

A copy of Guidance on Arranging Advice for Ministers, which includes guidance on making ministerial appointments

Guide

Arranging advice for ministers

1. Sponsoring advisory groups, working groups and commissions

Many of our directorates sponsor short life advisory groups, working groups or commissions which are appointed by ministers to provide independent advice. Each of these will have different roles and functions, work in different contexts and aren't formally regulated.

The guidance in these pages is intended to help sponsor teams think about what to consider before appointing a chair, board members, non-executive directors or advisors, and how to form effective, productive relationships with them.

This guidance covers non-statutory bodies and unregulated ministerial appointments only. For advice on regulated public appointments, [contact the public appointments team](#).

2. Arranging independent advice for ministers

There are a number of ways ministers can get independent advice.

A first step when arranging expert advice for ministers on any issue is to consider whether a new appointment needs to be made, or whether an existing body or service could provide this expertise.

Existing bodies

You can [find a list of existing bodies on the gov.scot website](#). However, these bodies may not be able to offer the advice required. Use this to take forward any discussion on whether they are able to accommodate the request for advice.

For example, if a minister is looking for new advice on issues of low income in relation to food insecurity, there are a range of expert bodies already in place who could advise, such as the Poverty and Inequality Commission.

Commissioning advice

It may be possible to commission advice on a particular issue through social research. You can [contact Scottish Government analysts](#) for further advice. In limited circumstances, this advice can be commissioned relatively quickly through academic experts using a formal contractual route.

New appointments or contracts for services

If a new appointment needs to be made, you should first consider whether the appointment has or will have a statutory basis. Is there legislation relevant to the particular issue which allows Scottish Ministers to appoint someone? If there is no clear statutory basis, you should discuss with subject area SGLD lawyers how the appointment could be made.

Public appointees can include board members, chairs, non-executive directors, and other roles. Ministers must be satisfied that the appointment can be made on merit in line with their obligations under the [Scottish Ministerial Code](#), paragraphs 5.3 and 5.6. There is no definition of 'on merit' in the code. This could include:

- a competitive interview where candidates are rated or scored against agreed criteria
- consideration of credible evidence on a list of acclaimed professionals in any one field

Where the appointment can't be made in compliance with the ministerial code, then the appropriate route to follow may be a contract for services. In this case, you should seek advice from procurement colleagues as well as from subject area SGLD lawyers.

Use this guidance and the [list of key support contacts](#) to help shape your proposals and ensure successful delivery.

It is important to consider carefully what advice or service is needed before making any appointments or offering advice about an appointment to ministers. You should consider:

- what is the task/action/advice needed by ministers?
- is this best done by an individual or by a group?
- how long will the individual or group be appointed for? For example, is this a long-term commitment?

Public appointees covers a wide scope and can include board members, chairs, non-executive directors, and other roles.

Below is a list of the most commonly used models. It is important to make sure the solution identified for your policy area best fits your requirements before you consider making an appointment.

Advisor

If specialist advice is required to advise on a particular policy or programme, you may choose to appoint one person, i.e. an advisor. This would normally be a time-specific appointment, for example, for 12 months or until the delivery of a specific outcome.

The individual appointed would be expected to have the relevant expertise needed to complete the task. However, there may be a need to engage with others to broaden their experience further. An advisor may be appointed for a number of days per month over a fixed period, with remuneration for their input.

Examples of an advisor include Independent Advisor on Poverty and Inequality, Race Equality Framework Advisor, Fair Access Commissioner.

Considerations

- an advisor will normally require a dedicated secretariat resource and administrative support
- the advisor may need IT equipment for their role, which would be supplied and billed by iTECS
- the advisor may need to do their own independent research
- an independent advisor may express views which are critical of government action in particular areas

Working group/advisory group

A working group or advisory group may be set up when there is a need for advice on a specific policy or policy area. These groups are usually formed from a range of subject matter specialists, either to advise on a time-sensitive issue or a long-term commitment. The group is likely to have a lower profile than a commission or the appointment of a specific high profile individual.

Appointments like these are not normally remunerated as there is an expectation that individuals will be representing the views of a host organisation. Travel and subsistence however, may be offered.

Working groups or advisory groups should meet periodically, for example quarterly, to consider board papers etc. A chair will be appointed by ministers to lead the group and board members are typically appointed by ministers. The chair may be an official, a minister or a relevant stakeholder.

Group examples include the Ministerial Advisory Group on Child Poverty, and the First Minister's National Advisory Council on Women and Girls.

Considerations

- secretariat for working groups will normally be provided by the sponsoring policy area who will have responsibility for preparing board papers etc.
- the group will not normally be expected to do their own communications or media, as the work will be guided by ministers
- the running costs for these types of groups are normally low with costs absorbed into existing directorates/divisions

Commission

A commission may be appointed where there is a long-term need for advice or scrutiny on a specific policy or policy area. This is normally a high profile ministerial appointment with potential to draw significant levels of interest from the media and stakeholders.

Commissions are usually the most expensive and resource intensive option to provide advice. There are costs for remuneration of the chair, members, secretariat support, research, travel and subsistence and other costs.

The chair or ministers can appoint members to the commission, however ministers should approve appointments. If members are being remunerated, consider whether it is appropriate for the chair to make appointments.

A commission is typically at arms-length from ministers and the Scottish Government, and has considerable autonomy including the work plan. In most cases, a ring-fenced budget should be arranged and held by the sponsorship division as the commission will not be a corporate body and won't hold funds or employ staff of its own.

A commission will be expected to set its own work plan, agreed by all members, with ministers making requests for particular advice. There is no guarantee these requests will be accommodated.

Commission examples include the Poverty and Inequality Commission, and the Fair Work Convention.

Considerations

- a secretariat will normally be established outside the sponsoring policy team to demonstrate a commission's autonomy
- the chair and other members of the commission may need IT equipment and support in their role, which would be billed by iTECS
- the commission may need help to do its own independent research.
- the commission will work to a remit outlined by ministers, but may have freedom (to be agreed in principle with ministers) to do additional work as they see fit.
- there is no guarantee the commission will be able to accommodate all ministerial requests within their work plan due to capacity limits
- the commission may need their own websites and social media channels to allow the publication of materials in a way that is distinct from the Scottish Government

3. Role and remit of the ministerial advice group

When setting up an advisory group, short life working group or commission the role and remit should be agreed with ministers.

If group members are appointed to advise, outline what outputs will be required from them and when these will be due.

Be clear on the expectations of the group at the outset. Sponsor teams should agree with ministers in advance how those appointed will operate.

You should consider:

- how advice will be provided to ministers for example, face-to-face, a written published report, or a combination of these
- whether advisors will develop their own work plan or work closely with ministers and officials to do so (this will depend on the breadth of the role).
- the extent to which the advisor is outward facing, for example engaging with internal/external stakeholders, responding to media requests, or if they're focused solely on providing advice to ministers

You should also think about how the remit links to existing advice providers and stakeholders. This will help make sure there is no duplication and the rationale for the new ministerial support role is clearly understood.

Set out how the new group will link with Scottish Government policy teams and discuss this with the teams where they have a genuine role.

Once the remit, expected outputs and key relationship issues are agreed and signed off by ministers, you should decide how this will be delivered. This includes the [budget and other support required](#).

When the appointees have taken up post, you should discuss the role, remit and scope of the role with them. It is vital there is a clear basis formed for any further discussion along with an agreed starting point for future discussions. You can do this in this initial phase.

4. Making a ministerial appointment

When making a ministerial appointment for advice, sponsor teams should think about how they will source candidates, remuneration and the terms and conditions of appointment.

When preparing a letter of appointment, use this [draft letter of appointment](#) as a template example. Make sure you check your final letter of appointment with your own SGLD contact and the SGLD employment law team before it's issued.

Sourcing candidates

Sometimes ministers may have already identified someone or a group of individuals for appointment to a role. You should discuss with the relevant minister the on merit test to make sure they comply with their obligations under the ministerial code. If the on merit test can't be satisfied, use the most appropriate way to source candidates for ministerial consideration. This can be achieved through:

- open recruitment, however as these are not regulated public appointments this may be difficult to manage
- using a shortlist of suitable individuals provided by policy teams
- secondment from an external organisation or trusted partner

Where ministers have identified someone for appointment to a role, and there is no statutory basis for the appointment, and the on merit test can't be satisfied, then it is likely the appropriate route to follow is a contract for services. In this instance, you should seek advice from procurement colleagues and subject area SGLD lawyers.

When considering any candidates, be mindful of Scottish Ministers' commitment to inclusion and diversity in public life, as well as their obligations under the ministerial code.

Candidates' existing interests

When considering suitable individuals for the role, it is important to make sure their external interests don't conflict or appear to conflict with the role. Ask candidates to declare their interests and political activity – consider these and keep a register.

Read the [Standards Commission guidance](#) on the [Model Code of Conduct](#), which has a section on register of interests and [on board guidance](#) issued by the public bodies unit.

Political activity is sensitive personal data and, along with other candidate information you hold, must be collected and processed in line with [UK General Data Protection Regulation \(UKGDPR\)](#). Once in post, candidates should notify of any intention to take up new posts, or engage in additional activities not previously registered.

Think about the reputational risk for each interest declared and where appropriate ask ministers if the risks are acceptable before an offer is made. Potential risks may be managed by a conditional appointment letter being offered.

Remuneration

Remuneration may not be required in all cases. If you don't make remuneration available this may restrict the pool of available candidates to those who will provide the service out of goodwill. These candidates will likely consist of stakeholders who hold immediate and vested interest.

In the case of groups, think about whether all members should be remunerated, or solely the chair. Discuss how to handle this with SGLD.

[Finance pay policy](#) must be consulted on the proposed level of remuneration (ideally before the individual is approached and any announcement is made), and approval made in line with [pay policy](#). Consideration should be given to how the payment of a daily fee (or none being offered) will be perceived by the public and stakeholders.

If appointees are to be remunerated, think about:

1. How will they be paid?
 1. Ministerial appointments are normally paid through payroll. The [Tax Planning and Tax Avoidance section](#) of the Scottish Public Finance Manual (SPFM) gives advice on payroll and taxation.
 2. Only on rare occasions should appointees be recruited as a contractor. Under such circumstances you will need to consult colleagues in procurement and consider procurement notices on [Tax arrangements of Scottish public sector workers](#) and [Change to tax legislation for temporary workers](#).
 3. You should consider why the individual does not qualify as an employee for tax purposes as set out in [HMRC/IR35 guidance on employment status and off-payroll working](#) through an intermediary (IR35) and read [guidance on interim workers and IR35](#). A simple way to determine this is whether the individuals concerned can appoint or delegate the work to another person. If they cannot – and they are appointed specifically as an individual – then it is not a contract for a service (and therefore also no VAT is payable on the daily fee).
2. How much is reasonable? Consider comparable appointments, refer to the [technical guide to the pay policy for senior appointments](#) and speak to finance pay policy to find out the banding/level of daily fee that is in line with pay policy and to gain the necessary approval (via Scottish Government senior officials or the remuneration group) under the pay policy.
3. These roles are not normally pensioned nor have other benefits such as annual leave, sick leave, etc.
4. What does the individual expect to receive?
5. What would be the public, parliamentary or media reaction to the level of daily fee or total anticipated fees if reported in the media?

Travel and subsistence

Follow the [guidance on travel and subsistence](#). You should consider if travel will be arranged in advance, or whether claims can be made for expenses incurred. Discuss this with those concerned to ensure arrangements are suitable.

Term of appointment

The term of appointment for members should be agreed at the outset. This will largely be determined by the task involved and the outputs expected. Also agree the intensity, i.e. number of days dedicated per week or month or in total, for the appointment term.

Before offering any terms of appointment, drafts should be cleared with the team's subject area lawyer in SGLD (who will liaise with SGLD's employment branch to ensure that any terms are robust and suitable) and with ministers.

Budget must be in place to cover any expected remuneration for the period of the appointment.

Conditional offers

There may be many instances where an offer will be made subject to certain criteria being met, for example a basic disclosure check being provided. Think about any risks with this approach such as what will the outcome be if this information is not provided and it is not possible to complete the appointment.

Disclosure checks

A basic disclosure, less than 12 months old, is required for individuals to be issued a security pass or IT equipment. If appointees require access to this equipment or regular unaccompanied building access, this should be considered as a conditional clause. It is expected those seeking appointment will meet the cost of this disclosure check.

Induction process

Once a preferred candidate is agreed with ministers, a formal offer letter should be sent outlining the remit and the remuneration for the role. This letter should be discussed and agreed with your SGLD subject area lawyers, who should discuss its contents with SGLD's employment law branch.

You should prepare a formal induction for those being appointed, following the [public bodies unit's on-board guidance](#).

The induction should include:

- background briefing from the relevant policy unit
- a programme of introductory meetings with key individuals (internal and external)
- introduction to the policy area such as directorate structure and responsibilities and an overview of other areas if the policy is cross-cutting
- details of the reporting structure, for example, the chair reports to the lead minister on a regular basis
- a clear outline of the requirements, such as the focus on a particular piece of work, or subject area, the output required or expected and timelines for this

- details of a sponsor contact/secretariat who can answer any questions, and details of an appropriate escalation contact
- arrangements for maintaining regular contact between the sponsorship division and those being appointed to ensure there are no undisclosed issues

Consider whether you need to provide a briefing or a note to officials who are likely to hold an interest, or are likely to be contacted. They should be aware of the appointment so they can provide appropriate support to the secretariat.

5. Timescales for making an appointment

Once you have agreed the roles and remit of the group being appointed for advice this will help determine the timescales for making any appointment. Timescales can vary for each case, but should be based on:

- the need identified
- how urgently the advice is needed
- how developed the role profile is
- whether a candidate or group of individuals has been identified for the role

Where appointments are for short-term, urgent advice, all necessary arrangements should be in place before the start of the appointment. The shorter the term of appointment, the greater the impact even small delays will have.

Sometimes the advice required will evolve over time. An advisory group, short life working group or commission set up specifically to do a focussed piece of work may then be asked to take on follow-up functions or roles as the work progresses. Sponsor teams need to manage these transition points carefully. You should make sure those appointed, ministers and any relevant policy teams have agreed and are clear about any new roles, remits and expected outputs.

Following an appointment the time taken to get started will vary depending on the subject matter, the appointees' familiarity with Scottish Government operations and the skills and experience of the secretariat. It can take time for appointees to become familiar with the role and produce the required outputs.

It's important those who are appointed are supported and their remit is clearly defined. You should be aware of and give consideration to all the guidance in these pages on supporting appointees, making a ministerial appointment, creating a terms of reference and induction for the appointee.

If you're unable to consider all these issues before the appointment is made you should do so as soon as you can.

6. Support for appointees

Make sure there is adequate budget available to fund the support and activities required. You can arrange this through your head of unit and budget centre liaison officer (BCLO).

Secretariat

In most cases, a basic level of administrative support is needed to organise meetings, facilities or venues, organise travel and collate background information from Scottish Government policy officials where necessary.

Policy support may also be required depending on the profile and functions of the body or individual and the work plan. For example, in helping to draft outputs, preparing meeting papers, and generally advising and providing support. Time should be taken to carefully consider the expectations of the secretariat, the roles they will fulfil, and the grades/roles to be filled, with allocations confirmed with the individual, group or commission.

If the secretariat does other work within the Scottish Government, it's important to make sure the secretariat work is separated. For example, using different email signatures to outline the capacity in which emails have been sent in and store files in restricted areas of eRDM (electronic Record and Document Management system).

Line management

Consider whether secretariat members should be line managed within the sponsoring unit or directorate. Depending on the grade of the most senior secretariat member, management within the unit or directorate may be preferred for close policy contact, maximum influence and working on a day-to-day basis alongside colleagues on related issues.

Managing outwith the directorate may help in avoiding any conflicts of interest. These might arise between policy leads, who may be defending a particular policy stance, and secretariat staff, who are working for an advisor who may be critical of that position. This can also help make sure the advisor(s) are seen by external stakeholders as being autonomous. If line management is outside of the directorate, close links to the sponsoring policy area will need to be developed.

Base location

You should consider whether the secretariat will be housed within the sponsoring policy area, or another area of the Scottish Government. In some instances it may be appropriate to consider external premises. However, sourcing accommodation will require significant time and there'll be cost implications. Consideration must be given to the line management and overall wellbeing of secretariat staff.

Recruitment of secretariat

The advisory group, short life working group or commission cannot influence the recruitment of civil servants. If the secretariat is made up of Scottish Government officials, it's important they are recruited through open and fair recruitment in line with Scottish Government guidelines.

This means those appointed cannot veto appointments or sit on selection panels. However, it may be possible for them to comment on a role before it is advertised and/or to meet with candidates to talk in general terms about the role.

7. Further support for appointees

Sponsor teams should consider what support in relation to analytical, communications, IT, data protection and security support might need to be arranged when a ministerial appointment for advice is made.

Analytical services

Depending on the nature of the body or individuals, analytical support may be needed. Requirements should be explored and discussed with your local head of analytical services. If the request cannot be accommodated in-house, or if it is inappropriate to do so, then external commission or a dedicated resource should be considered – taking into account funding available and value for money. Analytical specialists can provide advice and support to put these requirements in place.

Communications support

You should consider what communications support is available if the advisory group, short life working group or commission want to promote messaging independent of the Scottish Government.

Scottish Government communications teams can provide support in line with Scottish Government guidelines, but are unable to offer independent communications advice or help with news releases or publications. Contact your local communications team to discuss the help or support they can provide and whether this meets your needs. Ideally this should be done before the advisor, group or commission is established.

If additional support is required, the level of support, what form it will take and how often should be made clear. In most cases a dedicated communications specialist won't be needed. This should be reviewed on a case-by-case basis.

If independent resources are required, a relevant procurement framework can provide contractors, with services invoiced on an hourly rate. Agree a suitable budget with your [delegated purchasing officer \(DPO\)](#) before going out to tender. You should also consider sharing dedicated communications resources with another body.

Digital engagement and web support

You can publish information about an individual or body and meeting notes on the [groups page on the gov.scot website](#). Email [digital communications](#) to discuss adding content to the gov.scot website.

If you're thinking about creating a new website, read more about [creating and maintaining websites](#). If a new dedicated independent resource is needed, you should seek advice from with your local DPO about how to source this through the relevant procurement framework.

Publications

As support to these ministerial appointees will be provided, in most cases within the Scottish Government, normal publication methods should be followed. Think about the front pages and corporate branding used to make sure publications reflect the owner, or independent nature of the work.

Branding

If you're setting up a new group you might need to create branding such as a logo for use in communications. [Contact the Scottish Government publications supplier APS](#) to discuss your requirements.

Filing and storage

It's important you develop a policy on how you will store any correspondence or files held within Scottish Government on behalf of an individual or group. In most cases a restricted access area within eRDM (electronic Record and Document Management system) will be adequate, with access limited to the secretariat. You should explore requirements thoroughly and seek advice as appropriate. Bespoke email addresses can be created via iTECS however there will be a cost.

IT hardware

IT hardware can be loaned to individuals where sponsor teams feel it is appropriate. You should contact iTECS to discuss requirements and costs. A full list of available items and prices can be found in the [iTECS service catalogue](#).

Security and passes

All new staff will need to be security cleared. The minimum level of clearance needed is completion of a [Baseline Personnel Security Standard \(BPSS\) form](#) and providing a basic disclosure certificate dated within the last 12 months. They will also need to apply for a [security pass](#) for access to Scottish Government buildings. Read more about [preparing for a new member of staff](#) and refer to appointing an individual or members.

Data protection

All organisations that use [personal data](#) are required to abide by current data protection legislation (UKGDPR and the Data Protection Act 2018). The [data protection and information assets team](#) are only able to provide advice to areas and staff in the core Scottish Government.

An independent body would be a [data controller](#) in its own right and may need to seek independent data protection advice and establish its own internal processes for handling data rights requests and compliance issues.

You should contact [information assurance and data protection](#) regarding the legal status of a new public body as early as possible in the process.

Read more about [data protection for new public bodies](#) or [email the data protection and information assets team](#) for further advice.

8. Terms of reference

A terms of reference or governance document should be created to make sure appointees, Scottish Government officials and others are aware of the relationship and status of the advisory group, short life working group or commission.

The document should outline the background, relationship with ministers and officials, remit of the group or commission and expected outputs and be reviewed regularly. Examples of these documents are available for various bodies, including the [Disability and Carers Benefits Expert Advisory Group](#) and [Poverty and Inequality Commission](#).

Freedom of Information (Fol)

Your terms of reference should make clear the relationship between the Scottish Government and the body for the purposes of Freedom of Information (Fol). If information is to be held on a Scottish Government filing system such as eRDM (electronic Record and Document Management system) it should be made explicit that this information is held on behalf of the group or commission.

If officials are to play a dual role, i.e. policy and secretariat, you should try to distinguish in emails for example the role being undertaken in each capacity. It's recommended that you create a secondary signature specific to the secretariat role.

It's also important to check the status of the body with the Fol unit who will provide advice. Even if the body is not covered, the Scottish Government may receive requests for information and correspondence with the body concerned.