; IT manager; legal adviser; head of operations; and human resources manager.
- 4.3.12 Draw up an organisation chart identifying senior posts, post holders (where possible) and responsibilities and accountability for each senior post; and establish committees and sub-committees and appoint members, if necessary.
- 4.3.13 The work of the shadow body will be carried on by the skeleton body and the NDPB Board. The secretariat can be wound up once the body has taken on sufficient staff of its own.

4.4 Sustainable Development

- 4.4.1 Government has publicly committed to delivering sustainable development objectives and to leading by example. A new statutory duty (effective 31 March 2007) in Northern Ireland requires public authorities to promote sustainable development in the exercise of their functions. Bodies may be specifically designated under this section by Order made by OFMDFM. However, all NDPBs, whether or not they are specifically designated within

this Order will be expected to comply with the statutory duty legislation in terms of carrying out their role, responsibilities and remit as required by Ministers.

- 4.4.2 Executive NDPBs must consider the responsibilities they have for meeting the government's commitment to sustainable development. When the body is established, sustainable development principles should be embedded in the strategic framework of the body as well as in its day-to-day policy making and operational practices. Advisory NDPBs must similarly be aware of the commitment and take it into account when giving advice.
- 4.4.3 NDPBs should also support the achievement of the Government's specific objectives and targets set out in the Sustainable Development Strategy "First Steps towards Sustainability", its associated Implementation Plan, and in Departmental Action Plans relating to sustainable operations on the Government Estate. They must also take account of any other central guidance issued by OFMDFM or other Government Departments as well as the specific requirements of their sponsoring department.
- 4.4.4 To support delivery of sustainable development policy decisions by Ministers, provisions should be made to ensure that all staff have an appropriate understanding of the subject and the new body's role in it, and that all staff including key policy and operational staff have any necessary additional training and skills.
- 4.4.5 For information on sustainable development issues, please contact John Bradley (john.bradley@ofmdfm.gov.uk or 02890 528378) or refer to the websites:

<http://www.ofmdfmi.gov.uk/index/economic-policy/economic-policy-and-effectiveness.htm>

<http://www.sustainable-development.gov.uk/>

4.5 Engagement with the Voluntary and Community Sector

4.5.1 The work of the voluntary and community sector is central to the development of communities and the delivery of better public services. The Compact between Government and the Voluntary and Community Sector in Northern Ireland (the Compact) is a partnership agreement to improve the relationship with the sector. It is an important tool in managing the relationship, and provides mutual benefits.

4.5.2 The Compact is a set of principles and undertakings that provide a framework for relations between Government and the sector. Introduced in December 1998, it is the framework to give understanding to what the Government and the voluntary and community sector should expect from each other. It applies to government departments (both central and local), NDPBs, Statutory Agencies and District Councils in Northern Ireland

4.5.3 NDPBs should implement the requirements of the Compact and ensure this is reflected in their business plans and Annual Grant letters, where NDPBs have dealings with the voluntary and community sector (or have identified a potential relationship with the voluntary and community sector, as appropriate). The Compact can be found at www.dsdni.gov.uk/publications/documents/building_real_partnership.pdf.

4.6 Regulatory Impact Assessments

4.6.1 Public Bodies which perform a regulatory function should produce Regulatory Impact Assessments (RIAs) for any major new policies or initiatives which they wish to initiate, and which may have consequences for the business, charity or voluntary sector, the NDPB should consult those likely to be affected, and make the RIAs available for public scrutiny (e.g. on the NDPB's website). Guidance is contained in the OFMDFM publication "Integrated Impact Assessment in Northern Ireland" available at www.ofmdfmi.gov.uk/policylink-integrated-impact-assessment and available from the Cabinet Office's Better Regulation Executive www.cabinetoffice.gov.uk/regulation/.

4.7 Enforcement Concordat

4.7.1 Public Bodies with enforcement powers are encouraged to adopt the Government's Enforcement Concordat.⁷ Adoption of the Concordat should be publicised in the body's enforcement material and on its website.

4.8 Corporate Governance

4.8.1 Sponsoring departments should be aware of the 'Code of Good Practice for Corporate Governance in Central Government Departments' (dated July 2005) issued by DFP as DAO(DFP) 18/05 a copy of which is available at www.aasdni.gov.uk. Chapter 6 in particular addresses arm's length bodies (ALBs) and this term is used to include a department's NDPBs and public corporations. The underlying principle stated in the guidance is that 'where part of the business of the department is conducted with and through ALBs, the department's board should ensure that there are robust

⁷ <http://bre.berr.gov.uk/regulation/documents/pst/pdf/concord.pdf>

governance arrangements with each ALB board, setting out the terms of their relationship, in order to promote high performance and safeguard propriety and regularity'. The code can be accessed at www.aasdni.gov.uk/pubs/DAOs/dao1805att.pdf .

- 4.8.2 The Government is committed to improving standards of good governance in public service organisations and sponsor departments and public bodies should be aware of the various self assessment tools available to assist self-analysis. For example, the Audit Commission's self-assessment tool 'Changing Organisational Culture Audit' has been specially designed to help embed a good conduct culture and further information can be obtained as follows:

www.audit-commission.gov.uk

4.9 Fraud and Internal Audit

- 4.9.1 It is important that all public bodies have robust anti-fraud measures in place from the outset. A Memorandum of Understanding (MOU) between the Northern Ireland Public Sector and the Police Service of Northern Ireland (PSNI) was formally signed by Nigel Hamilton on behalf of the Northern Ireland Public Sector and by Sir Hugh Orde on behalf of the PSNI on the 30 October 2006.

- 4.9.2 The MOU was produced by the NICS Fraud Forum, which includes PSNI representation, and has been accepted by some 120 Public Sector Bodies including Departments, Agencies, NDPBs, Health bodies, Education bodies and Councils.

- 4.9.3 The MOU sets out a basic framework for the working relationship between the PSNI and the Public Sector in respect of the investigation and prosecution of fraud cases. Its aim is to ensure greater consistency in the
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way fraud cases are investigated across the range of public sector bodies and a more targeted approach to criminal prosecution cases.

- 4.9.4 The MOU should be read in conjunction with the procedures set out in *Fraud Forum Best Practice Guidance* INTERNAL FRAUD: MANAGEMENT CHECKLIST issued under cover of DAO (DFP) 12/06, both of which are available at www.aasdni.gov.uk .
- 4.9.5 In addition DFP recommend that DAOs relating to Fraud and endorsed by the Fraud Forum should be formally considered by Audit Committees.
- 4.9.6 For guidance on fraud and internal audit issues visit www.aasdni.gov.uk or contact:

Alison Caldwell
Fraud and Internal Audit Policy Branch
Department of Finance and Personnel
Rathgael House
Bangor BT19 7NA
Direct Line: 69033
General Tel: 028 9127 76033
Ailison.caldwell@dfpni.gov.uk

Public Bodies: A Guide for NI Departments

Chapter 5: Public Body Staff

5. Public Body Staff

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SUMMARY

Departments need to decide early on at the planning stage whether a new Public Body will recruit its own staff and if so arrange for the necessary powers to be given in the legislation that establishes them.

This chapter outlines some of the issues to be addressed in relation to the establishment of HR systems, including terms and conditions of employment, a Code of Conduct, disciplinary procedures and performance management and appraisal.

In addition it draws attention to obligations under the Data Protection Act (1998), the Freedom of Information Act (2000), Equality and Health and Safety legislation.

5.1 Which Public Bodies employ their own staff?

- 5.1.1 Public Bodies which are set up to perform executive, regulatory or commercial functions, i.e. Executive NDPBs/ Public Corporations, are normally given powers to employ their own staff who are not civil servants. These powers are set out in the legislation that establishes the body.
- 5.1.2 Only a very small number of Advisory NDPBs employ their own staff. The powers to enable them to do this are again normally included in any legislation setting them up. Advisory and Tribunal NDPBs are generally supported by a secretariat of civil servants who remain part of the sponsor department.
- 5.1.3 Only one NDPB in Northern Ireland employs civil servants: the Health and Safety Executive Northern Ireland (HSENI). HSENI is a Crown NDPB.

5.2 Role of the sponsor department

5.2.1 Starting up

- 5.2.1.1 A Public Body's ability to employ and manage staff is an important element of its relative independence from Ministers. Public Bodies should generally be allowed to establish their own HR systems. However, where the body joins the Principal Civil Service Pensions Scheme (Northern Ireland), formal systems of reporting and control are required between the sponsor department and the body. Whilst the sponsor department must be careful not to detract from a Public Body's independence, it does have a responsibility to assist the organisation in making a sound start in its management policies.

5.2.1.2 The sponsor department will want to suggest that the staff of new bodies adopt the principles of the NICS Staff Handbook. The Handbook covers a whole range of issues concerned with working in the Northern Ireland Civil Service. Most of the guidance can be replicated for NDPB staff.

5.2.1.3 The Handbook is available on the NICS Intranet. Departmental personnel branches can also provide advice.

5.2.2 Once Public Bodies are established

5.2.2.1 Sponsor departments should maintain contact on HR management matters and respond to requests for advice (such as in the case of a serious staffing problem). Sponsor departments are responsible for keeping Public Bodies informed of any Government commitments and changes in employment policy that may affect them.

5.2.2.2 Public Bodies should otherwise be left to conduct their own HR management.

5.3 **Recruitment**

5.3.1 Staffing Options:

5.3.1.1 Departments need to decide early on at the planning stage whether a new Public Body should either:

- Recruit its own staff - if the Department decides that the Public Body will appoint its own staff, it would be recommended that it follows closely, the NICS recruitment policies and procedures as outlined in

the NICS Recruitment Policies and Procedures Manual available at www.nicsrecruitment.gov.uk . Its recruitment and selection policies should also be on the basis of fair and open competition and consistent with the four principles set out in the Northern Ireland Civil Service Commissioner's Code.

- Be staffed by civil servants on secondment from the sponsor department - this will be appropriate on a short-term, transitional basis only, to speed up staffing and to get appropriate knowledge, experience and expertise; and where there is uncertainty about future workloads. Heavy or permanent use of secondments might detract from the independence of the body. This approach should therefore be exceptional e.g. if the body would otherwise find it difficult to attract staff who are right for the job and whose cost is reasonable. For the purpose of this guidance, any secondment of any NICS member of staff may be taken to be a voluntary posting for a time-bounded period of time under the auspices of the NICS secondment policy. This policy is currently contained within CSC 14/94 and a number of Code paragraphs but is subject to review and will in due course be replaced, on publication, by Chapter 18 of the NICS Handbook.

If it is decided to use seconded staff, the Public Body may wish to take legal advice on the terms of the secondee's temporary transfer. It should be documented that the secondee will remain the employee of the sponsor department. In order to help ensure that the secondee does not unwittingly become the employee of the body, the secondee should continue to receive their salary from their sponsor department and remain subject to the sponsor department's appraisal processes.

- Be staffed by people who have transferred permanently with the work from existing organizations - if staff are transferred permanently from existing organisations, early consideration needs to be given as to what will happen to their pay, pensions, and other terms and conditions of service. In most cases the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) will apply, and departments should refer to *Staff Transfers in the Public Sector: A Statement of Practice*
http://www.hm-treasury.gov.uk/media/D/C/staff_transfers_145.pdf

5.3.1.2 It is important that NDPB staff understand the terms and conditions under which they are employed. The NDPB should have a staff handbook which includes details of staff terms and conditions, pay scales, performance-related pay, rules for recruitment, personnel management, staff conduct and disciplinary procedures.

5.3.1.3 Arrangements for staff consultation about how the proposed changes will affect them also need to be put in place early on, for example via a newsletter or regular meetings.

5.3.2 Open Competition

5.3.2.1 Recruitment to new posts should be by fair and open competition. Hiring staff takes time and must be planned in good time. The Chief Executive and Finance Director are key appointments in securing the satisfactory setting-up of the Public Body. Early appointment to both these posts will be important. Departments will wish to ensure that selection of senior staff is on merit under fair and open competition.

5.3.3 Baseline Personnel Security Standard

5.3.3.1 The Baseline Standard is a good practice guide to the pre-employment screening of government staff and contractors, but it applies equally to staff of NDPBs with any access to government assets. Departments should ensure that their public bodies are familiar with the Baseline Standard so that appropriate checks are made on prospective employees before they take up post. Guidance and advice are available from Security Advisory Unit, OFMDFM.

5.3.4 Security Vetting

5.3.4.1 The level to which staff are vetted should be agreed between the NDPB and the sponsoring Department, in line with agreed policy. Advice and guidance can be obtained from the Departmental Security Officer.

5.4 Terms and conditions

5.4.1 It is important that the staff understand the terms and conditions under which they are employed. Most statutes provide for the approval of terms and conditions by the departmental Minister. In these cases they cannot be changed without his or her agreement.

5.4.2 All terms and conditions of employment should be set out clearly in a staff handbook or on an accessible website.

5.4.3 Annex 5B provides a model Contract of Employment for the Chief Executive and/or other senior posts.

5.5 Nationality Rules

5.5.1 The Civil Service nationality rules cover those in the employ of the Civil Service and are set out in annex B to section 1.1 of the Civil Service Management Code which can be accessed at:

http://www.civilservice.gov.uk/publications/pdf/csmc_june06.pdf

5.5.2 Staff in Public Bodies, with the exception of HSENI are not civil servants and are therefore not covered by the Civil Service nationality rules. However where, exceptionally, the nature of the work of an NDPB requires the imposition of nationality rules (as a basic indicator of loyalty to the state) the rules may be extended. Such an extension would require listing under the provisions of Section 75(5) of the Race Relations Act 1976. Departments considering such an approach should contact the Cabinet Office, Employment Policy and Practice Division, Room 2.6, Admiralty Arch, The Mall, London SW1A 2WH (Tel: 020 7276 1636 Fax: 020 7276 1642).

5.6 Confidentiality

5.6.1 All employees owe a general duty of confidentiality to their employer under civil law. They are therefore required to protect official information held in confidence and arrangements must be in place for disciplinary sanctions for a breach of this duty.

5.6.2 The Official Secrets Act 1989 makes unlawful disclosure of certain limited categories of information (for example security and intelligence, defence, international relations, and information which may lead to the commission of crime) a criminal offence. The Act applies explicitly to those staff of

NDPBs who are Crown servants, and to the staff of a small number of NDPBs listed in the Act.

5.7 Rules of conduct and staff code

5.7.1 NDPBs should adopt a staff Code of Conduct in line with the *Model Code for Staff of Executive Non-departmental Public Bodies* – see Annex 5A.

5.7.2 Staff should be clear about the standard of conduct required, their duties and obligations and penalties they may incur if they fall short of them. Conduct rules should cover:

- private interests and possible conflicts with public duty;
- the acceptance of gifts and hospitality;
- relevant share holdings;
- the disclosure of official information;
- political activity; and
- effective and clear procedures for staff to raise concerns about improper conduct (if necessary with an official in the sponsor department) including Whistle-blowing procedures consistent with the Public Interest (Northern Ireland) Order 2003.

5.7.3 In addition there should be rules for NDPB staff accepting business appointments after resignation or retirement in relation to the functions of the NDPB concerned and any potential for conflict of interest which may give rise to public concern. Rules about the acceptance of outside

appointments for Civil Servants (which can be replicated for NDPB staff) are set out in the NICS Staff Handbook.

- 5.7.4 Consideration should be given to rules about restrictions on political activity of NDPB staff, particularly in the run-up to elections and referendums, and to the avoidance of involvement in issues of party political controversy. Guidelines and principles on participation in political activities for Civil Servants (which can be replicated for NDPB staff) can be found in NICS Staff Handbook.

5.8 Human Resources Systems

5.8.1 Grading

- 5.8.1.1 Public Bodies should put in place arrangements for carrying out systematic reviews of the need for, grading, and loading of posts, after consultation with the sponsor department.

5.8.2 Training and development

- 5.8.2.1 Sponsor departments should ensure that Public Bodies are kept informed of emerging policies from the centre, and bodies must ensure that they implement appropriate training and development strategies.
- 5.8.2.2 Public Bodies will need to ensure that staff with financial responsibilities are appropriately trained to enable them to carry out their duties effectively. The training should include corporate planning, budgeting and management accounting. Public Bodies should consult their Sponsor Department if in doubt about what training is required or how it can be obtained.

5.8.2.3 Training for senior staff (chief executives and others) is run jointly by the Chief Executive's Forum and CIPFANI. Contact PSIU for further details.

5.8.2.4. Public Bodies should consider seeking accreditation as *Investors in People*: <http://www.investorsinpeople.co.uk/pages/home.aspx>

5.8.3 Performance Management and Appraisal

5.8.3.1 All Public Bodies must have a proportionate performance management and appraisal system. The sponsor Department must decide what the body's key performance areas are and how these can be measured on an individual basis.

5.8.3.2 There are many schemes currently in place to draw from when setting up a performance management system. Again, the sponsoring Department's systems would be a useful starting point. The performance targets for the Chief Executive Officer and equivalent senior posts should be agreed with the Board but should include some degree of stretch. These targets will be used to determine bonuses where bonus arrangements are offered (see paragraph 5.8.4.4).

5.8.3.3 The Public Body must have disciplinary procedures and systems in place to tackle cases of inefficiency, impropriety or misconduct, and these should be invoked in all appropriate cases and at the earliest possible date. If the body is considering whether to pay compensation for severance of employment, it must have regard to the guidance contained in *DAO(DFP) 17/05* and to whether any such payments need approval from its sponsor department or, through the sponsor Department, from DFP.

5.8.4 Pay

- 5.8.4.1 DFP issues the HM Treasury annual Civil Service Pay Remit Guidance providing information on the approval process for pay remits and the Government's public sector pay policy. This includes information on the determination of NDPB pay remits. It may be found at: http://www.hm-treasury.gsi.gov.uk/psd/wir/cs_payguidance.htm. Follow the link to Civil Service Pay Guidance (accessible only for Government Secure Intranet users.)
- 5.8.4.2 Pay systems should be judged against the criteria of affordability, value for money, flexibility, financial control, and linking pay to performance.
- 5.8.4.3 Where the NDPB joins the PCSPS(NI), pay decisions that may impact on pensions, such as making allowances pensionable, must be approved by the Civil Service Pensions at DFP.
- 5.8.4.4 Further information on the approval process for NDPB pay remits will be provided in the Treasury Civil Service Pay Remit Guidance. All pay remits must be processed in accordance with the Pay Remit Guidance before annual pay negotiations with staff and trade unions can commence.
- 5.8.4.5 In general, approval for Chief Executive pay is primarily the responsibility of the sponsor department in consultation with DFP. Where legislation exists for formal DFP approval, changes to Chief Executive pay will require agreement from the DFP Minister.
- 5.8.4.6 The NDPB must prepare a local pay bargaining plan when it first takes responsibility for its own pay bargaining.

5.8.5. Industrial relations

5.8.5.1 Current guidance can be obtained from The Labour Relations Agency (www.lra.org.uk).

5.8.6 Pensions

5.8.6.1 Departments should consult Civil Service Pensions, DFP about the powers and the arrangements for a proposed body at the earliest possible stage.

This applies regardless of whether it is a new NDPB, or one formed as a result of a merger of existing bodies.

5.8.6.2 Any necessary control powers should be included in any founding legislation, or in the terms attaching to a grant-in-aid, or the body's Financial Memorandum. Whatever the extent of prior planning about a NDPB, firm decisions on pensions often cannot be taken until after the NDPB is set up.

5.8.6.3 The enabling powers should therefore be drawn widely and provide the power to operate pension arrangements or otherwise make provision for the payment of pensions and should enable the body to:

- pay pensions, allowances and gratuities to or in respect of its staff and compensation in excess of the Employment Rights (Northern Ireland) Order 1996;
- make payments towards the provision of such benefits; and
- maintain pension schemes (whether contributory or not).

5.8.6.4 If the body is one where more detailed departmental oversight is appropriate, for example because the majority of the body's funding is provided from the public purse, the powers should make the arrangements subject to the approval of the sponsoring Department in consultation with DFP. Departments must ensure that NDPBs whose pension arrangements they approve conform to public service pension's policy. If in any doubt departments should consult Civil Service Pensions in DFP.

5.8.6 Pension Arrangements

5.8.6.1 It is normal for the public services to offer contracted out occupational pension schemes as part of the remuneration package. The need to maintain a consistency throughout the field where Ministers and their departments are expected to have a supervisory role means that there is relatively little scope to diverge from the normal terms for the major public services.

5.8.6.2 The factors that might determine an appropriate pension model are the analogue used (if any) for other conditions of service, the working affinities of the NDPB (e.g. with central or local government), and management's views on the normal retiring age.

5.8.6.3 Options

5.8.6.3.1 Occupational pension schemes for staff of NDPBs can be provided in a number of ways:

- admittance to an existing scheme;

- a stand alone unfunded scheme;
- a stand alone funded scheme; or
- a funded scheme run by a licensed pensions provider, eg an insurance company; or
- an unfunded pay-as-you-go arrangement 'by analogy' with another public service scheme.

5.8.6.3.2 In exceptional circumstances no occupational pension is provided. This is only likely to occur where bodies have a specific and short life span as a public service organisation. A pay uplift may be made to compensate for the non-pensionable employment.

5.8.6.4 Principal Civil Service Pension Scheme Northern Ireland (PCSPS(NI))

5.8.6.4.1 Many Executive NDPBs will have a close and continuing affinity with the Northern Ireland Civil Service and it may be possible to simplify the pension arrangements by admitting the staff to the PCSPS(NI). This is not possible in every case. **Civil Service Pensions DFP must be consulted about any such proposal at the earliest possible stage and before the founding legislation is drafted.** It should be noted that if the Public Body is admitted to the PCSPS(NI), accountability and reporting for their pensions' administration is the responsibility of the Sponsor Department.

5.8.6.4.2 Admission is achieved by adding the body to Schedule 1 of the Superannuation (Northern Ireland) Order 1972 usually through a provision in the founding legislation.

5.8.6.4.3 Benefits will then be paid from the PCSPS(NI) and the employer will be responsible for collecting employees' pension contributions and paying these and the employers' pension contributions, known as Accruing Superannuation Liability Charges (ASLCs), to the Civil Superannuation.

5.8.6.4.4 ASLCs form part of the running costs of the NDPB and expenditure cover will therefore have to be found for these costs. Adding a body to Schedule 1 does not make staff civil servants, but they will need to satisfy the Northern Ireland Civil Service health standard.

5.8.6.4.5 Where there is no founding legislation it may be possible to admit a NDPB under an Order made by DFP using the powers contained in section 3(4)-(7) of the Superannuation (Northern Ireland) Order 1972. This is only possible, however, where staff are paid directly from an Estimate, the Northern Ireland Consolidated Fund or a specified Fund or a grant paid from these sources which covers the cost of staff remuneration.

5.8.6.5 Northern Ireland Local Government Officers Superannuation Committee (NILGOSC)

5.8.6.5.1 Where an NDPB has an affinity with local government, it may be possible to relieve it of the need to administer pensions by negotiating admission of the NDPB to the Northern Ireland Local Government Officers Superannuation Committee (NILGOSC). The scheme pays the earned benefits, plus any associated pensions increase and the NDPB would collect and pay over employees' contributions and the employer contributions required to the administering authority.

5.8.6.6 Other Pension Scheme Arrangements

- 5.8.6.6.1 Another possibility is to negotiate admission to some other existing controlled scheme run by employers with whom the body has close connections, or who share the same sponsoring department.
- 5.8.6.6.2 In cases where it is not possible to join the PCSPS(NI), yet the NDPB has close links to the NICS, the NDPB can avoid drawing up a detailed scheme by introducing one which provides for the provisions to be 'by analogy' with those of the PCSPS(NI), as amended from time to time. However, the scheme will be unfunded with benefits paid out of revenue as they arise. This solution is not appropriate for partly grant-aided bodies with an uncertain future, since there is a risk that public expenditure would have to be increased to meet the full cost of residual pension liabilities if the body were wound up.
- 5.8.6.6.3 Detailed guidance on pensions and compensation is available from the Northern Ireland Civil Service Pensions website – www.civilservicepensions-ni.gov.uk . If you need to discuss the options after reading the guidance contact Civil Service Pensions on 028 7131 9000.
- 5.8.6.6.4 Where the above options are not deemed appropriate, the NDPB may need to introduce a comprehensive scheme of its own. Large NDPBs will probably wish to run funded schemes administered by trustees. (By law the trustees will need to appoint auditors. The auditors don't however need to be the same as those who audit the NDPB's accounts). Smaller NDPBs may prefer to make arrangements with an insurance company to avoid disproportionate additions to their administrative costs. Others may

prefer to pay benefits as they emerge (pay-as-you-go). But the point about avoiding this method for partly grant-aided bodies with an uncertain future is again relevant. Given the actual and contingent liabilities created by pension schemes, non-analogue schemes should be approved by departments and the relevant DFP Supply Officer in advance, especially where a significant additional liability is involved.

5.8.6.6.5 As the type of pension arrangement adopted may have implications for the manner in which pension costs are treated and disclosed in the accounts, the NDPB should have regard to the guidance contained in the Government Financial Reporting Manual (FreM) (www.financial-reporting.gov.uk) and consult Financial Reporting and Accountability Branch (FRAB) 028 9185 8025 in DFP in case of any doubt.

5.8.7 Injury Benefits

5.8.7.1 It will be necessary to provide injury benefits for staff who suffer injury or contract a disease as a direct consequence of employment by the body and where this leads to an impairment of earning capacity. In the event of death, benefits may be payable to dependants. Where staff are pensioned in an existing scheme, such as the PCSPS(NI), they will enjoy cover provided by the scheme or arrangements in association with it.

5.8.7.2 In other cases, including 'by analogy' arrangements set up after March 1989, it will be necessary to devise separate injury benefit arrangements which would be consistent with the existing public service policy, currently reflected in the Civil Service Injury Benefit Scheme (Northern Ireland). The benefits are paid out of revenue as they arise. Insurance-type cover should not be taken out for this contingency.

5.8.8 Compensation

- 5.8.8.1 It is normal for the pension scheme to provide for the immediate payment of pension and lump sum accrued on actual service when those who are aged above the Inland Revenue's age limit are retired compulsorily with at least 5 years' reckonable service. Where it is decided to follow the public service practice of enhancing such benefits by added years and providing special lump sum compensation payments in excess of the requirements of the Employment Rights (Northern Ireland) Order 1996, such benefits must be provided from a separate compensation scheme. This requirement applies to 'by analogy' arrangements set up after March 1989.
- 5.8.8.2 Compensation payments for those aged under the Revenue's age limit should be by analogy with the compensation arrangements for the public service to which the body's pension arrangements were linked, either directly or by analogy. If the body has a free standing pension scheme, the compensation arrangements for those not eligible for an immediate payment should be set in line with the public service norm of a maximum of up to 66 weeks pay.
- 5.8.8.3 The additional costs of any voluntary early retirement, e.g. on the grounds of redundancy, such as additional (unearned) benefits like added years for pension purposes, special lump sum compensation payments etc. will have to be met by the NDPB. This applies whether or not staff are members of schemes such as the PCS(NI) or NILGOSC.

5.9 Equality legislation

- 5.9.1 The HR systems must be fully consistent with equality legislation and any codes of practice issued under such legislation, and keep abreast of any new requirements that might emerge. The systems should reflect good practice in diversity matters, including sound monitoring procedures
- 5.9.2 Sponsor departments are responsible for keeping Public Bodies informed of any Government commitments and changes in equality legislation that may affect them.
- 5.9.3 The body should draw up an equal opportunities plan which ensures that all employment practices and policies comply with equal opportunities legislation and good practice guidelines.
- 5.9.4 Further guidance and codes of practice are available from the Commission for Racial Equality, the Equal Opportunities Commission, and the Disability Rights Commission. The Cabinet Office Diversity Division website (<http://www.diversity-whatworks.gov.uk/>) also offers guidance on good practice and further contacts.

5.10. Data Protection Act 1998 and Freedom of Information Act 2000

- 5.10.1 Public Bodies must be aware of their obligations under the Data Protection Act (1998) and the Freedom of Information Act (2000). Please refer to Chapter 8: Policy – Openness and Accountability for further information.

5.11 Security

- 5.11.1 Where an NDPB is to deal with or have access to protectively marked information, appropriate protective security measures must be taken. Advice on security matters should be sought from the Departmental Security Officer.

5.12 Health and Safety

- 5.12.1 It is a legal requirement that all places of work have a Health and Safety policy, which staff should be made aware of and adhere to. For more information on health and safety matters, contact the Health and Safety Executive – www.hseni.gov.uk

**MODEL CODE FOR STAFF OF EXECUTIVE
NON-DEPARTMENTAL PUBLIC BODIES**

INTRODUCTION

- This document sets out a Code of Conduct for staff of executive non-departmental public bodies (NDPBs) and similar organisations and is intended as a model which the public bodies concerned should adopt with any modifications that may be necessary to take account of their own characteristics and circumstances.
- It is mandatory for the board of each executive NDPB to adopt a Code of Conduct for their staff.
- NDPBs are asked to ensure that the Code is brought to the attention of staff.
- It should become part of the terms and conditions of service applicable to all staff, breaches of which may be the subject of disciplinary action.
- It will be necessary to ensure that the Code applying to the public body concerned is consistent with the legislation or other provisions under which it is established.

The Code should be a public document, freely and easily available to both NDPB staff and board members, and on request, to the general public.

DUTIES AND RESPONSIBILITIES

1. Staff of public bodies should familiarise themselves with the contents of the Code and should act in accordance with the principles set out in it.
2. Staff of public bodies have a duty:
 - to discharge public functions reasonably and according to the law; and
 - to recognise ethical standards governing particular professions.

The senior official, who is usually designated as accounting officer, has overall responsibility for propriety in a broad sense, including conduct and discipline.

ACCOUNTABILITY

3. Staff of public bodies should be aware:
 - of their accountability to the board of the public body which they serve;
 - of the respective roles of the sponsor department and the public body as set out in a Management Statement/Financial Memorandum or agreed Memorandum of Understanding;
 - that the Minister responsible for the body is ultimately accountable to the Assembly for its independence, effectiveness and efficiency.

The Board of an NDPB has responsibilities as an employer. These are set out in their own Code of Practice.

4. Staff of public bodies should conduct themselves with integrity, impartiality and honesty. They should not deceive or knowingly mislead the board, the sponsor department, Ministers, the Assembly or the public.

CONFLICTS OF INTEREST

5. Staff should abide by the rules adopted by the public body in relation to private interest and possible conflict with public duty; the disclosure of official information; and political activities. They should not misuse their official position or information acquired in their official duties to further their private interests or those of others. Key members of staff, such as the Chief Executive, Finance Director, managers of large contracts, and staff working on contracts, should ensure that any possible conflicts of interest are identified at an early stage and that appropriate action is taken to resolve them.

INTEGRITY

6. Staff of public bodies should not use their official position to receive, agree to accept or attempt to obtain any payment or other consideration for doing, or not doing, anything or showing favour, or disfavour, to any person. They should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgment and integrity. Under the Prevention of Corruption Act 1916, employees of public bodies may be required to prove that the receipt of payment of other consideration from someone seeking to obtain a contract is not corrupt.

RELATIONS WITH THE PUBLIC

7. Staff of public bodies who deal with the affairs of the public should do so sympathetically, efficiently, promptly and without bias or maladministration. Staff of public bodies should offer the public the highest standards of conduct and service.

Experience indicates that services can be improved and delivered more cost effectively by:

- refocusing services on customers/citizens;
- finding out what customers consider to be critical aspects of government services and service delivery;
- giving managers the flexibility to respond to customer needs; and
- monitoring and analyzing performance against realistic goals and standards.

DFP has developed nine customers service principles (see www.bestpracticeni.gov.uk/customerserviceprinciples.htm for further information) which are currently being adopted and implemented by the Northern Ireland Civil Service departments. Customer Service Principles provide a practical way to help organisations both to develop and improve their customer service.

USE OF RESOURCES

8. Staff of public bodies should endeavor to ensure the proper, economical, effective and efficient use of resources.

CONFIDENTIALITY

9. Staff of public bodies owe a general duty of confidentiality to their employer under civil law. They are therefore required to protect official information held in confidence. The Official Secrets Act 1989 applies to any member of the public who has, or has had, official information in their possession. The Act makes unlawful disclosure of certain limited categories of information (for example security and intelligence, defence, international relations, and information which may lead to the commission of crime) a criminal offence. The Act applies explicitly to those staff of NDPBs who are Crown servants, and to the staff of a small number of NDPBs listed in the Act.

DATA PROTECTION

10. Staff should be aware of their obligations under the Data Protection Act (1998) and Freedom of Information Act (2000). Guidance on this legislation can be obtained from the Information Commissioner (www.informationcommissioner.gov.uk).

STAFF CONCERNS ABOUT IMPROPER CONDUCT

11. If staff of a public body believe they are being required to act in a way which:

- is illegal, improper, or unethical;
- is in breach of a professional code;
- may involve possible maladministration, fraud or misuse of public funds; or
- is otherwise inconsistent with this Code:

they should either raise the matter through the management line or else approach in confidence a nominated official or board member entrusted with the duty of investigating staff concerns about illegal, improper or unethical behaviour. Staff should also draw attention to cases where:

- they believe there is evidence of irregular or improper behaviour elsewhere in the organisation, but where they have not been personally involved;
- there is evidence of criminal or unlawful activity by others;
- they are required to act in a way which, for them, raises a fundamental issue of conscience.

12. Where a member of staff has reported a matter covered in paragraph 11 above and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to a nominated official in the sponsor department who will investigate the matter further.

13. Staff should be aware of the provisions of the Public Interest Disclosure (NI) Order 2003

AFTER LEAVING EMPLOYMENT

14. Staff of public bodies should continue to observe their duty of confidentiality (see paragraph 9 above) after they have left the employment of the public body and should be aware of and abide by any rules on the acceptance of business appointments after resignation or retirement. Chapter four of the Civil Service Management Code deals with this issue and should be consulted to see parallel arrangements in the Civil Service.

MODEL CONTRACT OF EMPLOYMENT: INDEFINITE PERIOD. TO BE ADAPTED ON THE ADVICE OF THE NDPB'S LEGAL ADVISERS AND ON THE ADVICE OF THE SPONSORING DEPARTMENT

This document sets out your principal terms and conditions of employment. It incorporates the written particulars required by the Employment Rights (Northern Ireland) Order 1996 and, together with the staff handbook as amended from time to time, constitutes your contract of employment with the [*name of body*]

#⁸ Names of parties

..... (the Employee)

[*name of body*] (the Employer)

#1. Commencement of employment

Your employment began/will begin on [*date*].

(Refer to Probationary period details if appropriate)

⁸ Clauses marked # are included to comply with the Employment Rights (Northern Ireland) Order 1996 This information is supplemented by the schedule.

#2. Job title and duties

- 2.a. You are appointed as a [Chief Executive Officer or equivalent/ other senior post] of the [*name of body*]. Your current job title and duties are detailed in Schedule 1 and may be amended from time to time. Any changes will be discussed with you fully and notified to you in writing.
- 2.b. [*if applicable*][It is a fundamental condition of your employment as Chief Executive that you carry out the duties of Accounting Officer for [insert name of body], as appointed by the Principal Accounting Officer. You will carry out your duties and responsibilities as Accounting Officer in accordance with the DFP memorandum, “The Responsibilities of an NDPB Accounting Officer” issued under cover of DAO(DFP) 02/05 and a copy of which has been provided to you.

If in the reasonable opinion of the Accounting Officer for [sponsor department] you are no longer a fit person to carry out the responsibilities of an Accounting Officer, or it is otherwise in the public interest to do so, your designation as Accounting Officer will be withdrawn and your employment will normally terminate. In such a case the procedures that will apply will be the procedures relating to withdrawal of Accounting Officer status from Chief Executives of NDPBs which are determined from time to time by the Cabinet Office and which are available from the Chairman of the Board.]

3. Staff Handbook

The details of your terms and conditions are set out in the staff handbook, a copy of which you have been given [or is available at [www.....](#)]. Those

parts of the handbook which have contractual effect, as amended from time to time, form part of your contract.

#4. Salary

- 4.a. Your basic salary is [£x] a year, payable monthly in arrears by credit transfer to your bank or building society.
- 4.b. [The Board] [*if applicable – see Para 8.4.4 of Chapter 5 above*] will determine any increase in your salary in accordance with the procedures set out in [relevant provisions of staff handbook]. Your salary will be reviewed annually. You will be notified in writing of any change to your salary.
- 4.c. You are not entitled to the payment of any overtime.

5. Disclosure⁹

You should be aware that the post to which you have been appointed carries with it a requirement that certain information about your salary and pension entitlements will be disclosed in the annual accounts of [NDPB]. Details of the information to be disclosed are given in chapter 7 of the Government Financial Reporting Manual (FRoM) issued by the Treasury. [Applicable for Chief Executives only - Your annual remuneration will also appear in the Northern Ireland Public Bodies Directory. It is a condition attaching to your post that you agree to the disclosure described above.

⁹ Disclosure of this information is included in GAAP (Generally Accepted Accounting Practice) provisions to which the Government subscribes. Inclusion of this clause should therefore be regarded as mandatory.

6. Performance Management and Appraisal

Your employment requires performance consistent with the high standards expected of public servants. Your performance will therefore be subject to regular appraisal and review, with an opportunity to discuss that performance with your line manager. [The performance targets for Chief Executives and equivalent posts: Your performance targets should be agreed in advance with the Board and will be stretching. These will be used to determine your level of bonus if any.]

#7. Hours of work

- 7.a. You are required to work a minimum (over a 5 day week) of [42] hours, including daily meal breaks of one hour.
- 7.b. You will be required to work such additional hours as may from time to time be reasonable and necessary for the efficient performance of your duties subject to any limits imposed by law.
- 7.c. You are entitled to apply for part-time or flexible working arrangements.

#8. Annual leave

- 8.a. Your annual leave allowance is [x] days. The detailed rules relating to annual leave are set out in the attached Schedule 2.
- 8.b. Your leave year runs from _____ to _____.

#9. Public and Privilege holidays

Subject to the detailed rules in [relevant provisions of the staff handbook] you are entitled to all public holidays in addition to your annual leave allowance and you will be paid for each day. Further details are set out in the attached Schedule 2.

+¹⁰10. Sickness

The rules relating to sickness and injury are to be found in [relevant provisions of the staff handbook]. These provide for absence on full pay [and on half pay,] [depending on the length of absence and subject to a ceiling on total paid absence within a given period.]

11. Pensions

[This clause should be adapted as appropriate to the pension scheme[s] available to the staff of the NDPB.]

[11.a. As an employee of [name of body] you are eligible to be a member of the [name of NDPB pensions scheme] which provides a pension based on [provisions of the pension scheme eg years of service and pensionable earnings].

¹⁰ Clauses marked + cover areas where reference may be made to other documents providing that they are readily available during normal working hours or made reasonably accessible in some other way.

11.b. Information from your Personnel Division will explain about the pension scheme and the pension choices available to you. You may exercise your right not to participate in the scheme at any time. If you do so within three months of your current entry into the [name of body] your wish to 'opt out' will apply from the date of your appointment; otherwise it will apply from the next convenient pay period.

12.* Maternity leave

12.a. You are entitled to [*insert how much paid maternity leave will be granted in addition to the statutory entitlement.* (NICS provision is as follows: 18 weeks contractual paid maternity leave plus 8 weeks statutory maternity leave on each relevant occasion provided that when your maternity leave begins you intend to return to work, are in paid service and have rendered 1 year's employment in the NICS)].

Detailed provisions relating to maternity leave are set out in [relevant provisions of the staff handbook].

12.b The statutory provisions relating to maternity leave, maternity pay and parental leave may apply. Full details are available from [*the Personnel Division*].

OR

12.* Paternity leave

You are entitled to [*insert how much paid paternity leave will be granted in addition to the statutory entitlement. (Members of the SCS are entitled to a minimum of 2 days' paid paternity leave on each relevant occasion.)*] In

addition, you may have a statutory right to parental leave. Full details are available from the Personnel Division.

[Delete whichever is not applicable]*

#13. Place of work/mobility

- 13.a. Your current place of employment is *[insert address at which employee is required to work]* but you may be required to work at any place within reasonable daily traveling distance of your home.
- 13.b. *[If appropriate:* During the course of your employment you may be required to transfer to another place of work in NI. Unless wholly exceptional circumstances exist which make it impossible, you will be given reasonable notice of any such change. Reasonable expenses will be paid for any relocation or travel costs incurred as a result of the transfer. Details of such expenses are to be found in *[relevant provisions of the staff handbook]*.

#14. Notice

- 14.a. You will normally be given the following periods of notice in writing terminating your employment:
- (i) if you are retired on age grounds, if you are dismissed on grounds of inefficiency, or if your dismissal is the result of disciplinary proceedings in circumstances where summary dismissal is not justified:

Continuous Service for:

Up to 4 years - 5 weeks

4 years and over - 1 week plus 1 week for every year of continuous service up to a maximum of 13 weeks.

- (ii) if you are retired on medical grounds, the period of notice in (i) above or, if longer, 9 weeks, unless a shorter period is agreed.
- (iii) if your employment is terminated compulsorily on any other grounds, unless such grounds justify summary dismissal at common law or summary dismissal is the result of disciplinary proceedings - 6 months.] [(i) to (iii) are the provisions that apply to members of the NICS. See section 11 of the Civil Service Management Code.]

On the expiration of such notice, your employment will terminate.

You will receive no notice if you agree to [flexible or approved early retirement] *[if applicable]* or voluntary redundancy.

You will receive no notice where the date of termination is mutually agreed.

- 14.b. If your employment is terminated without the normal notice stated in (a) would compensation will be paid to you in accordance with the relevant provisions of the Civil Service Compensation Scheme. *[Only applicable if the member of staff is a civil servant and entitled to benefits under the Civil Service Compensation Scheme.]*

- 14.c. Unless otherwise agreed, you are required to give a minimum period of 3 months' **written** notice [except under certain circumstances] to *[indicate appropriate person by description or otherwise]*, if you wish to terminate your employment.
- 14.d. Your employment may be terminated without notice where dismissal follows disciplinary proceedings. Further details are set out in

15. Retirement Age

The compulsory age of retirement is 65 and this will be your retirement age unless a different retirement age is agreed with as a result of a request under the duty to consider procedures set out in para 5 of Schedule 6 of the employment Equality (Age) Regulations 2006. You should note that as a member of the PCS (NI), you may retire without having your accrued pension entitlement reduced, at age 60 – the current minimum pension age under the present PCS (NI) rules.

16. Other Compensation for Compulsory Early Termination of Contract

[The body should check the provisions of the relevant pension scheme to see whether it allows for compensation to be paid for early termination whether it is due to limited efficiency or organisational difficulties such as promotion blockage at the top of the organisation. The following applies to those who are entitled to benefits under the Civil Service Compensation Scheme]

- 16.a. [If your service is compulsorily terminated early on grounds of structure or limited efficiency or if it is terminated early on grounds of redundancy, you

will be eligible for benefits under the Civil Service Compensation Scheme in accordance with the rules of the scheme.

- 16.b. If your performance is so unsatisfactory as to warrant the use of inefficiency procedures as set out in [relevant provisions of the staff handbook] and you are dismissed for inefficiency, the Board has discretion, in certain circumstances, to award compensation under the Civil Service Compensation Scheme.
- 16.c. [Medical Retirement: You may be retired on medical grounds and eligible for payment of ill health retirement benefits. Details of the provisions for medical retirement are set out in [relevant provisions of the staff handbook]. [The present criteria for medical retirement are that the breakdown in your health is such that it prevents you from carrying out your duties and that the ill-health is likely to be permanent.] *[delete if not applicable]*.

17. Conduct

- 17.a. As a public servant, it is essential that you are, and are seen to be, honest and impartial in the exercise of your duties. You must not allow your judgment or integrity to be compromised in fact or by reasonable implication. The detailed requirements governing the avoidance of conflicts of interest, the receipt of gifts and hospitality and the standards of conduct expected of you are set out in [relevant provisions of the staff handbook]. *[In drafting the staff handbook the Board may wish to refer to the Model Code for Staff of Executive NDPBs.*

17.b. If you believe you are being required to act in a way which:

- is illegal, improper, or unethical;
- is in breach of constitutional convention or a professional code;
- may involve possible maladministration;

you should report the matter in accordance with the procedures set out in [relevant provisions of the staff handbook]. You should also report to the appropriate authorities evidence of criminal or unlawful activity by others. You may also report if you are required to act in a way which, for you, raises a fundamental issue of conscience.

17.c. You are required to seek permission to take part in local political activities and you must comply with any conditions laid down by the [name of body]. Further details are set out in [relevant provisions of the staff handbook].

+18. Disciplinary and grievance procedures

18.a. Disciplinary matters are dealt with in accordance with the [name of body] disciplinary procedures, which are set out in [relevant provisions of the staff handbook].

18.b. If you have any grievances relating to your employment, or if you wish to appeal against any decisions or actions which affect you adversely, you must bring this to the attention of [set out appropriate person, by description or otherwise, state the manner in which any such application should be made and refer to relevant provisions of the staff handbook].

19. Confidentiality/use of official information

- 19.a. As the [*Chief Executive/or equivalent /other senior post*] you will have access to information in respect of the management and affairs of [*name of body*] which is or may be confidential. The rules governing confidentiality and the use of official information are set out in [*relevant provisions of the staff handbook.*]
- 19.b [*If applicable to the body*] [You are also subject to the Official Secrets Act 1989. An explanatory leaflet summarising the provisions of the Act as they affect you has been provided to you.]

20. Acceptance of outside appointments

[*If applicable to the post*] In certain circumstances you are required to obtain the agreement of the [Board] before accepting any offer of employment outside the [*name of the body*] or which would start within 2 years of leaving its employment. The rules on the acceptance of outside appointments, and the circumstances in which they apply, are set out in [relevant provisions of the staff handbook].]

#21. Overseas employment

Currently it is not foreseen that you will be required to work outside the United Kingdom for more than one month on any one occasion.

OR

[Details to be inserted if relevant, to comply with Employment Regulations (Northern Ireland) Order 1996, section 1, which applies to work outside the UK for more than one month.]

22. Expenses

You shall be reimbursed for all reasonable travel, accommodation and other expenses in accordance with the rules set out in the staff handbook (as amended from time to time), which are wholly, exclusively and necessarily incurred in relation to the performance of your duties and responsibilities under this agreement.

23. Processing of personal data

- 23.a. By signing this contract you give your consent to [NDPB] to process personal data concerning yourself in order to fulfil its obligations under this Agreement and any other reasons relating to your employment, in accordance with the provisions of the Data Protection Act 1998 (as amended from time to time). This will principally (but may not exclusively) relate to personnel, administrative, pension and payroll matters. Your attention is drawn to the fact that [NDPB] will keep information about sickness and accidents for purposes such as maintaining records for the purposes of statutory sick pay and managing sickness absence.

24. The further particulars of terms of employment not contained in the body of this contract which must be given to you in compliance with Part 1 of the Employment Rights (Northern Ireland) Order 1996 are given in the attached Schedule 2.

Signed _____

On behalf of [*name of body*]

(Date) _____

Signed _____

(Employee)

(Date) _____

SCHEDULE 1

JOB TITLE AND DUTIES

[This schedule to be completed by the body]

SCHEDULE 2

EMPLOYMENT RIGHTS (NORTHERN IRELAND) ORDER 1996 - PART 1

The following information is given to supplement the information given in the body of the contract in order to comply with the requirements of Part 1 of the Order.

1. Continuous employment

Your period of continuous employment began on

2. Annual leave

[Detailed rules to be inserted by NDPBs in accordance with the provisions which apply to their senior staff].

3. Public holidays

[*Optional clause.*] [You may be required to work on a public holiday. If so, you are entitled to time off in lieu.]

4. Collective Agreements

[There are no service-wide collective agreements in force which affect your terms and conditions.]

5. Pensions

A contracting out certificate pursuant to the provisions of the Pension Schemes Act 1993 is [not] [*delete as applicable*] in force in respect of your employment.

NOTES ON CLAUSES

1. Commencement of employment

In most cases, a contract for an indefinite period, such as this, will be most appropriate. However, the Board may wish to consider offering a fixed-term contract in cases of genuine short-term need, for example, to cover a period of maternity leave.

3. Staff Handbook

As a legal requirement, this document must be freely available during normal working hours to all those for whom it forms part of their contract. It will be essential for the effectiveness of the contracts that the staff handbook is in proper order before contracts are signed. The final sentence reflects the fact that the handbook, the contractual parts of which form part of the contract, is the handbook as amended from time to time. It does not give a right to vary unilaterally the contractual terms in the handbook.

#7. Hours of Work

The Employment Regulations (Northern Ireland) Order 1996 requires details of any terms and conditions relating to hours of work including normal working hours. The

contract also needs to make clear that additional hours are also likely to be necessary on occasion. The Board needs to be aware, however, of the provisions of the Working Time Regulations 1998 (as amended). This, together with certain other clauses, will need to be adapted where flexible working, part-time working or job-sharing applies.

#8. Annual Leave

The Employment Regulations (Northern Ireland) Order 1996 requires particulars to be given of any terms and conditions relating to holidays, including public holidays, and holiday pay. The particulars must be sufficient to enable entitlement to holiday pay, including any entitlement to holiday pay on the termination of employment, to be precisely calculated. Since such terms may be lengthy and complex, it is appropriate to set them out in a schedule.

11. Pensions

Membership of an occupational pension scheme is not compulsory and a member of staff may at any time opt out and be covered instead by a personal pension scheme or the State Second Pension (S2P). Where a member of staff has opted out, a provision will need to be included recording the fact.

#13. Place of Work/mobility

[Only relevant if mobility clause used] A mobility clause ensures that the employee can be legally required to work in different locations. However, it should be noted that the Courts have implied limitations into express mobility clauses. In particular, they have held that the employer should give reasonable notice of any change in the

employee's place of work and should consider financial assistance where appropriate.

16. Other Compensation for Compulsory Early Termination of Contract

These clauses set out existing terms relating to termination of contract, in line with the [efficiency scrutiny recommendation] that contracts should clarify the terms which apply. General guidance on structure as a ground for compulsory early retirement which is not well understood, has been issued separately.

The relevant provisions of the Civil Service Compensation Scheme apply to staff covered by the Principal Civil Service Pensions Scheme (Northern Ireland), the partnership pension account, and those eligible for membership of either arrangement who elect to opt out.

Public Bodies: A Guide for NI Departments

Chapter 6: Financial Management - Accountability

6. FINANCIAL MANAGEMENT - ACCOUNTABILITY

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Annex 6A: NDPB Accounting Officer

Appendix to Annex 6A: Induction Arrangements including training from the Chief Executive Forum Training

SUMMARY

The Board of a Public Body has a collective responsibility for the proper conduct of the body's affairs and must ensure compliance with any appropriate financial requirement laid upon them by the sponsor department in the management statement/ financial memorandum (MS/FM) or by other means. The Chief Executive of the NDPB is normally designated as its Accounting Officer and must therefore sign the accounts.

This chapter outlines the need for proper systems of accountability within Public Bodies explaining the appointment and role of the Board, Accounting Officer and other senior posts. It includes information on Annual Reports and Accounts, Performance Targets and Internal and External Audit arrangements.

6.1 Introduction

6.1.1 Improved accountability is an important aim for all Public Bodies. As accountable units of management within the public sector, all Public Bodies are required to demonstrate that they are conducting their operations as economically, efficiently and effectively as possible. Annual reports and accounts are the main vehicles for discharging this “stewardship” function and enabling the Assembly, the taxpayer and customers to judge whether the body is securing value-for-money in its operations.

6.2 Organisation

6.2.1 Board Responsibility

6.2.1.1 The Board of a Public Body has a collective responsibility for the proper conduct of the body’s affairs and for ensuring that staff maintain the strictest standards of financial propriety. Where the Public Body has been set up by statute, the Board has a duty to ensure that the requirements of propriety, regularity and value-for-money are met in its use of public funds. Where the Public Body has been set up under the Companies (Northern Ireland) Order 1986 or has charitable status, it must also meet the requirements of the Companies Order and DSD guidance on charities.

6.2.1.2 The Board must ensure compliance with any appropriate financial requirement laid upon them by the sponsor department in the management statement/ financial memorandum (MS/FM) or by other means.

6.2.1.3 All public bodies are required to have in place a **Code of Practice** to which members should adhere. The Code should be publicly available and should set out the conduct expected of board members. DFP formally referred to a revised Code of Practice for Board Members of

Public Bodies issued by the Cabinet Office in FD(DFP) 03/06 which is available at www.aasdni.gov.uk .

6.2.1.4 Sponsor Departments should be aware of the guidance on Corporate Governance provided in para 4.8. The Treasury Code of Practice on Corporate Governance provides useful guidance on the role of the board and independent non-executive members.

6.2.2 Accounting Officer

6.2.2.1 The Chief Executive of the NDPB is normally designated as its Accounting Officer. The designation is usually made by the Permanent Secretary of the sponsor department, the Principal Accounting Officer, although an Additional Accounting Officer within the sponsor department may do so if they have responsibility for the body in question. The letter of designation, which should be accompanied by a copy of the NDPB Accounting Officer Memorandum (See GANI Annex 8.2) and the Treasury guidance document *Regularity, Propriety and Value for Money*, http://www.hm-treasury.gov.uk/media/A/2/Reg_Prop_and_VfM-November04.pdf should make clear that the designation can be withdrawn in certain circumstances. See Annex 6A of this document for further information. A model Designation Letter endorsed by DFP for use by sponsor departments was issued under cover of FD (DFP) 04/07. The Accounting Officer's designation letter should be copied to the Comptroller and Auditor General (C&AG), the clerk to the Committee of Public Accounts (PAC) and the Treasury Officer of Accounts.

6.2.2.2 A copy of the NDPB Accounting Officer Memorandum which provides detailed advice about his/her responsibilities can be found at Annex 8.2 of GANI.

6.2.2.3 The Government's Financial Reporting Manual provides a model Statement of Accounting Officer's responsibilities:

<http://www.financial-reporting.gov.uk/ANNEX 2 ACCOUNTING OFFICERS RESPONSIBILITIES.pdf>

6.2.3 Finance Posts

6.2.3.1 Public Bodies will normally appoint a finance officer or finance director whose duties are likely to include advising senior managers on financial policy and management and to run the financial management systems. The post will generally be separate from the management line which has responsibility for budgeted money and manpower.

6.3 Annual Reports and Accounts

6.3.1 Executive NDPBs produce annual reports and accounts that are either formally laid before the Assembly or placed in the Library. Different arrangements apply during suspension and Financial Reporting and Accountability Branch (FRAB) in DFP should be consulted (tele 028 9185 8025) in these circumstances. NDPB's founding legislation, should provide for the preparation of an annual report and of annual accounts in accordance with directions issued by the Sponsor Department with the approval of DFP, the audit of the accounts and their presentation to the Assembly. Guidance for the preparation of an annual report can be found in Chapter 7 FReM www.financial-reporting.gov.uk.

6.3.2 DFP should be consulted on the format of the accounts direction. Public Bodies established under the Companies Order prepare their accounts in accordance with the requirements of the Companies Order.

- 6.3.3 Where a NDPB is to be set up under statutory powers the legislation should normally provide for the body's audited accounts to be laid before the Assembly. This is not always the case as far as the Annual Report is concerned, however there is a presumption that all executive NDPBs will produce an Annual Report which incorporates the full audited accounts and is published as a single document. When departments are seeking new legislation which covers accounts, provision should be made for the preparation and presentation to the Assembly of an Annual Report which incorporates the Annual Accounts.
- 6.3.4 The accounts should be produced on an accruals basis following, as far as appropriate, private sector practice based on generally accepted accounting practice (GAAP), i.e. the requirements of the Companies Order and on the accounting standards issued or adopted by the Accounting Standards Board. The accounting and reporting requirements are set out in FReM: <http://www.financial-reporting.gov.uk/>. It should be noted that from 1 April 2008, FReM will be based on International Accounting Standards and hence accounts for the 2008/09 financial year onwards should be prepared in accordance with International GAAP, rather than UK GAAP.
- 6.3.5 The incumbent Accounting Officer of the public body will normally be expected to sign its accounts. The Public Accounts Committee attaches great importance to the responsibilities of the signatories of public accounts prepared by public bodies and any of them are liable to be summoned before the Committee, alongside the departmental Accounting Officer concerned. They should therefore be notified by the sponsor department of that liability.
- 6.3.6 Advisory and Tribunal NDPBs do not normally prepare separate accounts, but are accounted for as part of their sponsoring department's resource account. They should, however, prepare an annual report that for the large majority of Advisory NDPBs should be

prepared in a proportionate way and need only be one or two pages long. It might include the following:

- a brief history of the body;
- terms of reference for the body;
- a description of how the body's work supports the government's objectives and policies;
- details of membership of the body, including any changes which have taken place during the year;
- details of the remuneration, if any, of the chair and members;
- the frequency of meetings;
- a list of reports issued during the year and a summary of the reports if practicable; and
- a point of contact in the sponsor department or body from where further information about the body can be obtained.

6.3.7 It is recommended that the Annual Report is laid in the Assembly. Alternatively, the requirement to publish an annual report could be met by including a section in the sponsor department's report. Please note, Advisory NDPBs with a separate legal identity should comply with the guidance relating to Executive NDPBs in respect of accountability requirements.

6.4 Performance targets

6.4.1 All NDPB Annual Reports should provide full details of the extent to which financial and other performance targets have been achieved over the past year.

6.4.2 All NDPB's key financial and quality of service targets should be published **before** the start of the period they are intended to cover. NDPBs should agree with their sponsor department how this should be done. See Chapter 7: Financial Management – Planning, Funding and Control for further information.

6.5 Internal audit

6.5.1 NDPBs should make arrangements for internal audit in accordance with the Treasury's *Government Internal Audit Standards* (GIAS) issued under cover of DAO(DFP) 03/02. The sponsoring department in its turn is required to ensure that an NDPB makes effective arrangements for internal audit, and should arrange for its own internal auditors to have access to the NDPB. Where practicable an NDPB should have its own internal audit unit but may buy in a service from a private firm or sponsor department provided this complies with GIAS, and does not lead to a conflict of loyalties. Internal audit should maintain links with the NDPB's and other review services as well as with the sponsor department's own internal audit unit. Information on GIAS is available at:

http://www.hm-treasury.gov.uk/documents/public_spending_reporting/governance_risk/psr_governance_gia_guidance.cfm

6.5.2 The NDPB should set up an Audit Committee as a committee of its Board in accordance with the Cabinet Office's *Guidance on Codes of Practice for Board Members of Public Bodies*. The Treasury's *Audit Committee Policy Principles* which are set out in the *Audit Committee Handbook* issued under cover of DAO(DFP) 07/07 and available at:

http://www.hm-treasury.gov.uk/documents/public_spending_reporting/governance_risk/psr_governance_risk_audit_committee_handbook.cfm

6.5.3 A checklist for evaluating the audit committee arrangements is available from the National Audit Office:

[AuditCommittee Checklist May2006.doc](#)

6.5.4 The NDPB's Accounting Officer is personally responsible for making suitable arrangements for the provision of internal audit in a manner which represents best value for money.

6.5.5 If requested to do so the sponsor department should assist in setting up such arrangements, especially where the NDPB does not have the resources to provide a comprehensive internal audit service that conforms to GIAS.

6.5.6 The sponsor department should also have a right of access so that its own internal auditors or other representatives can carry out any additional work required to provide an assurance to the department's Accounting Officer on the exercise of his responsibilities in relation to the NDPB.

6.5.7 The sponsor department must obtain details of the internal audit arrangements and monitor the effectiveness of a NDPB's internal audit provision. The Management Statement and Financial Memorandum should set out the arrangements for the NDPB to provide to the department (regularly or on request) information about the NDPB's internal audit strategy, the annual programme, and copies of final audit reports selected by the department, including the NDPB's Head of Internal Audit's opinion on risk management, control and governance. Arrangements should be made by sponsor departments for their own internal auditors to see these documents

6.6 External audit

6.6.1 The expenses of most advisory and judicial bodies will be audited by the Comptroller & Auditor General (C&AG) as they are borne on the

Estimates of sponsoring departments and included as part of the department's resource accounts. The C&AG has been given powers to audit all executive NDPBs except for the time being those established under the Companies Order. It is expected that this will change as a result of the Companies Order Reform Bill.

6.6.2 The C&AG is separately empowered to carry out value-for-money examinations of NDPBs under Articles 3 and 4 of the Audit and Accountability (Northern Ireland) Order 2003, irrespective of whether or not he/she audits those NDPBs accounts.

6.6.3 The auditing arrangements below reflect the decisions announced in the Government's response of March 2002 to Lord Sharman's review of audit and accountability in central government.

6.6.4 Appointment of Auditors

6.6.4.1 Where new Executive NDPBs are being set up with their own founding legislation, the statute should provide for the appointment of the C&AG as the external auditor.

6.6.4.2 There is a different treatment for NDPBs that are set up under old legislation that does not include statutory provision for C&AG audit, or for bodies that have been or are being reclassified by the Cabinet Office as NDPBs. In these circumstances, DFP has the power under the Government Resources and Accounts Act (NI) 2001 to give the C&AG statutory audit responsibility. Departments should speak to the relevant DFP contacts for further information.

6.6.4.3 For the time being, NDPBs established under the Companies Orders will continue to appoint their own external auditors in accordance with the requirements of the Companies Orders. However, once the Company Law Reform Bill comes into force, different arrangements may apply and DFP should be consulted.

- 6.6.4.4 In approaching the audit of a NDPB, the C&AG will consult the sponsoring department and other relevant stakeholders as well as the NDPB itself and consider their views on whom – the Northern Ireland Audit Office or a commercial auditor – should undertake the audit. The final decision will rest with the C&AG but he/she will of course explain its basis.
- 6.6.4.5 Sponsoring departments have a range of interests in the audit of their NDPBs. Where they have hitherto appointed the auditor they will have agreed, in advance of the audit, requirements which might include clarity as to what is being covered by the audit and appropriate documentation surrounding it, and the audit reports and any other outputs will have been addressed to the sponsoring departments. This has enabled the departments to require, as part of the audit, an assurance on the financial systems within the NDPB.
- 6.6.4.6 Where the C&AG is the statutory auditor of an NDPB he/she will share with the sponsoring department and other relevant stakeholders the kind of information noted above, subject to appropriate agreement between him/herself and the department, and also between the department and the NDPB, to allow such disclosure. These arrangements will normally include agreement that information identified during the audit process will be shared with the department at the end of the audit. Such arrangements will apply in particular to issues which impact on the department's responsibilities in relation to financial systems within the NDPB.
- 6.6.4.7 Where the C&AG is the statutory auditor, the management letter is addressed to the NDPB and the audit certificate is addressed to the Assembly. Where asked, however, the C&AG will provide departments with Regulatory Compliance Reports and other similar reports that the departments may request at the commencement of the audit and which are compatible with the independent auditor's role.

6.6.4.8 For NDPBs which are established under the Companies (NI) Order 1986 and which therefore for the time being appoint their own external auditors, the Management Statement and Financial Memorandum needs to provide for audit reports to be supplied to the sponsor department.

6.6.5 Right of Access to Documents

6.6.5.1 Under the Audit and Accountability (Northern Ireland) Order 2003 (which also reflects decisions announced in the government's response to Lord Sharman's review) the C&AG has, for the purposes of statutory audit, a right of access to relevant documents held both by recipients of grants from the NDPB and by the NDPB's contractors and subcontractors. (These rights are in addition to those provided for under Section 21(5) of the Government Resources and Accounts Act (Northern Ireland) 2001, which provides for access to documents held or controlled by the audited NDPB itself.)

6.6.5.2 In addition, for the purposes of conducting a value for money study of a NDPB the C&AG has access to relevant documents held by the bodies noted above (i.e. recipients of grants from the NDPB and the NDPB's contractors and subcontractors).

ACCOUNTING OFFICERS

Introduction

1. The decision to appoint a Chief Executive of a NDPB normally rests with the Board. In making the appointment, the Board will be acting in the knowledge that the Chief Executive will have to carry the responsibilities of the Accounting Officer, but the decision to designate the chief executive as the NDPB Accounting Officer is the responsibility of the sponsor department's Accounting Officer alone. For this reason, it is imperative that the departmental Accounting Officer, or his/her representative, should be involved in the process of appointing the Chief Executive and consulted about any actions that might lead to his or her removal as such.
2. In June 1995 the Permanent Secretary of the Department of National Heritage, as the Department's Accounting Officer, withdrew Accounting Officer status from the Chief Executive of the National Heritage Memorial Fund (NHMF). As a direct consequence, the NHMF trustees then dismissed the Chief Executive. Against that background, and with the aim of preventing a re-occurrence of the NHMF case, this note discusses the steps that departmental Accounting Officers should take to increase the NDPB Accounting Officers' understanding of their responsibilities. Although the expectation is that cases such as the NHMF one should be extremely rare, the note also sets out the procedures a departmental Accounting Officer should follow if he or she faces a similar decision in the future. These are based on those followed in the NHMF case.

Increasing NDPB Accounting Officers' understanding of their responsibilities

3. Departmental accounting officers should:

- make it clear in the letter designating a NDPB Accounting Officer, which should enclose the DFP memorandum 'The Responsibilities of an NDPB Accounting Officer'¹¹, that their status can be withdrawn in certain circumstances and that this would normally lead to termination of their appointment as Chief Executive. Further guidance on this issue is contained in the DFP letter to Accounting Officers dated 10 September 1998 which is available at http://www.aasdni.gov.uk/pubs/MISC/gen_guid100998.pdf
- make sure that Accounting Officers in NDPBs are well briefed on their responsibilities. Accounting officers are required to attend the course 'An Introduction to Public Accountability for Accounting Officers' through the Chief Executive's Forum, which is specifically designed for newly appointed Chief Executives of Executive Agencies and NDPBs. The 'menu' of courses includes accountability, Government Accounting, regularity and propriety, accounting officers, the roles of Parliament, Treasury, C&AG and PAC in financial control, corporate governance and current issues on standards, ethics etc in the delivery of public services;
- newly designated Accounting Officers should discuss their role with either the Permanent Secretary or the Finance Director of the sponsor department;
- as standard practice, newly designated Accounting Officers should have a general discussion with staff in NIAO to obtain a better understanding of its role. This will augment the session on the role of the C&AG, which forms part of the course above. A talk with the NIAO would be worthwhile even in those cases where

¹¹ Annex 8.2 of GANI

they are not the financial auditors of the NDPB, since NIAO still have the right to conduct value for money audits in such bodies;

- if a department is designating as Accounting Officer someone from outside the civil service, consider the need for additional induction training (see Appendix 6A); and
- where this has not been done already, draw the attention of Accounting Officers in NDPBs, who have not been formally designated as such, to the DFP memorandum.

Procedures for handling the withdrawal of accounting officer status in an NDPB

4. Circumstances leading to the withdrawal of Accounting Officer status are likely to be ones in which the Board of the NDPB would also wish to take disciplinary action which may lead to dismissal of the individual concerned. There may be circumstances in which the Board of a NDPB might take the initial decision to suspend the Chief Executive, with suspension or withdrawal of Accounting Officer status following. Where the Board consults the Department first and then takes the appropriate investigative and disciplinary action (including prompt suspension if necessary), separate departmental action to consider withdrawal of Accounting Officer status will not be required, as withdrawal will be the automatic consequence of the Board's action. Where separate action is needed the following procedures will be followed.
5. Although the relationship between a departmental Accounting Officer and the Accounting Officer of a NDPB is governed by public rather than employment law, the departmental Accounting Officer has a duty to act fairly and rationally when making a determination which affects the Accounting Officer of the NDPB, notably as to his or her continued employment. If the loss of Accounting Officer status leads to dismissal, the dismissing employer will need to show, as a matter of employment

law, that he acted reasonably in all the circumstances and these may include the fairness of any decision to remove that status.

6. If a department has more than one Accounting Officer, it may be possible to offer an appeal; the original decision could be taken by an additional accounting officer, leaving the principal accounting officer to hear any appeal. Otherwise there is no scope for an appeal.

The procedures

7. If a NDPB Chair is considering the suspension of a Chief Executive, the Chair should consult his/her finance and internal audit committees.
8. If a departmental Accounting Officer is considering the withdrawal of Accounting Officer status from the Chief Executive of a NDPB, he or she will normally:
 - advise the Chief Executive and the Chair of the board immediately of the concern, the procedures that will be followed and the possible consequences. The Chair should be informed of all subsequent developments;
 - if the allegations are sufficiently serious to require the suspension of the Accounting Officer, work closely with the board of trustees to identify a temporary replacement. The decision on the designation, however, rests with the departmental Accounting Officer;
 - invite someone from the sponsor department to carry out an initial investigation. The Chief Executive has the right to legal or trade union representation;
 - allow the Chief Executive the opportunity to comment on the results of the initial investigation;
 - inform the Chair of the results of the initial investigation and the

Chief Executive's response. and allow him or her the opportunity to comment on them;

- consider all the evidence, advise the Chair of the probable decision, and take account of any representations he or she may make; and
- formally advise the Chief Executive and the Chair of the decision.

9. The department has a duty to report such matters to DFP and to the Northern Ireland Audit Office, and to respond to any questions they may put. The department also has to respond to any subsequent questioning by the Public Accounts Committee. The departmental Accounting Officer might also wish to draw the attention of other departments to what has taken place to help prevent a re-occurrence elsewhere, but will not otherwise discuss the case publicly.

Induction arrangements for senior staff who are new to the Civil Service and other public offices including NDPBs including training available from the Chief Executives Forum

Training

Training for senior staff (chief executives and others) joining the Government from outside the Civil Service is available from the Chief Executives Forum in conjunction with the National School of Government and run in Northern Ireland. The School provides the following programmes:

- Senior Entrants Programme for staff at Grade 7 (or equivalent) and above who join the Civil Service from outside;
- ‘An Introduction to Public Accountability for Chief Executives’ – designed for new Accounting Officers and those who support them in their role e.g. Finance Directors. It is relevant to those recently appointed from outside the Civil Service and also those who wish to update themselves and focus on their new responsibilities.
- Individual training packages tailored to the particular needs of Chief Executives or equivalent (arranged through the Executive Development Unit);
- ‘Appearing before the Public Accounts Committee’ provides tailored preparation for Accounting Officers and their supporting witnesses when required to appear before the Committee;
- Training for newly-appointed members of the Boards of Non-Departmental Public Bodies which senior staff may attend, run both as open courses on the School's own premises and in versions tailored to the needs of single client organisations. The course covers matters of accountability, ethics and propriety, and the role of the Accounting Officer.

Contact Details

For more information please contact Roger Bradley of the Chief Executive's Forum tele. 028 9054 2966.

Mentoring

The availability of informal advice from an experienced person in the early stages of a public service appointment, and later as new issues arise, may add value and directness to formal training and guidance material. Departments and NDPBs will wish to consider this.

Public Bodies: A Guide for NI Departments

Chapter 7: Financial Management – Planning, Funding and Control

7. FINANCIAL MANAGEMENT: PLANNING, FUNDING AND CONTROL

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SUMMARY

This Chapter provides guidance on the responsibilities of sponsor departments and Public Bodies for ensuring the approach in terms of financial management reflects best practice in public sector financial management. It explains how departments should deal with the expenditure and finance of Public Bodies in terms of their resource accounts and budgets.

Advice is provided amongst other things on corporate, operating or business plans, Management Statement/Financial Memorandum (MSFM), performance targets and funding arrangements.

7.1 Introduction

7.1.1 The main aim of all Public Bodies is to carry out their duties as efficiently and effectively as possible, within available resources, for the benefit of taxpayers, customers and staff. Because Public Bodies responsibilities vary widely, what can be regarded as best practice in terms of financial management will vary from case to case. Corporate planning and management arrangements will need to take account of the distinctive positions and responsibilities of Ministers, Boards and Chief Executives. This Chapter provides guidance on the responsibilities of sponsor departments and Public Bodies for ensuring the approach adopted reflects best practice in public sector financial management.

7.2 General Principles

7.2.1 This section explains how Public Bodies are classified in the national accounts and the effect this has on how departments should deal with the expenditure and finance of Public Bodies in terms of their resource accounts and budgets.

7.2.2 The National Accounts are a set of integrated economic accounts covering the whole economy that are compiled by the Office for National Statistics (ONS) based on international conventions. Government policy in terms of public expenditure control is defined and measured using the national accounts.

7.2.3 For the purposes of national accounts, NDPBs are normally classified as part of the central government sector. The expenditure, assets and liabilities of bodies classified by the ONS as public sector score in the public finances and are included in public sector expenditure aggregates and balances. Flows between departments and their

Public Bodies are generally consolidated out of these measures to ensure there is no double counting.

- 7.2.4 The Government's objectives in terms of public expenditure control are delivered through the annual Spending Review process that sets yearly departmental resource and capital budgets. Because NDPB spending is in the central government sector, departments' budgets are set accordingly and NDPB spending scores against departmental budgets. As such departments must ensure that they are able to control the expenditure of their Public Bodies in order to stay within their limits. Where a department co-funds a Public Body there should be arrangements in place to share the budgetary hit. Please consult DFP for detailed guidance.
- 7.2.5 Departmental resource accounts measure expenditure when it crosses the departmental accounting boundary. This means that the Public Body's own expenditure and income do not score against departmental resource accounts. Any funding provided by the department, e.g. grant-in-aid, will be measured in a department's accounts, and as such is subject to Assembly approval via the Supply Estimates process.
- 7.2.6 Departments are responsible for recording the expenditure of their Public Bodies on the DFP Resource Budgeting Management database, which is used to record plans and outturn spending data. Central Expenditure Division (CED) within DFP uses this information to update NI data on Treasury's Combined On-line Information System (COINS) database. Departments must therefore satisfy themselves that the management, budgeting, and financial accounting procedures are in place to allow them to meet this responsibility.
- 7.2.7 Arrangements for planning and controlling a Public Body's activities will depend on the purpose for which it has been set up; the degree of

independence from government it is intended to have; and whether it operates within a statutory framework which sets out its main responsibilities and establishes a statutory board between the Chief Executive and the responsible Minister. In general when a Public Body is set up and when it is reviewed particular attention should be given to ensuring that:

- its aims and objectives are agreed and clearly defined and included, as appropriate in the underlying statute, Management Statement/ Financial Memorandum (MSFM);
- the respective responsibilities of the body and its sponsor department are clearly defined in a MSFM;
- the Public Body agrees the broad policy framework within which it will operate with the responsible Minister and performance targets are set covering economy, efficiency and effectiveness in the delivery of its services;
- the Public Body has in place sound internal financial, risk management and management information systems including: management accounting systems to enable it to monitor and control its expenditure against budget; to produce annual accounts; to produce and update its corporate plan; and to evaluate progress towards key targets on financial performance, quality of service and efficiency and adjust those targets as necessary. All systems must also ensure that the Public Body is making best use of the resources available to it and securing value for money in all areas; and
- the Public Body itself and the sponsor department carry out regular assessments designed to monitor performance and ensure the financial management arrangements reflect best public

sector practice and are working effectively. These should cover evaluation of both specific policy initiatives undertaken by the Public Body itself and longer-term policy reviews. Guidance on policy making is contained in the OFMDFM publication “A Practical Guide to Policy Making in Northern Ireland” available at www.ofmdfmi.gov.uk/policylink/cpubrochure/index.htm. Guidance on policy evaluation is contained in the Treasury booklet *Policy Evaluation: A Guide for Managers*.

7.3 The Planning Process

7.3.1 Strategic Planning

7.3.1.1 Most Public Bodies will be set up with the intention of distancing the sponsor department from day-to-day decisions. Accordingly they will be given responsibility for carrying out their activities within a policy and resources framework laid down in legislation and/or by the responsible Minister. In practice this responsibility will usually be best discharged through an effective corporate planning system. This should meet not only the needs of the NDPB itself but also those of the sponsor department and DFP where appropriate.

7.3.1.2 An NDPB's strategic planning system should:

- identify those features in the **environment**, including risks and opportunities, which the NDPB needs to take into account when determining how the organisation can best meet its main aims including the needs of its customers;
- evaluate **alternative strategies** and the resource requirements needed to implement those strategies;

- provide the responsible Minister and the NDPB with an agreed view on the **long-term direction of the organisation**;
- ensure that the NDPB is set challenging, but realistic, **performance targets**. Treasury guidance on setting performance targets is available in 'Choosing the right Fabric: a Framework for Performance Information', available at the following address:
http://www.hm-treasury.gov.uk/documents/public_spending_reporting/public_service_performance/psr_performance_efficiency_fabricframework.cfm

A more recent publication, jointly published by HMT, Cabinet Office and the National Audit Office, entitled 'Setting Key Targets for Executive Agencies: A Guide' provides helpful information in this respect and can be accessed from the Treasury web-site or the following link:
<http://www.civilservice.gov.uk/other/agencies/publications/pdf/setting-targets.pdf>

- provide the basis for determining the **financial resources** which will be made available to the NDPB and, in the case of NDPBs charging for service, the appropriate charging policy; and
- provide a clear understanding of the **corporate strategy** which the NDPB is to follow and enable that strategy to be implemented **within an agreed policy and resources framework** which leaves day-to-day responsibility for the management of the NDPB with the Chief Executive and his key staff.

7.3.1.3 Strategic planning involves three distinct stages:

- (i) a strategic **analysis** of the environment in which the NDPB operates;
- (ii) the identification of strategic **options** including options which the responsible Minister and customers believe should be examined;
- (iii) **implementation** of the corporate strategy as agreed with the NDPB board and/or responsible Minister.

7.3.1.4 Strategic analysis should include a review of past experience and the lessons to be learned and the strategic objectives previously agreed.

7.3.2 Corporate Plan

7.3.2.1 The **Corporate Plan** is the main output from the first two stages and whilst it may be appropriate to link the timetable with the annual Main Estimates, consideration should be given to the annual budgetary timetable when departmental budgets are set. The annual business or operating plan is primarily concerned with the third stage, ie implementation of the approved corporate plan once the NDPB's financial and quality of service targets, the resources which will be made available to the NDPB, and the key elements of the NDPB's corporate strategy are agreed.

7.3.2.2 NDPBs should follow the principles set out in *DAO(DFP) 15/05*.

7.3.2.3 The corporate plan serves as a focus for the discussion of strategic options; a means of setting targets and allocating resources; and a means of reviewing performance. It also provides the mechanism through which NDPBs may bid for additional resources through the public expenditure review process. The corporate plan should also

include agreement on how the NDPB will provide assurance to its sponsor department that risks are being well managed.

7.3.2.4 New NDPBs starting up mid-year should have an interim corporate plan for the current and in some cases the immediately forthcoming financial year. Larger and more complex new NDPBs may take two to three years to develop their strategies fully across the whole range of their functions and should therefore concentrate initially on tasks critical to their setting up such as agreeing an interim budget.

7.3.2.5 Sponsor departments should agree a timetable with each of their NDPBs for consideration of corporate plans, which relate to the annual Priorities and Budget process. Ministers may discuss draft corporate plans with NDPBs in order to ensure that NDPBs devise their strategies in the light of Ministerial objectives and to clarify the resource bids which will be made in the course of the Budget and Monitoring processes. Departments' bids are made in the light of their Ministers' consideration of NDPB corporate plans. DFP may ask to see draft corporate plans in certain cases, for example where expenditure by an NDPB constitutes a significant proportion of a Department's resources bid or where it wishes to be assured that an NDPB's strategic planning and control systems reflect best practice.

7.3.2.6 DFP may wish to see and agree Corporate and Business Plans.

7.3.3 The Annual Operating/ Business Plan

7.3.3.1 While Ministerial agreement to the strategy set out in the NDPB's corporate plan will establish the overall policy and resources framework within which the NDPB will operate, as noted above, each NDPB will need to draw up an annual operating or business plan which translates strategy into action. This may be done either by preparing a revised

and more detailed version of the corporate plan or by preparing a separate operating plan. The operating plan will normally summarise, or be backed up by, budgetary plans for each of the NDPB's budget centres.

7.4 Management Statement/ Financial Memorandum

7.4.1 The terms and conditions which a sponsor department attaches to the funding of a NDPB and the arrangements for setting its financial and other performance targets should be clearly set out in its management statement/ financial memorandum (MSFM). A model MSFM produced by DFP and OFMDFM can be found in GANI annexes 8.4 and 8.5 available at www.aasdni.gov.uk .

7.4.2 The **Management Statement** sets out the broad framework within which the NDPB will operate. It includes information on aims, objectives and targets of the NDPB; the respective roles and responsibilities of the department and the NDPB; the planning, budgeting and control arrangements; staff management; risk management arrangements; and how the NDPB is to account for its performance.

7.4.3 The **Financial Memorandum** complements the Management Statement and sets out the detailed financial framework within which the NDPB operates. The Financial Memorandum covers, among other things, the NDPB's funding arrangements (including the conditions attached to the receipt of grant-in-aid, and the handling of receipts from charges and other sources of revenue); the financial delegations within which the NDPB can spend; budgeting procedures; banking; and expenditure on staff.

7.4.4 In summary the MSFM should set out:

- the statutory authority or other constitutional basis for the body and the powers under which any grant is made, by whom and from where;
- sponsor department's responsibilities in agreeing the NDPB's strategic aims, objectives and financial and other performance targets, and in monitoring performance;
- the responsibilities and financial duties of the Accounting Officer, the Sponsor Department and Minister;
- the responsibilities and financial duties of Board members and the Chief Executive;
- the planning framework including the provision by the NDPB of forecasts of income and expenditure, the timing and preparation of corporate plans and measures used to monitor output and performance;
- reporting arrangements including the arrangements for laying and approving the form of the NDPB's accounts and reports and any special arrangements for reporting on items such as progress on major capital projects;
- delegated financial controls and authorities, e.g. issue of guarantees and indemnities, powers to enter into contracts, capital expenditure controls, etc;
- administrative cost controls and personnel matters; and
- accounting and audit arrangements.

7.4.5 A MSFM is needed whether or not the NDPB is in receipt of Government funds. All MSFMs must be approved by DFP and copied to PSIU for information.

7.5 Performance Targets

7.5.1 All NDPBs should seek to develop performance targets. These should be incorporated in the overall planning process and in budgeting and management information systems. Particular points which all sponsor departments and NDPBs should consider are:

- **coverage:** performance targets should cover the NDPB's key activities and be closely linked to the NDPB's principal aims and strategic objectives and, through them, to the department's own related Public Service Agreement (PSA) objective(s) and target(s). The appropriate number of targets will vary, although it should be borne in mind that the average number of PSA targets for a government department is around 6. Guidance on target-setting is included in '*Choosing the Right Fabric: a Framework for Performance Information*' and '*Setting Key Targets for Executive Agencies: A Guide*' as outlined in paragraph 7.3.1.2;
- **value for money:** where possible value for money target(s) should be specific – e.g. a specific cost reduction measure without detriment to service, or a specific service improvement at no extra cost. Targets along the lines of some overall improvement in value for money, which tend to be subjective and therefore difficult to measure, should be avoided;
- **tracking:** each target should have a baseline and end-point, so it is clear what improvement is needed by when. The NDPB and its sponsor department will need to have performance measurement systems that can track progress towards the target, and give

sufficient warning to allow corrective action to be taken if a target is shown to be off course.

7.5.2 As well as these published performance targets – which should be agreed by the responsible minister - the NDPB senior management should set lower level internal targets or measures to help them deliver their performance targets. In turn, each budget centre's and, ultimately, member of staff's own targets should flow directly from the performance targets.

7.6 Principles of Budgeting

7.6.1 As explained previously, NDPB expenditure scores in departmental budgets and as such the same principles apply to NDPB budgets as departmental budgets.

7.6.2 The key aims of any budgeting system are to:

- Establish who will do what by when with the resources available;
- Monitor actual performance against plan;
- Ensure effective control; and
- Take remedial action as soon as it becomes evident that this is necessary or take steps to revise the plan.

7.6.3 In drawing up budgets and operating plans it is important that NDPBs should have regard to the following **four key principles of good budgeting** in the public sector:

- (i) all managers, from the top right through the management line, should be responsible for setting and reviewing budgets;

- (ii) Departments must consider the NDPB's budget as part of their Budgeting and Monitoring process;
- (iii) budgets should include output and performance measures and there should be regular evaluation of what has been achieved compared with the targets which have been set; and
- (iv) top managers must organise their work and that of their organisation so as to make clear the responsibility for setting targets, managing resources and reviewing performance.

7.6.4 The budgeting system should not be separate from the NDPB's other financial management and information systems. It is important that all are part of a single overall system. For example there must be links from budgets to the corporate plan, through the setting of output measures and the monitoring of these, to the annual report cycle, which culminates in the annual accounts.

7.7 Delegation and Financial Controls

7.7.1 An NDPB's income and expenditure forms part of the department's budget and it will be required to ensure that, as a public body, it pursues regularity, propriety and value for money in all its operations. In all cases the aim should be to delegate responsibility to the NDPB to the maximum extent practicable where this offers improved value-for-money and can be done within an agreed policy and resources framework. The extent to which authority can be delegated depends on:

- **the strength of the NDPB's management and the circumstances in which it operates.** A large NDPB with effective internal controls is likely to need fewer external controls than a small one which is short on expertise in resource

management (8.3.5 of GANI gives examples of controls that sponsor departments should have in place); and

- **the powers of the NDPB and its method of financing.** An NDPB which is financed by a compulsory levy or one which has a monopoly position is likely to need closer control over the level of its fees and charges than one operating in an environment where market forces exercise effective financial disciplines.

7.7.2 The sponsor department should carefully monitor and subsequently review the results of increased delegation both to assess whether agreed aims have been achieved and whether increased delegation has led to any unintended side effects. Where increased delegations fail to provide expected improvements in value for money they should be reviewed, and where they prove to have adverse effects they should be withdrawn.

7.8 Methods of Funding

7.8.1 Grant in Aid

7.8.1.1 Government finance for all NDPBs within the NI block is authorised and controlled by the Assembly. Within these overall requirements and any legislation governing the operations of the body, the financial regime of each NDPB needs to be tailored to meet its particular circumstances and needs.

7.8.1.2 Most Executive NDPBs will be financed by a grant-in-aid. This form of financing, as opposed to the payment of a grant, is most appropriate where the Government has decided, subject to Assembly and essential departmental controls, that the recipient body should operate at arm's

length. (The distinction that is normally made between grants and grants-in-aid is described in Chapter 9.2 of *GANI*.¹²).

7.8.1.3 The sum charged to the resource account of the sponsor department for a particular year will be the amount paid out by the department on a cash basis to the NDPB during that year. Any voted provision not actually paid out by the sponsor department by the end of the year must be surrendered to the Northern Ireland Consolidated Fund (NICF) (unless DFP has agreed that the underspend can be used to offset the sponsor department's voted resources elsewhere in accordance with the limited circumstances for virement set out in *GANI* section 11.7). Once the grant-in-aid is in the hands of the recipient body any unexpended balances of the sums issued by the sponsor department during the financial year will not be liable for surrender to the NICF. However, in view of the requirement that money should not be paid in advance of need, the sponsor department should only pay installments of grant-in-aid in accordance with regular statements by the NDPB of its forthcoming requirements. Equally, a NDPB should not hold excessively large cash balances and the sponsor department should decide, in consultation with the NDPB and in line with the advice set out in DAO(DFP) 04/03¹³, how any unspent balances held by the NDPB at the end of the financial year should be dealt with. The rules regarding the provision in Estimates for the grant-in-aid are set out in *GANI* paragraphs 9.4.4-6.

7.8.1.4 Special arrangements need to be made before grants and grants-in-aid are paid to NDPBs with charitable status, to ensure that where money is used to finance the acquisition, improvement or creation of assets, an appropriate proportion can be surrendered to the Exchequer if the

¹² *GANI* can be found at www.aasdni.gov.uk .

¹³ DAO letters are not sent direct to NDPBs. Departments are asked to forward them where appropriate. DAOs can be accessed at www.aasdni.gov.uk

NDPB disposes of the assets in question. Details of the procedures which sponsor departments should follow before paying such grants is set out in the GANI Annex 24.2.

7.8.2 Fees and Charges

7.8.2.1 Some NDPBs may be financed in whole or part by fees or charges. This will normally apply where its services benefit a particular group of people and can be financed by that group, but may also apply to services to the public sector. DFP should be consulted on the correct classification for national accounts purposes of income streams and advice sought on the correct budgeting treatment.

7.8.2.2 Where the ratio of income from sales of goods and services (as opposed to income from a regulatory service or from tax type receipts, e.g. levies) exceeds 50% then the body is actually a public controlled market body. If this is the case then the body would probably be classified as a public corporation and a different budgeting and control framework would be appropriate. Guidance should be sought from DFP in these cases.

7.8.2.3 As a general rule, NDPBs should not subsidize the cost of goods or services provided unless the Government has taken a conscious decision that this should be done – either because of a statutory requirement or as a matter of policy. In order to help ensure the efficient allocation of resources, fees and charges should normally be set to recover the full cost, including the cost of capital of providing the particular service. Further guidance on the setting of fees and charges is contained in the Treasury publication the *Fees and Charges Guide* and in the case of goods and services provided by government departments to NDPBs, in paragraph 14.5.5 of GANI. The MSFM

should always contain a reference to the need for an NDPB to follow the *Fees and Charges Guide*.

7.8.2.4 Fees and charges should normally be reviewed annually. Any changes in fees or charges should normally be discussed and agreed each year as part of the NDPB's corporate strategy as set out in its draft corporate plan.

7.8.3 Loan Finance

7.8.3.1 Where NDPBs have significant receipts, loan finance may, exceptionally, be appropriate. However, the department will require budget cover for the increased expenditure financed by the loan.

7.8.3.2 Provision for loan finance will have, or should have, been made in the statute under which the NDPB operates. In principle, NDPBs may receive loans from the NICF, from voted funds, or, subject to the consent of DFP, from the private sector. The general conditions under which loans may be made by departments from the NICF and from voted moneys are set out in chapter 29 of GANI.

7.8.3.3 NDPBs will not normally be permitted to borrow from the private sector except by way of bank overdraft, covered by a Government guarantee, in order to meet very short-term requirements in the absence of an equivalent public sector facility.

7.8.3.4 DFP will need to be consulted in any cases where it is proposed that NDPB expenditure should be financed from loans. In each case DFP would need to be satisfied that loan finance is appropriate and will lead to improved value-for-money. DFP would not, for example, be willing to see provisions for loan finance included in legislation on the off-chance

they may be used or where the body concerned is a privatisation candidate.

7.9 Administrative Costs

7.9.1 All spending of NDPBs scores against their sponsor departments' programme budgets, however for many NDPBs administrative costs account for a significant proportion of their expenditure. Each NDPB should have an effective system for controlling administrative costs and this should be made a condition attached to the provision of its grant-in-aid. An effective control system should ensure that only essential work is done, that the organisation operates on a sound and economic basis, that staff numbers are adequate but not excessive and that grading standards are being met.

7.9.2 The precise nature of the controls which the sponsor department decides to retain itself will vary from case to case. But, subject to the considerations set out below, NDPBs and sponsor departments should seek to establish a regime which gives the managers of each NDPB the maximum incentive to manage resources as economically and efficiently as possible.

7.9.3 While the long-term aim should be to allow managers to manage and for the department to retain only those controls over administrative costs which it regards as essential, there are a number of points on which sponsor departments will need to satisfy themselves before relinquishing detailed manpower and other administrative controls. The most important are:

- that the NDPB meets the four key principles of good budgeting set out above;

- that the NDPB is achieving progressive improvements in the efficiency and effectiveness of its operations;
- that satisfactory arrangements have been put in place to ensure that there are regular reviews of the need for and organisation of numbers and grading of staff;
- that sponsor departments are in a position, through the financial memorandum, to require the NDPB to keep within its ceiling on administrative expenditure, and that adequate sanctions are available if this is exceeded.

7.10 Net Financing Regimes

7.10.1 Where an Executive NDPB has significant receipts and has demonstrated that it can operate efficiently and effectively under its existing financial regime, sponsor departments should consider with the NDPB whether administrative or all expenditure (i.e. administrative plus programme expenditure) by the NDPB should be controlled on a net basis. Proposals to introduce net control should take effect from the beginning of the financial year after agreement has been reached. Net control proposals may cover net control of administrative costs or of administrative plus programme costs.

7.10.2 Net control may be agreed where the following criteria are met:

- where the change follows a review of the NDPB's operations and forms part of an agreed programme of management change and improvement set out in the NDPB's MSFM;
- the receipts reflect movements in demand which are beyond the direct control of the NDPB and it is agreed as a matter of policy with the sponsor department and DFP that the scale of activities

and expenditure which generate them should vary in line with changes in the level of demand;

- the NDPB has the necessary performance indicators and other management controls in place which will ensure that efficiency can be monitored and improved; and
- that the NDPB is fully recovering all costs, except where otherwise agreed with the responsible Minister and DFP, in accordance with the principles set out in the Treasury's *Fees and Charges Guide*.

7.10.3 Where it is considered that an NDPB should be allowed to retain the proceeds from the disposal of an asset which would normally be surrendered to the NICF, the procedure set out in paragraph 37 of GANI Annex 24.3 and DAO(DFP) 16/05 should be followed. This is to secure the Assembly's approval to the reinvestment of the proceeds, or where the proceeds could not be surrendered as a matter of law, to bring the reinvestment to the Assembly's attention.

7.11 Selling Services into Wider Markets

7.11.1 Where appropriate and within certain rules, NDPBs are encouraged to make better use of their assets by engaging in commercial activities. The policy applies to the commercial exploitation of physical assets, including equipment, land and premises and non-physical assets including intellectual property, data and skills. NDPBs would normally undertake more straightforward projects themselves. However, larger, more complex projects should be taken forward in partnership with the private sector.

7.11.2 NDPBs could benefit from such opportunities by retaining the benefits of income generated, or to offset administration cost expenditure and meet efficiency targets. NDPBs are expected to seek out and

implement wider markets opportunities, which they should develop in line with the Wider Markets Guidance which sets out a framework for such activity.

- 7.11.3 You can access the guidance at Partnerships UK: <http://www.partnershipsuk.org.uk/information/Guidance.html> or direct at wider_markets@partnershipsuk.org.uk , telephone 020 7273 8340. For further information speak to the Wider Markets Unit in OFMDFM.

7.12 Price Basis of Forward Financing Statements

- 7.12.1 All forward financing statements submitted by NDPBs to sponsor departments should be in terms of current prices and based on published Gross Domestic Product (GDP) deflators at market prices. There is no objection to using other approved/recognised price indices as well where this is thought appropriate providing the implications of using the GDP deflator are also shown.

7.13 Banking Arrangements

- 7.13.1 NDPBs should have banking arrangements which represent good value-for-money for the Exchequer overall. This means using the most efficient and cost effective money transmission methods and securing the best terms possible from banks.

7.14 Disposal of Assets

- 7.14.1 NDPBs should review their assets on a regular basis. Surplus assets should be disposed of as appropriate. Any implications for future funding should be included in the NDPB's corporate plan.

- 7.14.2 Further guidance on the disposal of assets is contained in Chapter 24 of GANI and DAO(DFP) 16/05.
- 7.14.3 It is important that any NDPBs owning land acquired by use of powers of compulsory purchase should apply the ‘Crichel Down’ rules when disposing of the land. Subject to certain exceptions, the original owner (or his/her successor) should be offered the opportunity to buy back the land at its current market value if the land is no longer needed for the purpose for which it was compulsorily acquired. A threat of compulsion is assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition.
- 7.14.4 Comprehensive guidance on all aspects of disposal incorporating the Crichel Down rules is available in the Central Advisory Unit’s guidance “Disposal of Surplus Land and Buildings by Public Sector Bodies” available at <http://vla.nics.gov.uk> .

7.15 Insurance

- 7.15.1 The conditions attached to a grant-in-aid, normally set out in a NDPB’s Financial Memorandum, should cover insurance arrangements. Further details are set out in Chapter 30 of GANI.

Public Bodies: A Guide for NI Departments

Chapter 8: Policy – Openness and Accountability

8. POLICY - OPENNESS AND ACCOUNTABILITY

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SUMMARY

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.

This chapter highlights the requirement to produce and distribute widely information on the role and achievements of a body through a variety of vehicles, primarily, annual reports and accounts. It explains the various types of document to be made available and why and draws attention to obligations under Section 75 of the Northern Ireland Act 1998, the [Freedom of Information Act 2000](#) (FOIA), the Environmental Information Regulations 2004, the Data Protection Act 1998 and the Re-use of Public Sector Information Regulations 2005.

Also in the chapter, departments will find information relating to Codes of Practice and Conduct and procedures for dealing with complaints.

8.1 Introduction

8.1.1 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.

8.2 Information

8.2.1 The Freedom of Information Act 2000

8.2.1.1 The [Freedom of Information Act 2000](#) (FOIA) 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:

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

8.2.1.2 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:

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

- The manner in which information in each class is, or will be, published; and
- Whether the information is intended to be available free of charge.

8.2.1.3 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.

8.2.1.4 The Department for Constitutional Affairs has policy responsibility for FOIA and it provides detailed guidance on the implementation of the Act and Publication schemes at <http://www.foi.gov.uk/index.htm>. The Information Commissioner who acts as an independent 'watchdog' as regards the operation of FOIA also provides detailed guidance at: http://www.ico.gov.uk/for_organisations.aspx

8.2.1.5 Queries regarding the FOIA should in the first instance be directed to Departmental Information Managers (DIM).

8.2.2 Access to Environmental Information

8.2.2.1 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 operation of the Regulations is overseen by the Information Commissioner as in the case of the FOIA. Please see the following website for detailed advice:

http://www.ico.gov.uk/for_organisations.aspx

8.2.3 The Data Protection Act 1998

8.2.3.1 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:

- (i) It gives individuals certain rights;
- (ii) 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.

8.2.3.2 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.

8.2.3.3 Queries, subject access requests and complaints should be directed to departmental DIMs 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>.

8.2.4 The Re-use of Public Sector Information Regulations 2005

8.2.4.1 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.

8.2.4.2 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.

8.2.4.3 The policy responsibility for the re-use of public sector information rests with the Office of Public Sector Information (OPSI) working from within the National Archives. OPSI 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.

8.3 Openness

8.3.1 Annual report and accounts

- 8.3.1.1 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 the Assembly 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.
- 8.3.1.2 Many executive NDPBs are required by statute to produce and make publicly available annual reports; those that are not are urged to do so in the interests of greater public accountability and transparency. Guidance on the preparation by executive NDPBs of their annual reports and accounts is set out in the Government Financial Reporting Manual (FReM) a link to which is available at www.aasdni.gov.uk .
- 8.3.1.3 Advisory NDPBs do not prepare separate accounts; their financial information is contained within the resource accounts prepared by their sponsoring department. They should, however, prepare an annual report, which, for the large majority of advisory NDPBs, should be prepared in a proportionate way and need only be one or two pages long. It might include the following:
- A brief history of the body;
 - Terms of reference for the body;
 - A description of how the body's work supports the government's objectives and policies;
 - Details of membership of the body, including any changes which have taken place during the year;

- Details of the remuneration, if any, of the chair and members;
- The frequency of meetings;
- A list of reports issued during the year and a summary of the reports if practicable; and
- A point of contact in the sponsor department or body from where further information about the body can be obtained.

8.3.1.4 The requirement to publish an annual report could be met by including a section in the sponsor department's report.

8.3.2 Management Statement and Financial Memorandum (MSFM)

8.3.2.1 The MSFM 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.

8.3.3 Open meetings

8.3.3.1 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.

8.3.3.2 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.

8.3.3.3 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.

8.3.3.4 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.

8.3.3.5 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.

8.3.4 Codes of Practice for Board Members

8.3.4.1 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. DFP formally referred to a revised Code of Practice for Board Members of Public Bodies issued by the Cabinet Office in FD(DFP) 03/06 which is available at www.aasdni.gov.uk .

8.3.5 Code of Conduct for Staff of Executive NDPBs

8.3.5.1 NDPBs should adopt a Code of Conduct for staff of Executive NDPBs. Further guidance can be found in paragraph 5.7 and Annex 5A.

8.3.6 Conflicts and registers of interests for board members

8.3.6.1 The board of an NDPB should, in conjunction with the sponsor department, draw up rules of conduct for board members, which ensure that conflicts of interests are identified at an early stage and that appropriate action can be taken as soon as possible to resolve them.

8.3.6.2 These rules should include a requirement for declaring, and if necessary resolving, any potential personal or business conflicts of interests in relation to the work of the public body concerned. Failure to declare a potential conflict of interest could lead to the decisions of the NDPB being called into question, especially in the case of an Executive or a Tribunal NDPB.

8.3.6.3 A register of members' interests appropriate to the body's activities should be held and kept up to date. The register should, as a minimum, list direct or indirect pecuniary interests, which members of the public might reasonably think could influence board members' judgment. Board members are strongly encouraged to register non-pecuniary interests, which relate closely to the body's activities, and interests of close family members and persons living in the same household as the board member.

8.3.6.4 Indirect pecuniary interests arise from connections with bodies, which have a direct pecuniary interest; or from being a business partner or of being employed by a person with such an interest. Non-pecuniary interests include those arising from membership of clubs and other organisations. Close family members include personal partners, parents, children (both adult and minor), siblings and the personal partners of any of these.

8.3.6.5 Board members should declare at board meetings any interest that relates specifically to a particular issue under consideration, for recording in the minutes. Board members should not participate in the discussion or determination of matters in which they have an interest, and should normally withdraw from the meeting if their interest is direct and pecuniary, or if their interest is covered in specific guidance issued by the body or the sponsoring department which requires them not to participate or to withdraw from the meeting. Minutes must be taken at all board meetings.

8.3.6.6 Departments and, where appropriate, the Chief Executive of an NDPB, should provide advice to board members and chairs on the handling of conflicts of interests.

8.3.6.7 Public bodies should make registers of members' interests available to the public on request, and should make available details of how the register can be obtained, including in the annual report. From 1 April 2003 onwards, Executive NDPBs have been required to disclose in their accounts either details of company directorships and other significant interests held by board members, which may conflict with their management responsibilities, or information about how details in the register of members' interests can be obtained. Registers can be published annually. Board members should be required to update the register as changes occur.

8.3.7 Office of the Commissioner for Public Appointments Northern Ireland (OCPA NI)

8.3.7.1 The Commissioner for Public Appointments for Northern Ireland regulates, monitors and advises on ministerial and departmental appointments to public bodies. 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 for appointments within the Commissioner's remit. The

Commissioner, through his/her office and independent assessors, monitors compliance with the procedures and produces an annual report.

8.3.7.2 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.

8.3.7.3 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 Northern Ireland web-site: <http://www.ocpani.gov.uk/>.

8.3.7.4 The Central Appointment Unit's best practice guidance "Making Public Appointments - A Best Practice Guide for Departments in Northern Ireland" is available on Knowledge Network Central or from the Central Appointments Unit on extension 28193.

8.4 Customer Focus

8.4.1 Consultation

8.4.1.1 Departments and public bodies should aim to consult their users and stakeholders on a wide range of issues. These will include consulting on policy matters as required under Section 75 of the Northern Ireland Act 1998 or consulting users in relation to customer service issues. A Guide to Consultation Methods for Northern Ireland Public Authorities is available at www.consultationni.gov.uk and this should be followed in all cases.

8.4.1.2 Consultation on customer service matters can be formal or informal. Formal consultation methods can include using focus groups, carrying out surveys and using comment cards. The main informal means of gathering feedback from customers is through day to day contact.

8.4.1.3 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.

8.4.2 Complaints procedures

8.4.2.1 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.

8.4.2.2 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; using the phone more, 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.

8.4.2.3 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 NI Ombudsman or

the Health Service Ombudsman (if the body concerned is within the Ombudsman's jurisdiction).

8.4.2.4 Complaints relating to decisions or action taken by a body should be referred to that body for response. NDPBs should have clear written procedures that focus on sorting out complaints quickly. The complaints system should be widely publicised and should be monitored and audited regularly to ensure that it is effective

8.4.2.5 NDPBs should:

- Encourage complaints and compliments by advertising procedures and making them easy to use;
- Tell users about service standards and how to complain if they do not meet them;
- Make it clear that they welcome complaints and comments and will use the information to improve their services; and
- Allow for users who may have difficulties, for example those with a reading difficulty or whose first or preferred language is not English.

8.4.2.6 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.

8.4.2.7 People should be able to have their complaint reviewed if they are not happy with the response that they receive. Individual organisations should decide on the best arrangements to suit their circumstances but

all systems should include some form of internal and independent review.

- 8.4.2.8 Internal review should provide a fresh look by a senior officer at a higher level within the organisation. This should be someone who is not involved in the line management of the person or service complained about.
- 8.4.2.9 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 Northern Ireland Ombudsman(see section 8.4.3 below).
- 8.4.2.10 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.

8.4.3 The Northern Ireland Ombudsman

- 8.4.3.1 The Northern Ireland Ombudsman is the popular title for two statutory offices: the Assembly Ombudsman for Northern Ireland; and the Northern Ireland Commissioner for Complaints. The Northern Ireland Ombudsman deals with complaints from people who believe they have suffered injustice as a result of maladministration by Northern Ireland government departments, their agencies; public bodies; or the Health and Personal Social Services. Complaints about the actions of government departments and their agencies, North South Implementation Bodies and Tribunals must be referred to the Northern Ireland Ombudsman by a Member of the Assembly (MLA). Complaints about bodies within the remit of the Commissioner for Complaints can be referred directly to the Northern Ireland Ombudsman.

8.4.3.2 The Northern Ireland Ombudsman's remit is defined in the Assembly Ombudsman (Northern Ireland) Order 1996, the Commissioner for Complaints (Northern Ireland) Order 1996 and the Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997.

8.4.3.3 The Ombudsman can consider complaints from people who claim to have suffered injustice because of maladministration. Although the term "maladministration" is not defined in legislation, it is generally taken to mean poor administration or the wrong application of rules. Some examples which may be regarded as maladministration include:

- Avoidable delay;
- Faulty procedures or failing to follow correct procedures;
- Not telling users about any rights of appeal they have;
- Unfairness, bias or prejudice;
- Giving advice which is misleading or inadequate;
- Refusing to answer reasonable questions;
- Discourtesy and failure to apologise properly for errors;
- Mistakes in handling claims.

8.4.3.4 The Northern Ireland Ombudsman cannot investigate:

- Complaints about policy or the content of legislation;
- Crime, judges' decisions or matters relating to national security;
- Decisions about whether to begin court proceedings or how they are conducted;

- Complaints about something for which remedy is available through an independent tribunal; and
- Contractual or commercial transactions by Northern Ireland government departments and their agencies.

Although complainants will normally be expected to put their complaint to the organisation concerned, the Ombudsman will in certain circumstances consider cases direct.

8.4.3.5 A full list of organisations falling within the Northern Ireland Ombudsman's remit, and further information about the role, remit and powers of the Northern Ireland Ombudsman are available on the web site, at www.ni-ombudsman.org.uk.

8.4.3.5.1 Departments and public bodies should co-operate fully with any Northern Ireland Ombudsman investigation.

8.5 The Assembly

8.5.1 Departments should contact Machinery of Government Division within OFMDFM for advice concerning Assembly procedures. Useful contacts are:

Machinery of Government	Deirdre Griffith Tel: 907665701 E-mail: deirdre.griffith@ofmdfmni.gov.uk
Legislation	Jim Hamilton Tel: 90522440 E-mail: jim.hamilton@ofmdfmni.gov.uk
Assembly Liaison	Alan Rogers Tel: 9076702 E-mail: alan.rogers@ofmdfmni.gov.uk

8.6 Publication

8.6.1 Publications (including to the Assembly Library) and advertising

8.6.1.1 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.

8.6.1.2 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.

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

8.6.1.4 The Conventions of government publicity and advertising, set out at http://archive.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/government_information_service/annex_a.asp 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.

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

8.6.1.6 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 the use of consultants is contained in DAO(DFP) 03/05.

8.6.1.7 NDPBs must follow government policy on the procurement and management of advertising services. Advice and guidance is available from the Government Advertising Unit, telephone 9037 8139.

8.6.2 'Public Bodies'

8.6.2 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. It is an online searchable database at <http://www.knowledgenetwork.gov.uk>

Public Bodies: A Guide for NI Departments

Chapter 9: Reviewing a Public Body

9. REVIEWING A PUBLIC BODY

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SUMMARY

The Government is committed to quality and continuous improvement. As part of this it is important to regularly review whether individual NDPBs continue to be the best way to deliver the services for which they are responsible, and if they are how delivery of these services can be improved.

This chapter provides guidance on how to carry out a light touch review of NDPBs without lead responsibility for, or a key role in, delivering departmental PSA targets. It provides information on where to obtain further guidance on carrying out Landscape Reviews and end-to-end reviews.

The guidance consists of some of the key issues to be addressed when reviewing an NDPB supplemented by a number of fact sheets providing more detailed guidance on particular aspects of a review, such as performance, partnership working and making the best use of technology.

9.1 Introduction

9.1.1 Landscape Reviews and Business Reviews

9.1.1.1 The central programme of quinquennial or financial, management and policy reviews of executive agencies and NDPBs are no longer required and have been replaced with business reviews of the end-to-end processes involved in achieving the outcomes specified in Departmental Public Service Agreements. Those NDPBs with lead responsibility for, or a key role in, delivering a PSA target would feature in these business reviews. Further information on end-to-end reviews can be obtained from PSIU.

9.1.1.2 The Agency Policy Review report (Better Government Services: Executive Agencies in the 21st Century), published by the Cabinet Office in July 2002, found that the agency model had brought about significant improvements in service delivery, but that steps were needed to improve, and in some cases re-establish, the strategic links between delivery bodies and their sponsoring departments. One of the review's key recommendations was that departments should conduct a one off high level review of all the bodies (including NDPBs) involved in delivering objectives for which they are responsible. These are designed to produce better strategic alignment of objectives, improved targeting of services and customers and better governance arrangements across a department's entire delivery 'landscape', and are therefore called 'landscape reviews'.

9.1.1.3 Having assessed its landscape, departments should conduct business reviews of the delivery of selected outcomes, as expressed, for example, through the objectives or targets set out in a Public Service Agreement. These 'end-to-end reviews' are an in depth study of the processes – from the point of policy making through to service delivery – involved, and lead to focused and evidence-based change programmes and better results for the public. Guidance on

methodology for landscape and end-to-end reviews is available from PSIU.

9.1.2 Light-Touch Reviews

9.1.2.1 However small NDPBs would generally fall outside these proposed review processes. Typical examples would be advisory or tribunal NDPBs¹⁴ but small executive NDPBs may also be outside the scope of end-to-end business process reviews. This light-touch guidance has therefore been drawn up for departments on how to review these bodies, given the ending of the QQR programme. These reviews will look at whether the function the body carries out is still required and, if so, whether the NDPB model is the most effective way of carrying out that function.

9.1.2.2 There is no longer a rigid requirement for departments to carry out these reviews every five years nor is the centre stipulating any other minimum period between reviews. But as these NDPBs remain accountable to their sponsor department and Minister, reviews should be carried out with sufficient frequency to give the department confidence that the NDPB is delivering high quality services, efficiently and effectively and fits appropriately into the department's overall delivery structure. When the need for a review has been identified, departments should aim to complete such reviews within a six-month timeframe to avoid creating undue uncertainty for the NDPB concerned.

9.2 What this guidance addresses

9.2.1 The Government is committed to quality and continuous improvement. As part of this, it is important to regularly review whether individual NDPBs continue to be the best way to deliver the services for which

¹⁴ Small agencies may also fall outside the proposed review processes and Departments may wish to apply this guidance to reviews of those organisations.

they are responsible; and if they are, how delivery of these services can be improved in the future.

9.2.2 Key Features Of Review Methodology

9.2.2.1 Reviews determine whether the function is required at all, and if it is, whether the existing NDPB model is the best option for its delivery. This reflects the Government's policy of keeping the number of NDPBs to a minimum.

9.2.2.2 After NDPB status is confirmed as the most appropriate delivery mechanism, the review then looks at how services and functions could be provided more effectively in the future, and whether the current accountability arrangements are appropriate given the role and risks associated with the NDPBs work.

9.2.2.3 Under certain circumstances, **joint reviews** involving more than one NDPB may be the best way to harness the potential of reviews to achieve improved delivery of NDPB services and functions.

9.2.2.4 The review should take into account the **views of customers** in identifying how to improve the responsiveness and quality of services and functions.

9.2.2.5 The review need not be undertaken in two stages. For example, when seeking the views of customers, it may be more efficient to seek views on both the status of the organisation and how performance can be improved in future at the same time. Nevertheless, considering the organisational options separately from performance improvement is a useful analytical tool for making decisions about the future of the organisation.

9.3. How this guidance is structured

9.3.1 The guidance is intended to encourage an intelligent and proportionate approach to NDPB reviews. It is supplemented by a number of Factsheets (see Annex 9B) providing more detailed guidance on particular aspects of a review. It is up to Departments, NDPBs and reviewers to make the most of the advice they contain depending on their experience; the size and nature of the NDPB being reviewed and the scope of a review.

9.4 Key Issues

9.4.1 Organisational options

9.4.1.1 **The bigger picture** – to what extent does the NDPB contribute to the delivery of wider Departmental and Government objectives (as reflected in the appropriate Public Service Agreements)?

9.4.1.2 **Links with others** – what links does, or should, the NDPB have with other organisations? What is the scope to carry out a joint review with other relevant agencies or NDPBs?

9.4.1.3 **Past performance** – how has the NDPB performed against its aims, objectives, key financial and other performance targets and quality standards? How does it compare with other bodies (in the public and private sectors) performing similar functions? How has it used the freedoms and flexibilities it enjoys? How successful have its relationships been with its parent/sponsor Department and Ministers?

9.4.1.4 **Customers' views** – what do the NDPB's customers and other interested parties think about its role and performance?

9.4.1.5 **The future organisation** – how should the NDPB’s services be delivered in the future? Which organisational option is best suited to delivering responsive, efficient and quality services in the future?

9.4.1.6 **Good practice** – what examples are there of good practice in how the NDPB has delivered its services?

9.4.2 Improving performance

9.4.2.1 **Performance targets** – how far do they reflect the NDPB’s aims and objectives? Are they sufficiently comprehensive and stretching to drive improvement? Is there sufficient continuity from one year to the next? How is performance validated?

9.4.2.2 **Partnership working** – where could the NDPB develop joint-working arrangements with other bodies to enhance the efficiency and effectiveness of service delivery?

9.4.2.3 **New technology** – how can the NDPB make better use of new technology to improve the delivery of its services and functions?

9.4.2.4 **Customers’ views** – in what ways do the NDPB’s customers think it can improve the way it delivers its services and functions?

9.4.2.5 **Openness and accountability** – how far is the NDPB accountable to its customers and other stakeholders for the service it provides? How does it consult on its ways of working and the services it offers and could this be improved? Does it hold open meetings when appropriate? Will the NDPB be able to comply with the Freedom of Information Act 2000?

9.4.2.6 **Freedoms and flexibilities** – how could the NDPB benefit from different freedoms? Could it improve the delivery of its services and functions if it was given more flexibility?

9.4.2.7 **Corporate Governance and reporting** – how well are the NDPB, Departmental and Ministerial roles and reporting arrangements defined and how could this be improved? Do they provide proper support to operational and policy work? Are Nolan principles followed in terms of registers of members' interests?

9.4.2.8 **Sustainable Development** - to what extent does the delivery of the NDPB's services and functions meet the Government's objectives on sustainable development? Does it consider how its services affect social exclusion? Does it use the precautionary principle? Does it use resources efficiently and effectively protect the environment?

<http://www.sustainable-development.gov.uk/>

9.5 The future organisation

9.5.1 A periodic review of NDPB status is necessary to identify whether they remain the most suitable way of delivering public services. These reviews provide an opportunity to consider whether the circumstances which led to the creation of the NDPB, or confirmation of that status at the last review, have changed. If they have, NDPB status may no longer be appropriate. Equally, these reviews also provide a good opportunity to take a fresh look at whether some rationalisation of organisational structures might be beneficial in the light of changing customer requirements or expectations, changes in the department's overall delivery strategy or changes in policy.

9.5.2 The main organisational options that should be considered are:

- abolition;

- agency status (for existing NDPBs);
- NDPB status;
- contracting-out;
- market testing;
- merger or rationalisation; and
- privatisation.

9.5.3 The sequence in which the options should be taken is as follows:

- (i) firstly, decide whether the function is required at all (ie abolition);
and
- (ii) secondly, if it is, whether an NDPB model is the best way of meeting the relevant Departmental objectives (ie a review of all the other options).

9.5.4 **Factsheet 1** provides more information on each of the options mentioned above.

9.6 Performance

9.6.1 Reviews are an opportunity to look at how well an NDPB has performed against its aims, objectives, key targets and quality standards. This will be important when deciding if NDPB status remains the best way of delivering services in the future.

9.6.2 It is equally important in considering whether the current aims, objectives, targets and standards are sufficiently focused, stretching, consistent and validated to help the NDPB achieve improved performance in the future.

9.6.3 **Factsheet 2** identifies the types of questions that should be asked as part of the review.

9.7 **Partnership working**

9.7.1 Government policy encourages new and innovative ways of working. Working in partnership with others is an important part of such an approach. Customers are not interested in which organisations lie behind the delivery of a particular service but in whether they can gain access to that service easily and whether it meets their needs.

9.7.2 NDPB reviews are an important opportunity to look at the links that these organisations have, or should have, with other bodies in pursuit of delivering more responsive services. Identifying these links should be carried out early on in a review. Doing so will help to highlight whether there is a strong case for carrying out a joint or parallel review from the start. It will also help to focus any further work on how to improve a NDPB's effectiveness through greater partnership working.

9.7.3 **Factsheet 3** sets out some of the issues to be considered when looking at the question of using partnership working to improve performance.

9.8 **Joint or parallel reviews**

9.8.1 In some cases, it may make sense to review a number of NDPBs (and perhaps agencies) at the same time. This might allow the review to take a fuller account of actual or potential synergies.

9.8.2 This is explained in more detail in **Factsheet 4**, which also gives advice on how joint and parallel reviews might be approached.

9.9 Making better use of technology

9.9.1 In keeping with all public services, the Government wants NDPBs to make the best use possible of new technology. Doing so will help to achieve joined-up working with different parts of government and provide new, efficient and convenient ways for citizens and businesses to communicate with NDPBs and to receive services.

9.9.2 NDPB reviews are an opportunity to consider how services could be improved through better use of new technology and in a way which is in keeping with the Government's IT strategy.

9.9.3 **Factsheet 5** sets out the key considerations for this aspect of the review.

9.10 What the guidance means for you

9.10.1 This guidance is relevant to:

- (a) **Departments** – who are responsible, on behalf of their Ministers, for ensuring that reviews of their NDPBs are carried out and that their continuing sponsorship of the NDPB is effective with agreed accountability arrangements.
- (b) **Reviewers** – who are responsible for the day to day running of the review within agreed terms of reference and for producing the review report¹⁵.
- (c) **NDPBs** – who, whilst not carrying out the review, are key to it being conducted properly and for taking forward its recommendations.

¹⁵ Reviewers should be selected to be independent of the NDPB. It is also recommended that the person selected to lead the review should not be involved in the day-to-day sponsorship of the NDPB.

CHECKLIST - WHAT MAKES A GOOD REVIEW

- **Be ready** – think about the issues and information needs well in advance of the start of the review.
- **Be disciplined** – set clear start, completion and interim milestone targets.
- **Be aware** – of other reviews that may be relevant.
- **Be focused** – tailor the review to where it can have the most impact.
- **Be intelligent** – be flexible enough to take on board new issues and options should they arise in the course of a review.
- **Be open** – consult users throughout; and work closely with the NDPB.
- **Be forward looking** – remember that the purpose of reviews is to improve service delivery in the future.

FACTSHEETS

There are a number of Factsheets providing more detailed guidance and advice on the following subjects:

Factsheet 1 Assessing different delivery mechanisms

Factsheet 2 Assessing how well Government policies have been delivered

Factsheet 3 Effective partnership working

Factsheet 4 Joint or parallel reviews

Factsheet 5 Making better use of new technology

FACTSHEET 1

Assessing different delivery mechanisms

1. The following checklist of questions has been set out as a useful guide for carrying out these "light touch" reviews.

Organisational options

- (i) How effectively does the NDPB contribute to the delivery of Government and departmental objectives, as reflected in the appropriate Public Service Agreement? Is there a continuing need for the functions undertaken by the NDPB? If not, can the NDPB be abolished?
- (ii) What links does or should the body have with other organisations? Is it appropriate to carry out a joint review with other NDPBs (within or across departmental boundaries)?
- (iii) Can all or some of the functions of the NDPB be brought "in-house"? Is there really a need for an independent NDPB or can the functions of the NDPB be provided by civil servants – or by the wider public service (e.g. the police, local authorities, the HPSS, etc.)?
- (iv) Are there other bodies, particularly other NDPBs, carrying out similar or complementary functions? If so, can the functions of the NDPB be transferred to one of these other bodies?
- (v) Is it necessary to have a standing body? For advisory NDPBs, can the advice the NDPB provides be sought on an "ad hoc" basis through consultation with industry, the voluntary sector or some other Non-Governmental Organisation rather than through a standing NDPB?
- (vi) Can the functions of the NDPB be delivered more effectively by the private or voluntary sector? For advisory NDPBs, can the advice the

body provides be sought directly from industry, the voluntary sector or other Non-Governmental Organisations rather than through an NDPB? Can the NDPB be reconstituted as a body led through one of these other sectors rather than as a Government sponsored NDPB?

Improving NDPB performance

- (vii) Do the terms of reference of the NDPB enable it to play its part in delivering wider Government or departmental objectives?
- (viii) Does the NDPB provide value for money? Over time, is it delivering its outputs at reduced cost or more outputs for the same cost? Is there any scope for increased efficiency savings? Are Travel and Subsistence claims for board members (and any other claims) properly monitored? Does it have an appropriate policy for remunerating board members, including pensions as well as pay? If board members are paid, how do the levels of remuneration compare to other public appointments?
- (ix) Are the arrangements for administrative support effective? Are administrative staffing levels correct? Are the lines of accountability clear?
- (x) Are the appointments procedures operating effectively? Are these in line with the Commissioner for Public Appointments Northern Ireland's principles and detailed Code of Practice ¹⁶ (for executive and advisory NDPBs)? What actions have been taken to contribute to the department's diversity targets for under-represented groups to apply for appointments? Is new recruitment activity/appointments being reported to OFMDFM?
- (xi) Does it have corporate governance arrangements that maintain effective lines of accountability between the NDPB, the sponsor department and

¹⁶ This code, which is mandatory for most appointments but not for tribunal appointments, can be found at: www.ocpani.gov.uk/

the responsible Minister? Does it have the right mix of skills and experience amongst the NDPB's board? Have new board members received appropriate training? Are existing board members performing well? Are there appropriate mechanisms in place to monitor members' performance? Does the Code of Practice for board members need updating¹⁷? Is there an up-to-date and publicly available register of members' interests¹⁸? Have Board members' terms and conditions been reviewed and updated as necessary?

- (xii) Is the NDPB operating in an open and transparent fashion? Is an Annual Report published each year¹⁹? Can the NDPB's Annual Report be improved (e.g. should it contain more information or be circulated more widely)? Should the NDPB hold open meetings – or, at least, an annual open meeting? Can the NDPB release the minutes of its meetings?
- (xiii) Does the NDPB operate in accordance with the requirements of the Freedom of Information Act 2000? Do those NDPBs which have significant dealings with members of the public have well publicised and easy-to-use complaints procedures?
- (xiv) Is the NDPB making the best use of new technologies? Does the NDPB have its own web site and, if it does, is it linked to the OFMDFM site <http://www.ofmdfmni.gov.uk/publicappointments> ? Does the NDPB have an email address? Is information on the NDPB (such as Annual Reports, etc.) made available electronically?
- (xv) Does the Department as a whole have a remuneration policy for public appointees, covering both pay and any pension that is up to date, fair, proportionate and represents value for money?

¹⁷ This does not apply in the case of tribunal NDPBs.

¹⁸ This does not apply in the case of tribunal NDPBs.

¹⁹ This does not apply in the case of tribunal NDPBs

2. There is no requirement for the start or completion of reviews of this type to be announced. However, the minister may make a written statement to the Assembly to announce a review that is likely to be of public interest.

3. The scope for consultation with "stakeholders" during reviews of Advisory and Tribunal NDPBs is often limited. However, finding out what users think of the services provided is an important part of the review process. Consequently, where an NDPB has a clear set of users or customers, they should be given the opportunity to comment.

If a public consultation document is issued, consultation documents should follow the guidelines from the Northern Ireland Consultation Guide available at www.consultationni.gov.uk . If departments don't follow the guide, they should explain why in the consultation document.

FACTSHEET 2

Evaluating how well Government policies have been delivered

1. How well an NDPB has performed against its aims, objectives, key targets and quality standards is a key element in the review. Evaluating its performance will throw light on how successful a NDPB, as the current delivery mechanism, has been in achieving Government objectives; and therefore whether it should continue to be the preferred mechanism in the future. It will also highlight where improvements and changes may be needed to allow the NDPB, if it is to continue to deliver the services and functions being reviewed, to better meet those objectives in the future.
2. This Factsheet sets out the sorts of questions that might be considered when evaluating a NDPB's performance. For small advisory NDPBs some of the questions (eg. relating to the employment of staff, training, performance appraisal, service delivery and funding flexibilities) might not be relevant.

Has the NDPB been the best way of achieving the Government's objectives?

Past performance

To what extent has the NDPB met its aims, objectives, key targets and quality standards? What were the reasons for any failures?

How have the NDPB's key targets changed over time?

What changes have been made in the services provided to customers?

What are customers' views on the nature and quality of services and the way in which they have been provided and have these views altered?

Efficiency savings and productivity gains

How well has the NDPB performed financially and how could this be improved?

What steps have been taken to improve efficiency? Is the taxpayer receiving better value for money?

Relationship with Department and Minister

Has the Department's role in relation to the NDPB become more strategic and effective?

Are the arrangements set up for advising the Minister on the NDPB's performance working well?

What gain or loss has there been in contributions to the Department's policy formation?

How effective have the relationships between other NPDBs or agencies operating in related areas been?

How does the NDPB engage with the devolved administrations and how could such engagement be improved? (if appropriate to NDPB's role)

How does the NDPB feed in to policy making in its area of responsibility

For executive and advisory NDPBs with a significant budget, how does the NDPB engage with the department in terms of business planning? Are NDPB and departmental business planning cycles aligned and able to take account of each other? How can the NDPB's planning become more integrated?

Relationship with customers

Where the sponsoring department or other government departments are the customers of the NDPB:

What steps have customers taken to ensure that they are receiving the services they require and achieving value for money?

What form of agreements have been reached and how effective are they?

What part does the Agency/NDPB play in helping the customer to be informed/intelligent? What other sources of advice can the customer draw on?

Where the customers are direct purchasers/users/beneficiaries of the Agency/NDPB's services are adequate systems in place to ensure that the NDPB can identify customers' requirements and monitor the extent to which they are met?

Impact of freedoms and flexibilities

Was the Management Statement/Financial Memorandum clear - did ambiguities arise²⁰?

To what extent have the commitments in the Management Statement/Financial Memorandum to future developments in the NDPB's organisation or systems been met?

For executive NDPBs, are there any problems in recruiting staff

²⁰ Small unpaid advisory committees may not have formal management statements

Effect on the Centre of the Department

Have central support costs/staffing levels reduced in proportion to the transfer of staff and activity to the NDPB? If so, to what extent, if not, why not?

What overheads does the sponsorship of the NDPB by the department consume?

How can the NDPB better deliver the Government's objectives in the future?

Suitability of aims, objectives and targets

To what extent do the aims and objectives reflect what is in legislation/Royal Charter/Memorandum and Articles of Association?

How well are the targets and objectives linked into the Department's overall aims?

Are the aims, objectives and targets sufficiently comprehensive?

How useful are the key targets in driving continuous improvement?

How much continuity is there in the key targets between one year and the next?

To what extent does the delivery of the NDPB's services and functions meet the Government's objectives on sustainable development?

Does the NDPB have too many key targets?

Are any additional/alternative key performance measures and targets needed?

How well do the key targets relate to the achievement of outcomes (where relevant) as well as to outputs?

Does the NDPB have the right balance between output and outcome key targets?

To what extent does the NDPB need to develop additional internal targets to measure its performance?

Are effective information systems in place to measure performance against objectives and targets and how could these be improved?

Future freedoms and flexibilities

Are the current pay arrangements (which must be within DFP? remit guidelines) the most cost-effective way of recruiting and retaining staff? If not, how could they be improved?

How well qualified is the NDPB's staff to carry out the tasks allocated to them? How could training systems be enhanced?

To what extent are staff directly providing services to customers hampered by internal bureaucracy? What could be done to encourage greater flexibility and creativity in delivering services?

How can greater customer choice be provided?

Future governance and reporting arrangements

How well are the respective roles and responsibilities of the Chair, board members and the Chief Executive defined? Has the Board got an appropriate mix of skills and experience among its membership? If not, in what areas does it need to increase its diversity and expertise? How has the membership

changed over time? How regularly and rigorously are performance reviews conducted? Does the duration of appointments meet with government policy?

What improvements could be made in the mechanisms by which Ministers and the Department receive information on the performance of the NDPB?

How effective are the channels by which operational issues and policy formulation can inform each other? Does communication take place in a timely and comprehensive manner?

FACTSHEET 3

Effective partnership working

1. NDPBs, like other public sector organisations, need to explore the possibilities of delivering services and functions in partnership with others, including bodies from the private and voluntary sectors. Partnership can increase the effectiveness of service delivery and help NDPBs improve their performance and the achievement of the wider outcomes to which they seek to contribute. Partnerships are often also a key factor in taking an innovative approach to the delivery of services and functions. Many NDPBs have already begun to do this.
2. Partnership arrangements need to be well thought through if they are to achieve their potential and creating such links can present risks. But if assessed and managed properly, such risks should not in themselves discourage NDPBs from working with others to gain the benefits which partnership can bring.
3. This Fact Sheet sets out some questions intended to help the review identify where there is scope for new or greater partnership working with others. In practice, the scope for partnership working by small advisory committee may be very limited.
4. In considering partnership working, the role of information and communications technology should be recognised in enhancing the quality of service delivery. This will apply to links that a NDPB already has with other organisations; and to the possibility of developing new links with other organisations inside and outside the public sector.

Deciding to go into partnership

What reasons has the NDPB given for being involved in its current partnership(s)? How persuasive are these?

Where new partnerships must be set up to meet Government objectives at the national level, what groundwork is being done locally to maximise their chances of success?

What changes in behaviour or in decision-making processes are needed to avoid setting up partnerships with only limited chances of success?

Getting started

Have all the partnerships in which the NDPB is involved been reviewed to evaluate whether the form of partnership is appropriate to its functions and objectives and what were the results?

Do all the partnerships have an appropriately structured board or decision-making forum?

When setting up a new partnership, how are prospective partners identified?

Operating efficiently and effectively

To what extent are the partner's aims and objectives for the partnership shared and/or mutually compatible?

If an outsider watched a partnership operate, to what extent would he/she be able to identify the partnership's main objectives?

Do the partners know where the boundaries between the activities of the partnership and of their own organisation lie? If not, what should be done to clarify this?

How far do the members of any partnership steering groups have authority to commit their organisations to decisions?

How far are partnerships prepared to delegate responsibility for parts of their work to particular partners?

For large partnerships, is there an executive group that all the partners trust to make decisions on their behalf? If not, how are decisions taken in a timely way?

How far are project-planning techniques used to ensure that the separate agreement of all partners to a course of action is achieved in good time, when necessary?

How well are the partnership's decisions implemented?

How are partnership staff selected? (e.g. is appropriate consideration taken of their technical competence and their ability to operate both inside and outside a conventional public sector framework?)

What actions are taken to build and maintain trust between partners?

If members have dropped out of a partnership, what lessons have been learnt about how to maintain involvement in the future?

Reviewing success

How far does each partnership have a shared understanding of the outcomes that it expects to achieve or contribute to, both in the short and long term?

What means have been identified for measuring the partnership's progress towards expected outputs and outcomes and the health of the partnership itself?

To what extent has the partnership identified its own performance indicators and set jointly agreed targets for these?

Are the costs of the partnership known, including indirect and opportunity costs? If so, to what extent are these justified against the benefits that the partnership delivers?

To what extent are these costs actively monitored and controlled?

What steps have been taken to make sure that the partnerships are accountable to the individual partners, external stakeholders, service users and the public at large?

Are some or all of the partnership's meetings open to the public? If not, why not?

Is information about the partnership's spending, activities and results available to the public? If not why not?

How does the partnership review its corporate governance arrangements?

Has the partnership considered when its work is likely to be complete, and how it will end/handover its work when this point is reached?

FACTSHEET 4

Joint and parallel reviews

1. There will be occasions when it is appropriate to look at a number of NDPBs (and perhaps small agencies) at the same time. These might be because:
 - the NDPBs (and agencies) are already working closely together in the delivery of particular services and functions; or
 - the NDPBs (and agencies) are not currently working together but the Government's commitment to delivering responsive and high quality public services creates suitable opportunities for them to do so in the future.

2. Reviewing each of the NDPBs concerned separately in such circumstances may mean, that the full potential of the review to help improve the way in which services and functions are delivered, is not realised because it will not take full account of the actual or potential synergies which exist.

3. The focus of such reviews could be:
 - multiple NDPBs (plus perhaps relevant agencies) across or within Departmental boundaries involved in similar functions (e.g. services to small firms; or public sector research establishments); and
 - multiple NDPBs (plus perhaps relevant agencies) across or within Departmental boundaries whose work may not be similar but which is relevant to a particular theme, or the achievement of a particular Government objective (e.g. the integrated provision of different services to particular groups such as young people and the elderly).

4. These reviews can be carried out using:

- a joint review involving the same review team looking at all the organisations concerned;
 - parallel reviews where each of the organisations concerned are reviewed by separate review teams but over the same timescale, with the planning and execution of each review having built into it the need for liaison so that the conclusions of each can be informed by the findings of the other reviews; or
 - a combination of both, where parts of the review would be carried out jointly, for example the first stage looking at organisational arrangements, and other parts being taken forward in parallel with, for example, the forward look at improving delivery in the future.
5. It will be for departments to identify when joint or parallel reviews are appropriate, and on how they should be carried out. This may depend on the nature of the services/ functions being reviewed; the number of organisations which would be involved; and whether or not the Agencies/NDPBs in question all come under the same parent/sponsor Department.
 6. Although the full range of organisational options should be considered in a non-hierarchical manner, joint or parallel reviews provide a particular opportunity to assess the case for merging one or more Agencies/NDPBs. They also provide an important opportunity to consider how partnership working between the organisations in question (and with other bodies in the public, private and voluntary sectors) can be introduced or enhanced.
 7. Such reviews will also provide an opportunity to consider how best to develop performance measures and targets which will reflect and encourage joint working between the organisations involved in the future.

FACTSHEET 5

Making better use of new technology

Making best use of information and communications technology (ICT) has become a central issue for all kinds of organisation, and it is a key plank of the government's public service improvement programme. New technologies raise new possibilities for organisational structure; the re-engineering of business processes; and modes of service delivery. This Factsheet sets out the sort of questions that a review might consider when looking at the role of new technology in improving services²¹.

Strategic considerations

To what extent is the NDPB's strategic management process, and the development of its overall business plan, informed by awareness of the potential of new technologies?

To what extent is the NDPB's IT strategy driven by business needs?

To what extent has the NDPB ensured that all its staff have adequate IT training and can make full use of their systems?

Is the NDPB hooked up to the NICS Intranet and planning to exploit its potential?

Is the NDPB's IT system compatible with those used by the parent department?

To what extent is the NDPB's management aware of the development of the NI e-Government Strategies²² and acting in accordance with them?

²¹ In practice, small advisory committees are unlikely to have their own IT systems and the opportunities for making innovative use of IT may be quite limited.

Data sharing and data protection

To what extent is the NDPB aware of the implications of, and complying with, the Data Protection Act 1998?

In particular, if the NDPB decides to use IT in new ways, has it ensured that it has an adequate statutory basis for any new use of personal data?

To what extent is the NDPB complying with the obligations of the Freedom of Information Act 2000?

Electronic Service delivery (ESD)

To what extent is the NDPB pursuing options for delivery of electronic services through a variety of channels?

How is the NDPB planning to achieve the targets that all of its services to business and the public will be capable of electronic delivery?

How is the NDPB ensuring that the introduction of ESD in new areas, or of new types of ESD, is part of a general re-engineering of business processes (including back-office systems) and re-thinking of its business plan?

How is the NDPB ensuring that it identifies and overcomes barriers to more widespread use of ESD: technical, legal, or cultural?

Monitoring progress after the review

How far are the NDPB's and the Department's ICT systems capable of supporting the process of continuous monitoring of performance?

⁰²² www.NI-e.Gov.uk/epol.htm

To what extent have these systems been constructed in such a way as to enable the sharing of information across government, in order to promote evidence-based policy-making?

Public Bodies: A Guide for NI Departments

Chapter 10: Dissolving a Public Body

10.1 DISSOLVING A PUBLIC BODY

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Annex 10A - Factors for Consideration – Dissolving a Public Body

SUMMARY

In the light of the Government's aim to streamline public administration it is important that Public Bodies that are no longer required are dissolved.

This chapter highlights some of the issues that departments should consider when terminating a Public Body, for example is legislation required, what happens to staff, pensions, assets and accounts? It also provides contacts who can provide advice.

10.1 Introduction

- 10.1.1 A public body continues to exist so long as the founding instrument remains in force. However, when a decision has been taken to dissolve an executive NDPB, ministers may decide to wind down its affairs in anticipation of its dissolution in law.
- 10.1.2 It is customary to inform the Assembly of such proposed action, and this should always be done where the body has been set up by or under an Act of the Assembly.
- 10.1.3 Care should be taken to ensure that such winding up does not conflict with any legal duties of the NDPB.

10.2 Statutory Bodies

- 10.2.1 Abolishing a body established by or under statute will generally require legislation.
- 10.2.2 Legislation setting up new NDPBs should normally contain powers to permit winding up at a later date, if a fixed lifetime is not established at the outset. In most cases this will take the form of a power to make appropriate secondary legislation, subject to negative resolution.

10.3 Surrendering Royal Charters

- 10.3.1 A Charter can be revoked by an Act of Parliament or by the Sovereign. Technically, a Charter can also become forfeit through action in the Courts alleging impropriety, but this has not been used in modern times. In practice, a chartered body is normally dissolved through voluntary action culminating in a Petition for Surrender. This is done by the body petitioning The Queen in Council to accept the surrender of its Charter. The Petition is accompanied by an appropriate Deed of Surrender together with the original Charter bearing the Great Seal (and any Supplemental Charters). All these documents should be sent

to the Privy Council Office. Acceptance of the surrender is signified by an Order in Council, which usually recites the terms of the Deed of Surrender. The chartered body ceases to exist from the date on which such an Order in Council is made.

10.3.2 The procedure, and the form of the Petition and Deed of Surrender may vary according to the body's constitution, and the Privy Council Office should be consulted in every case (see paragraph 3.7).

10.3.3 It follows from this that a chartered body cannot be dissolved by executive action. If the body concerned receives a grant-in-aid and the Department is responsible for all the appointments to the Board, then, if the Department wishes to stop funding that body and terminate the appointments or not renew them, the body would effectively cease to exist. If served with notice of the Department's intentions, the last act of the body should be to Petition for the surrender of the Charter. Arrangements would then be made for the disposal of any assets and liabilities before the process would be completed.

10.4 Terminating a Royal Commission

10.4.1 Royal Commissions normally cease to have any existence once they have completed their tasks; but in some instances a Commission may be superseded by a new Commission. In such cases the superseded Commission needs to be formally wound up by the issue of a further Royal Warrant. The Crown Office in the Department for Constitutional Affairs (Grant Bavister on 020 7219 2632) should be contacted for guidance concerning Royal Warrants.

10.4.2 Where a Royal Commission is not superseded by another body but where no appointments are made to fill vacancies which arise in the course of extended researches, the Commission may be considered defunct if no report is made after a lapse of months.

10.5 Removing references to a body in legislation

- 10.5.1 There may be references to the NDPB in legislation, such as the Assembly Ombudsman (Northern Ireland) Order 1996, the Freedom of Information Act 2000 and others. Steps will need to be taken to ensure that these unnecessary references are removed from the statute book. Legal advisers will be able to identify relevant references and advise on the means available to make the necessary amendments.
- 10.5.2 Where an NDPB whose members are disqualified from membership of the House of Commons is to be dissolved by statute, the legislation should provide for the removal of the relevant entry from Schedule 1 of the House of Commons Disqualification Act 1975. Where an NDPB is to be dissolved by other means, the Public Appointments Unit in OFMDFM should be informed by the sponsor department, so that the entry can be removed from the Schedule in due course by Order in Council.

10.6 Compensation for redundancy

- 10.6.1 When a body is wound up, board members who are not found alternative appointments may be due for compensation – for further information, contact the Public Appointments Unit in OFMDFM. NDPB staff who are made redundant will normally be entitled to benefits due under their contracts. The statutory powers should be adequate to pay compensation but the sponsor department should check this; if powers are not adequate, provision should be included in the winding-up legislation.

10.7 Pensions

- 10.7.1 Information on 'Pensions aspects of merging and winding up NDPBs' can be found in *Non Departmental Public Bodies Pension and Compensation Guidance Notes* issued by Treasury's Workforce, Pay and Pensions Team which can be seen at http://www.hm-treasury.gov.uk/media/3/5/OCOP2003_5_NDPBnotes_200104.doc

10.8 Residual pension liabilities

- 10.8.1 When an NDPB is abolished, the sponsor department should establish that adequate powers exist to meet residual pension liabilities for board members and staff. Inadequacies should be remedied in any legislation to abolish the body. The source of finance to meet the residual liabilities should also be carefully determined, particularly when the NDPB was only partly grant-aided. For wholly grant-aided bodies the financial source may well be the Vote from which the grant was paid, but each case needs to be considered with the relevant DFP Supply Officer. In some cases, a major part of the residual liabilities may be covered in alienated funds which will fall to be dealt with in accordance with the provisions in the Trust Deeds; and some other schemes may be insured. But extra costs are still likely to arise, e.g. for future pensions increases which formed part of contractual commitments.
- 10.8.2 In all cases, it will be necessary to clarify who will have the responsibility for financing the pension benefits in the future and who will have the responsibility for administering the payment of those pension benefits. Some of these problems will be avoided where there is a successor body to take over the residual liabilities or where it is possible for the staff to transfer their accrued pension rights to another scheme. But the question of powers will still be important, and when

reliance is placed upon adequate existing powers it is important that these are not repealed too soon.

10.9 Records

10.9.1 The sponsor department's Information Manager should be asked to advise about what should happen to the records of an NDPB that is to be abolished. If the body is being superseded by another – and there is to be legislation – it may be appropriate to provide for the transfer of records. When an NDPB is abolished without its functions being transferred elsewhere, arrangements should be made for those of its records worthy of permanent preservation. Records of bodies subject to the Public Records (Northern Ireland) Act 1923 should be appraised and transferred to the Department of Culture Arts and Leisure (DCAL) in the normal way. Those of other bodies can, with the agreement of the Keeper of Public Records, be accepted by the DCAL as a deposit or gift.

10.9.2 For further information about keeping and disposing of public records contact DCAL.

10.10 Accounting and audit arrangements

10.10.1 It is important to set out in the legislation the accounting and audit arrangements in the year in which the NDPB is dissolved. This should cover the need for accounts for the period from 1 April to date of dissolution, the arrangements for preparation, approval and signing the accounts, as well as including provision for the costs of, and payment to, the external auditors. The final audited accounts will need to be laid before the Assembly.

10.11 Disposal of assets of charities

10.11 As a matter of general policy, when a public body that does not receive its funding directly from the Northern Ireland Consolidated Fund (NICF)

disposes of assets (either tangible or intangible) which were wholly or partly funded by central government grants or grants-in-aid, the proceeds or an appropriate portion of them should be paid through their sponsor department to the NICF. Where an NDPB has charitable status this outcome is only likely to be secured if valid and legally enforceable conditions have been imposed at the time when the grant is paid. Sponsor Departments should refer to GANI Annex 24.3 and DAO(DFP) 16/05 for guidance in these matters.

10.12 Mergers and transfers of functions

10.12.1 Guidance on mergers and transfers of functions can be found in Chapter 5 of the Financial Reporting Manual (FReM) a link to which can be found at www.aasdni.gov.uk .

10.12.2 In some cases where an NDPB is being abolished or its functions transferred to other bodies it may be appropriate to keep it in being for a short period as a residuary body – for example to prepare final accounts and complete the disposal of assets. Provision for this will normally need to be included in the winding-up legislation.

FACTORS FOR CONSIDERATION – DISSOLVING A PUBLIC BODY

Under what authority is the body operating?

- Is legislation required to dissolve the body?
- Is the body a registered company? If so, see additional considerations below.
- Are there any other special circumstances that need to be considered (e.g. Royal Commission, Royal Charter)?

Who should I contact for guidance?

- The Public Service Improvement Unit should be contacted in relation to policy and planning issues.
- Accounting and Accountability Services Division within DFP should be contacted in relation to queries on the accounting treatment, and any accountability issues.
- DFP Supply should be consulted on budgetary impacts.
- Legal advisors.
- Companies registry within DETI (if the body is a company).
- Private sector advisors (e.g. accountants) working with the body concerned may also be consulted, but any fees paid will, in common with other expenditure, need to be defensible on Value for Money grounds.

What will happen to the employees of the body?

- Transfer to another body? – consider TUPE requirements.
- Redundancy? – consider compensation entitlements and discuss budgetary impacts with DFP Supply.

What about pension arrangements?

- Consider the potential requirement to make up any pension deficit on withdrawing from a scheme with pension administrator. This could be through increased future contributions or via a lump sum payment.

- Who will fund the liability? DFP Supply should be consulted on any budgetary impacts.
- If staff are transferring, will their pensions be provided by a different pension provider? Will staff transfer their accrued pension rights to this different scheme? Will the pension rights in the schemes be comparable?

What happens to contracts signed by the body?

- The legal position of contracts will need to be explored with legal advisors.
- Do contracts need to be transferred into the name of another body?
- Do contracts need to continue for a period of time after the body has ceased operations (for example, accountancy or audit services)? If so, arrangements need to be made to ensure the contract is appropriately managed during this period. Arrangements for payment of any bills that arise will also need to be made, although it is likely that any costs will accrue to the final accounting period of the body.
- Are there any penalties for early termination that need to be considered?
- Will contracts become onerous (e.g. a rental agreement that cannot be terminated until 1 year after the body has ceased to exist) and hence require additional costs to be provided for in the entities final accounts?

Who will sign the final set of accounts for the body?

- Will the previous Chief Executive remain in a suitable role after the body has ceased to operate to enable them to sign the final set of accounts? If so, arrangements should be made to extend this aspect of their responsibilities as an Accounting Officer until the accounts are signed.
- If the previous Chief Executive is not a suitable person to sign the final accounts, the Accounting Officer of the sponsor department will need to perform this function, or suitably delegate this responsibility through appointment of a suitable official as Accounting Officer of the body.

Will the body's assets and liabilities transfer to another body or bodies?

- It will be important for a written agreement to be reached between the various parties setting out in detail which assets will transfer to which

organisation. This will ensure that all parties are in agreement and will provide important evidence both for accountability reasons and for the accounts process. As part of this exercise it should be made clear which body or bodies will be responsible for any unforeseen liabilities that arise in the future.

- If the assets are being transferred as part of a transfer of function within the public sector, it is likely that merger accounting will apply to the transfer. The key features of merger accounting are:
 - Net assets will be transferred at the value that they are shown in the body's accounts at the time of transfer. Therefore no negotiation is required on price/value of the assets.
 - Assets will transfer in/out of the bodies through reserves rather than being shown as a purchase/disposal of assets. Thus there will be no budgetary impact of the transfer of assets for either body.
 - If transfer takes place within a financial year, the full cost of operations for that financial year will be recorded in the accounts (and therefore will score against the budget) of the body who is receiving the transfer. It is important that this implication is fully understood and discussed with DFP Supply.
- If transfer is outside the public sector or is not part of a transfer of function then the transfer of net assets will need to be accounted for as an acquisition/disposal. This requires assets to be transferred at "fair value" and it is possible that a revaluation exercise will need to be undertaken. There could be budgetary implications if a reduction in value of assets is identified.

What additional considerations are there if the body is a company?

- The companies office within DETI should be consulted to ensure that the correct procedure is followed.
- The company will need to be wound up. It is likely that this will involve the company going into voluntary liquidation.
- If the signatory of the final accounts is different from the current officers of the company, it is likely that the official taking on this role will need to be appointed as an officer of the company to enable them to discharge this function.

Public Bodies: A Guide for NI Departments

Chapter 11: Public Corporations and Government Owned Companies
(GOCOS)

SUMMARY

This chapter explains that whilst the Public Bodies Guide is not written specifically for PCs or GOCOS they are nevertheless types of Public Body and the advice contained within this document will be relevant in many cases and provides details where other advice might be sought.

11.1 PUBLIC CORPORATIONS (PCs) AND GOVERNMENT OWNED COMPANIES (GOCOS)

- 11.1.1 The term "public corporation" applies to a number of types of organisation and is more a way of classifying an organisation rather than signifying a particular type of body with its own set of rules and requirements. The key feature of a PC is that it generates trading income (usually in excess of more than half of its total income). The term can (and does) apply to some NDPBs and trading funds as well as what might be considered "true" public corporations such as the British Broadcasting Corporation.
- 11.1.2 A self-financing public corporation is one which is entirely funded from trading income and which trades with the outside world. (Although many trading funds deal with the outside world, they are engaged on regulatory-type activities and hence fail the "trading" test.)
- 11.1.3 As they are, on the whole, large commercially-orientated bodies, their accounting and reporting requirements have tended to be based more on Companies Act's requirements than on public sector requirements where there are differences.
- 11.1.4 Some departments own controlling interests in PCs or Companies Act companies (GOCOS). Except where the bodies powers are specifically defined in legislation, they are subject to all the disciplines of corporate legislation.
- 11.1.5 To manage relationships of this kind, departments will need to adapt the guidance in this manual to suit the corporate context while delivering public sector disciplines. Whilst the Public Bodies Guide is not written specifically for PCs or GOCOS they are nevertheless types of Public Body and the advice contained within this document will be relevant in many cases.

- 11.1.6 Further information on PCs and GOCOS is contained in the Treasury's Managing Public Money²³ available at <http://managingpublicmoney.treasury.gov.uk> . In particular section 7.8 of Managing Public Money and the references therein set out the outline terms for relationships between Sponsor Departments and the relevant organisations. This emphasises the need for the financial performance of a public corporation to provide the shareholding department with a fair return on the public funds invested in the business and for departments to balance the guidance framework for Arms Length bodies aimed at delivering public sector disciplines (set out in this document) against the corporate context. The recent Northern Ireland Audit Office report (Good Governance-Effective Relationships between Departments and their Arms Length Bodies) is another useful source of guidance and includes best practice examples including from public corporations and is available at <http://www.niauditoffice.gov.uk/pubs/onereport.asp?arc=False&id=195&dm=0&dy=0> .
- 11.1.7 Further advice is available from DFP. The contacts are in the "Overview of Guidance Documents – Contents" section of this manual.

²³ It is planned to issue a version of Managing Public Money in Northern Ireland for use from 1 April 2008