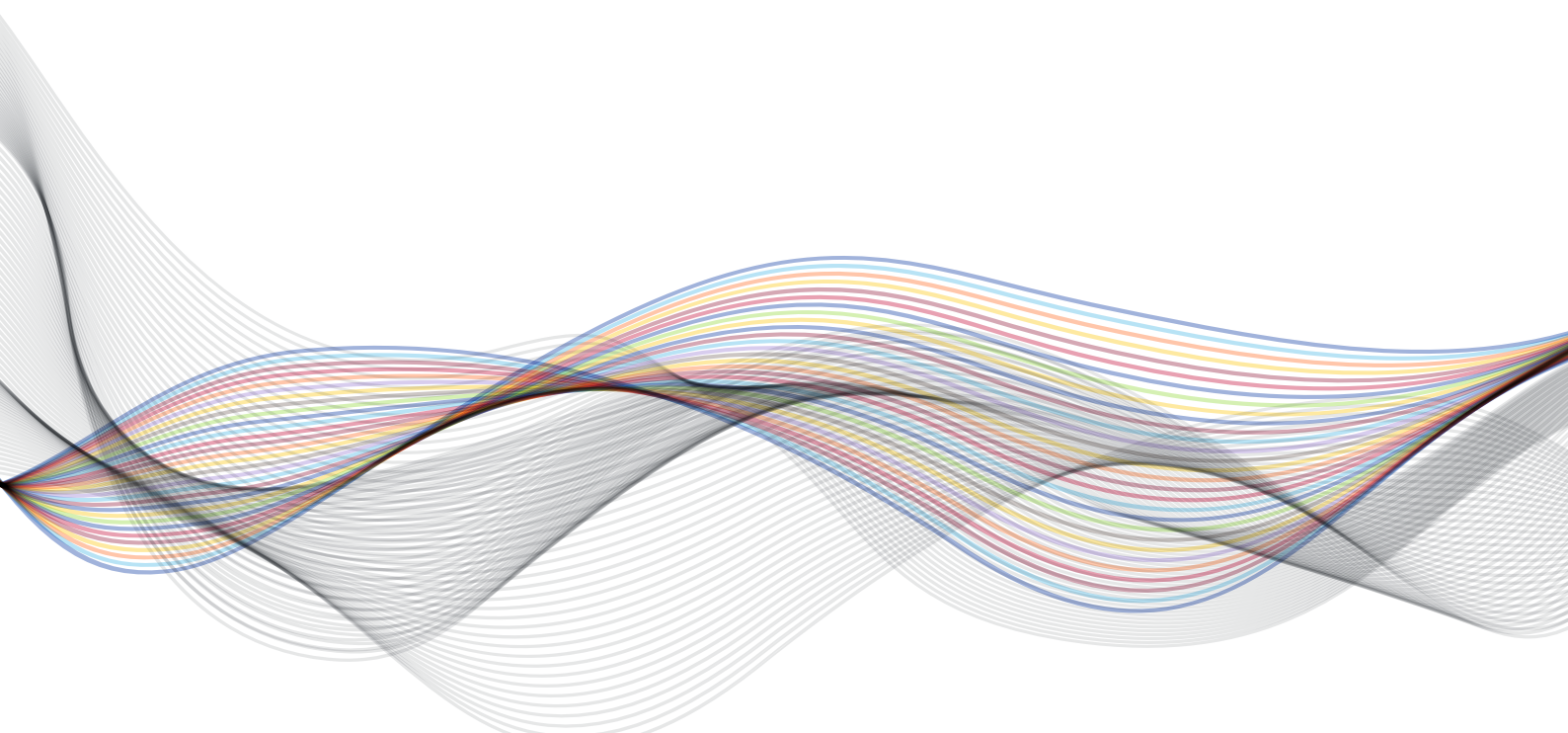


Guidance on Establishment of New Public Bodies

December 2017



**The Scottish
Government**
Riaghaltas na h-Alba

Introduction

This guidance applies to the establishment of new public bodies which will be required to exercise particular functions at arm's-length from Scottish Ministers.

For the purposes of this guidance, the term 'public body' is used to describe public organisations which are directly accountable to the Scottish Government or the Scottish Parliament. These bodies are categorised as:

- Executive Agencies
- Non Ministerial Departments (NMDs)
- Executive Non Departmental Public Bodies (NDPBs)
- Advisory NDPBs
- Tribunal NDPBs
- Public Corporations
- Health Bodies
- Parliamentary Bodies
- Other Significant Bodies

A new public body may be established through a change in status (e.g. Executive Agency to Executive NDPB), by the merger of existing bodies to create a single new entity, or by the creation of a brand new entity to perform functions not previously exercised by a public body in Scotland. This guidance can be used to inform the process of establishing all types of new public body, regardless of the circumstances around the creation of a particular body.

Icons used in this guide

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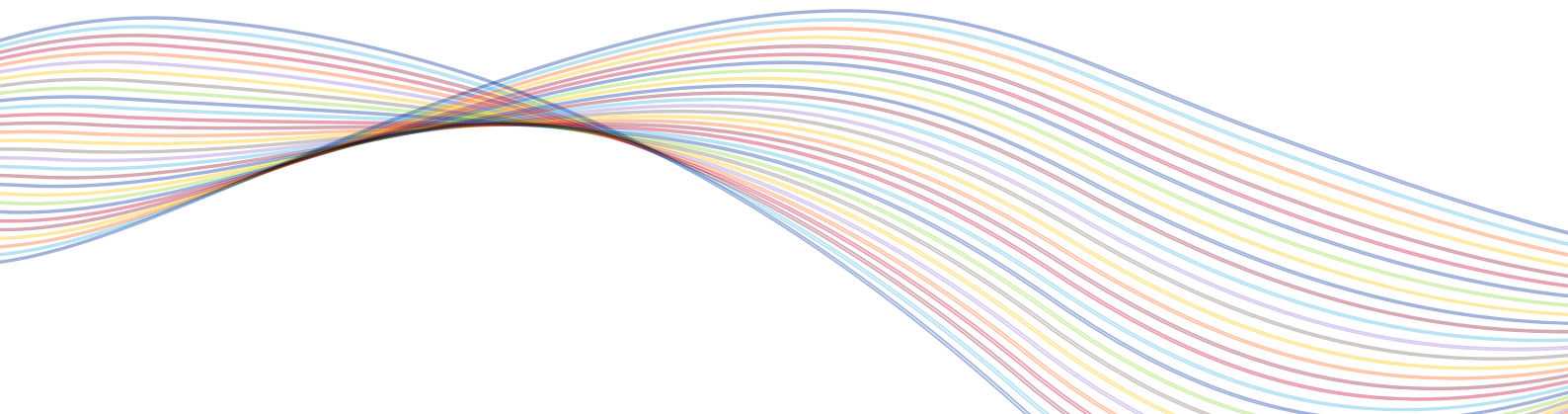
Print this section only (Guidance Note)



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Guidance Notes

The guidance is structured around nine separate Guidance Notes:

Scottish Government Policy

Organisational Options

Constitutional Frameworks

Change Management

Senior Leadership Team

Governance Framework

Planning and Implementation

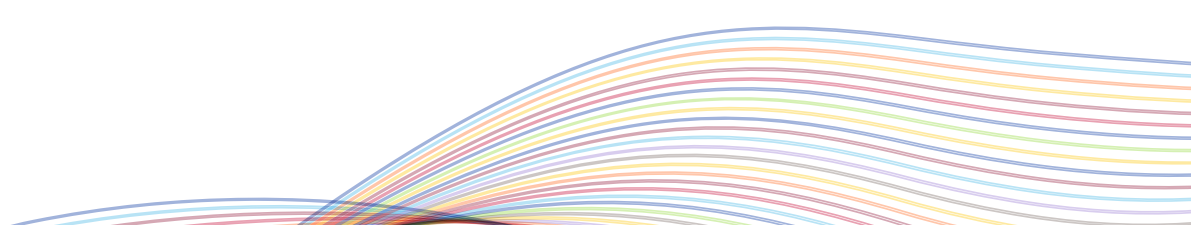
Estimating and Recording Costs and Savings

Measuring Performance

Each **Guidance Note** provides a list of key actions, links to key reference documents and contacts, a general overview of the subject under consideration and a detailed description of the issues and factors to be considered under each subject heading.

The Guidance Notes can be referred to individually or together to reflect the relative context, size and complexity of the new public body. For example, some bodies may require new accommodation and complex IT systems, some may employ hundreds of staff, others only a handful; some may be geographically dispersed, while others will be based in a single location. Although the guidance covers all these issues, the extent to which individual Guidance Notes will apply will vary from body to body, depending on the circumstances involved in the establishment of a particular body.

These circumstances will determine the resources, budgets and timescales that will be required for the establishment of a new body and the extent to which formal project management structures and processes should be adopted. However, the basic principles of effective leadership, planning, financial controls and performance management, as described in **Guidance Notes 5 to 8**, should always be considered as part of any exercise to establish a new public body, regardless of the context, size and complexity of that body.

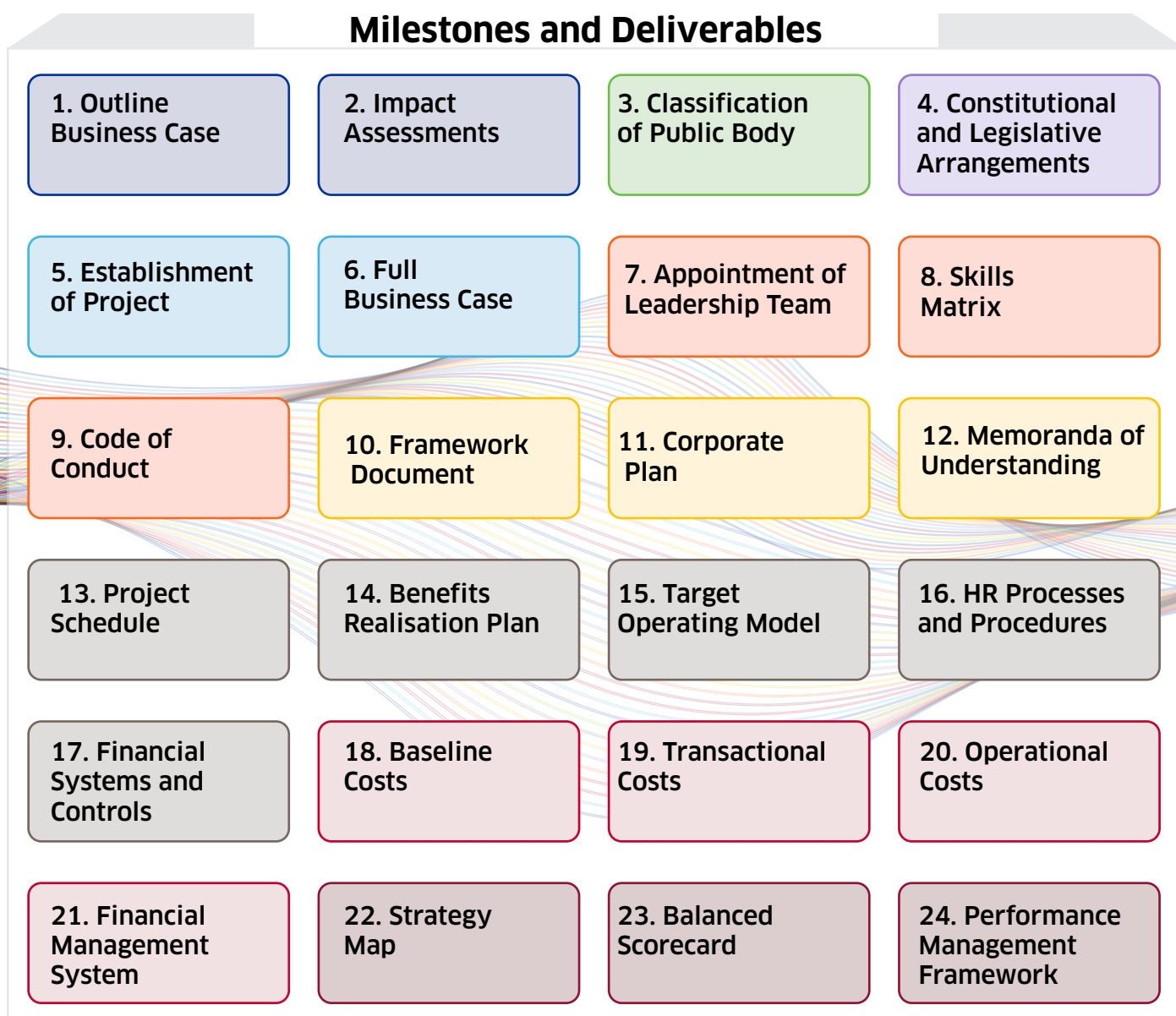


Milestones and Deliverables

The guidance does not prescribe a step-by-step process to be rigidly adhered to when establishing a new public body. The complexity of the public body landscape, the context within which a particular body is to be established and the specific strategic and operational nature of individual public bodies do not lend themselves to a straight-forward linear or sequential approach to change management.

Instead, the guidance highlights the key milestones and deliverables that are typically associated with the establishment of a new public body. The extent to which these should be applied (if at all to the establishment of a particular public body and the sequence in which they need to occur will vary on a case-by-case basis).

A Milestones and Deliverables key Pad (**Figure 1**) reflects the order and structure of individual guidance notes, and provides a quick link to the relevant section of the guidance. It allows sponsor and change teams to plan, develop and manage the establishment of a new public body around the specific circumstances relating to a particular body.



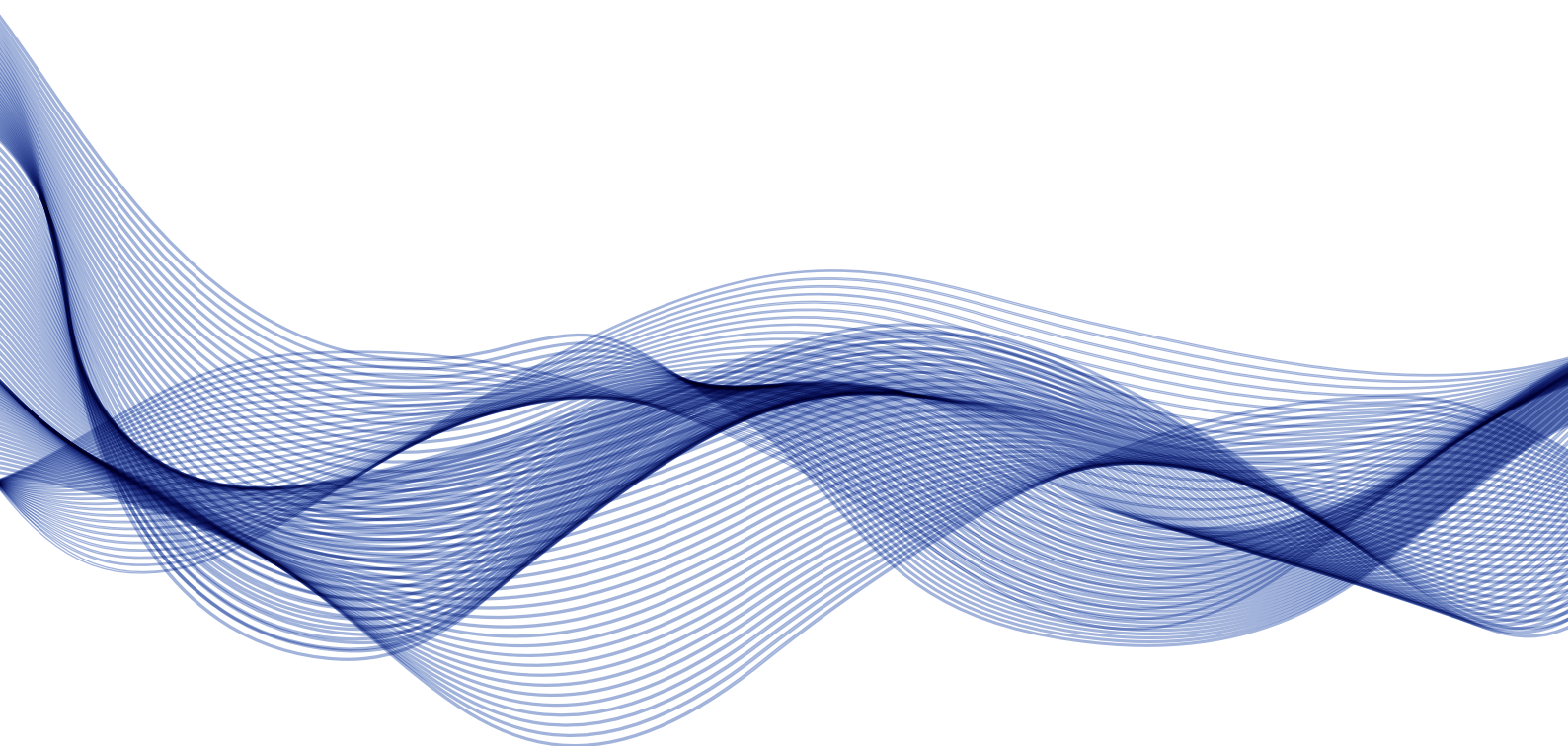
Annex A provides an overview of the processes involved in the establishment of a new public body. The overview reflects good practice in policy making, legislative procedure and strategic change management. Taken together, these processes form the key elements of any project to establish a new public body.

Further Information and Key Contacts

It is not possible to provide guidance on every circumstance and scenario involved in the establishment of every type of public body. The **Public Bodies Unit** can assist in addressing any issues which may not be covered by this guidance, drawing upon knowledge and expertise from within the Unit and across the Scottish Government and wider public bodies landscape. Other key contact points for specialist areas are listed under subject headings in the respective guidance notes.

Scottish Government Policy

Guidance Note 1



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Equality Impact Assessment

Child Rights and Wellbeing Impact Assessment

Strategic Environmental Assessment

Privacy Impact Assessment

Cabinet Approval

Key Actions

- **Assess need for a new public body against Scottish Government policy – with a strong presumption against setting up an entirely new body, instead functions should be subsumed within an existing body where possible**
 - Prepare initial proposals, covering:
 - the need for new body against Scottish Ministers' policies and priorities
 - how the body will be constituted and whether statutory authority is needed
 - delegated responsibilities
 - functions, aims and objectives
 - how the body will be directed and controlled
 - distribution of rights and responsibilities among any stakeholders
 - relationship with sponsoring Minister
- **Prepare outline business case, including:**
 - options appraisal
 - resourcing, financial planning and controls
 - estimated costs involved in establishing and maintaining the new body assessed against likely benefits
 - risk assessment
 - additional key points/considerations specific to the body
- **Consider impact of new public body on business, equality, environment and privacy legislation and policies**
- **Seek Cabinet approval through lead Minister**

Key Reference Documents

[Business and Regulatory Impact Assessment Guidance](#) _____

[Data Sharing Guidance](#)

[Equality Impact Assessment Guidance](#)

[Child Rights and Wellbeing Impact Assessment Guidance](#)

[National Economic Strategy](#)

[National Performance Framework](#)

[NDPB Strategic Engagement](#)

[Privacy Impact Assessment Guidance](#)

[Strategic Environmental Assessment Guidance](#)

Key Contacts

[Better Regulation Team](#)

[Data Protection and Information Assets Team](#)

[Children and Families: Rights and Participation Team](#)

Equality Strategy, Legislation and Mainstreaming Team

Finance Programme Management (Business Partners)

Public Bodies Unit

Public Sector Reform

Strategic Environmental Assessment Gateway Team

SPCD: Property Division

SPCD: Procurement

Parliament and Legislation Unit

Overview

A number of Scottish Government policies and legislative requirements must be considered when assessing the need for a new public body.

Guidance Note 1 explains that proposals to establish a new public body must clearly demonstrate how the body will contribute to the **Scottish Government's Economic Strategy** and **National Performance Framework**. Proposals should also make reference to the potential impact that the establishment of the new body may have on business, equality, environmental and privacy legislation and policies.

A robust analysis of the key policy requirements, estimated costs and benefits, and relevant impact assessments will assist the Cabinet in reaching a decision on whether to approve the establishment of a new public body.

A robust analysis of the key policy requirements, estimated costs and benefits, and relevant impact assessments will assist the Cabinet in reaching a decision on whether to approve the establishment of a new public body.

It is crucial that key contacts including Public Bodies Unit, Finance Business Partners, HR Business Partners and SGLD are consulted at the onset of the development of potential policy to ensure proposals are appropriately assessed.

Why Establish a New Public Body?

Public bodies exist because they have proven value in performing certain functions on behalf of Government:

- They operate with a degree of independence from Scottish Ministers, and provide expert independent advice on technical, scientific or other complex or sensitive issues;
- They deal with government functions, which for legal or other reasons must or should be free from political interference or direct ministerial input;
- They operate flexibly, in ways that may not be open to Scottish Government Directorates – for example, in building partnerships with other organisations, taking commercial and entrepreneurial decisions and operating at a local level;
- They allow the public sector to benefit from the skills, knowledge, expertise and commitment of the members who sit on their boards;
- They focus in depth on clear and specific functions and purposes.

Assessing the need for a new Public Body □

Scottish Ministers' policy is that the number of new public bodies should be kept to a minimum. There should be rigorous assessment about the need for a new public body before any consideration is given to developing formal proposals for the establishment of such a body. Key issues to be covered in the assessment include:

- ▶ The need for the functions and services being proposed;
- ▶ The contribution that the proposed functions and services will make to the **Scottish Government's Economic Strategy and National Performance Framework**;
- ▶ The level of demand for the proposed functions and services;
- ▶ The extent to which the proposed functions and services offer good use of public money
- ▶ The impact of not providing the proposed functions and services.

Proposals and Outline Business case

Initial proposals to establish a new public body would most likely have been informed through preliminary discussions with the lead Minister. These initial proposals should also be discussed with the **Public Bodies Unit**, who can facilitate early engagement with key policy and specialist support staff across the Scottish Government.

Prior to deciding on the legal status of a new body, policy colleagues should take advice from colleagues in Finance with regards to the financial and tax implications of the proposals and these must be factored into the policy making process. If the initial proposals are deemed affordable, following consultation with Finance and subsequent assessments conclude that the establishment of a new public body is justified, formal proposals should be prepared to demonstrate that the new body:

- Has a distinct role to play and functions to perform that are relevant for government to be fulfilling even at arm's-length from Ministers and which cannot be carried out at least as effectively by any other organisation;
- Will be clearly accountable to Scottish Ministers or the Scottish Parliament and the people whom they serve for the functions it performs;
- Will be able to work in a joined-up way with other organisations and be able to draw new people into the process of government in its widest sense;
- Once established, will be properly run, efficient and effective, and deliver value for money and best value;
- Will not have freestanding support services (there is a strong presumption against free standing support services and any proposals to establish separate systems must be fully justified and agreed by Ministers).

Formal proposals should also be supported by an Outline Business Case, including the estimated cost of setting up and running the new public body as a digital business and the benefits, efficiency savings and service improvements it will be expected to deliver.

Impact Assessments

When developing formal proposals to establish a new public body, early consideration should be given to the impact that these may have on the economy, business, the public and the handling of all personal data.

There are five impact assessments which may be relevant to the establishment of a new public body:

- ⇒ Business and Regulatory Impact Assessment
- ⇒ Equality Impact Assessment
- ⇒ Child Rights and Wellbeing Impact Assessment
- ⇒ Strategic Environmental Assessment
- ⇒ Privacy Impact Assessment

These assessments will be subject to more robust scrutiny during the policy making and legislative procedure to establish the new public body. They should also be reviewed throughout the project life cycle to establish the new body to ensure that statutory requirements and sensitivities identified through earlier consultation are addressed.

Business and Regulatory Impact Assessment

All policy changes, whether European or domestic, that may have an impact upon business or the third sector should be accompanied by a **Business and Regulatory Impact Assessment (BRIA)**.

A **BRIA** should accompany the consultation document for the policy change and associated legislation to establish the new public body to help inform and assess the impact on, and encourage comment from, those affected by the proposals.

Equality Impact Assessment

New equality duties came into force in May 2012 which require an **Equality Impact Assessment (EIA)** to be undertaken (on all new or revised policies and practices).

The EIA process assesses the impact of new policies or practices, including the establishment of a new public body, on people covered by the 'protected characteristics' of age, disability, sex, pregnancy and maternity, marriage and civil partnership, gender reassignment, sexual orientation, race and religion or belief. Equality should be embedded into the process of establishing any new public body, including its functions, communications and any service provision.

The results of any **EIA** must be published on the Scottish Government's website.

Child Rights and Wellbeing Impact Assessment

To support Scottish Ministers in meeting their Child's Rights and Wellbeing duties under Part 1 of the Children and Young People (Scotland) Act 2014, the Child Rights and Wellbeing Impact Assessments (CRWIA) was introduced in June 2015 as a policy development and improvement tool. Guidance issued enables the adaptation of the model to an organisation's policy improvement and implementation needs. Whilst there is no legal requirement to undertake a CRWIA, or to publish any undertaken, the CRWIA extends the scope of the Equality Impact Assessment (EIA) to take into account United Nations Convention on the Rights of the Child requirements.

Strategic Environmental Assessment

The Environmental Assessment (Scotland) Act 2015 requires all Scottish public bodies to assess, consult and monitor the likely impact of their plans, programmes and strategies on the environment.

Before proceeding with an engagement strategy or consultation exercise, the Scottish Government must ensure that its statutory duties under the 2015 Act have been fulfilled. Any strategies, plans and programmes that are likely to result in significant effects on the environment must undertake a Strategic Environmental Assessment, which includes the requirement for a public consultation. Alternatively, those that are likely to have no or minimal environmental effects would have to prepare and submit a pre-screening notification.

Should you be uncertain whether a Strategic Environmental Assessment is required, please contact the SEA Gateway helpdesk on 0131 244 7650 for general advice.

Privacy Impact Assessment

A Privacy Impact Assessment (PIA) is a risk management technique for projects or policies that involve the processing of personal information or intrusive technologies.

The Scottish Government is committed to using "Privacy Impact Assessments" to identify and address the potential impact of all new policy proposals, projects and programmes on the management and control of personal data. This helps to inform a project's compliance with legislation, data security and privacy concerns. If appropriate regulatory bodies should be involved in consultations to ensure legal compliance.

PIA documents will be made publicly available before the new initiative is implemented.

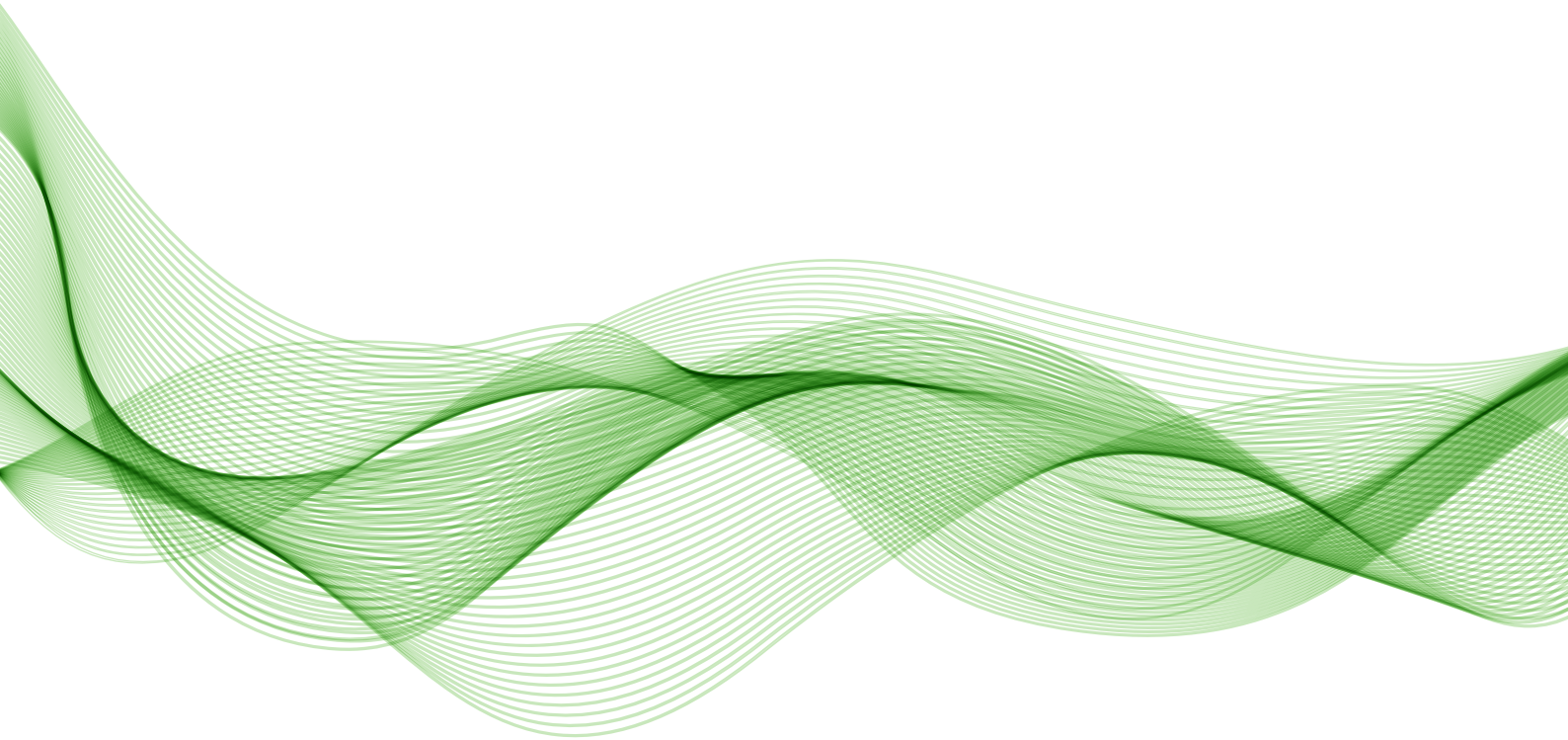
Cabinet Approval

Formal proposals to establish a new public body must be cleared by Cabinet and reported to the relevant Committee of the Scottish Parliament. The work undertaken to assess the need for a new public body, to prepare an Outline Business Case and undertake the initial impact assessment procedure will allow the relevant Minister to explain to Cabinet:

- How the body meets the underpinning principles set out in the Economic Strategy and National Performance Framework;
- What alternative options have been examined and why they are not suitable;
- How the body will deliver value for money and how its services will be designed with and for the people it will serve.

Organisational Options

Guidance Note 2



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- Define desired relationship between Ministers and the new public body
- Identify the types of function to be performed by the new public body
- Assess whether desired ministerial relationship and required functions can be performed without the need for a new public body
- Determine most appropriate type of public body to meet desired ministerial relationship and perform required functions.

Key Reference Documents

Cabinet Office – Classification of UK Public Bodies Guidance (April 2016)

Public Sector Pay Policy

Scottish Public Bodies Directory

Key Contacts

Finance Pay Policy

Office of the Chief Economic Adviser

Public Bodies Unit

Scottish Government Legal Directorate

Overview

The type of public body will be determined by its arm's-length relationship with Ministers, the functions that it will be required to perform and its financing arrangements.

Guidance Note 2 describes the various options to be considered when determining the most suitable type of Ministerial relationship and constitutional arrangements for a new public body, including whether the proposed functions could be performed by existing organisations in or out-with the public bodies landscape.

Classification of Public Bodies



It is a legal requirement for the UK to produce its national accounts in line with the European System of Accounts, and classification is a requirement for the production of these accounts to be accurate. However, the diverse range of functions performed by public bodies means that classification is not always a straight-forward process.

The **Office for National Statistics** (ONS) operates in accordance with guidance produced by Eurostat (the statistical office of the European Union). The Office for National Statistics (ONS) determines a body's national accounting classification (central government, local government etc), based on whether an organisation is public or private, and market or non-market, in order to produce accurate national accounts.

The Scottish Government (or Parliament) determines the organisational type (Executive Agency, Executive NDPB etc), depending on the body's functions and relationship with Scottish Ministers and/or the Scottish Parliament. The national accounting classification arm of HM Treasury must be consulted in reaching an initial assessment of the proposed body's classification, particularly where there is any discussion about whether the body is public or private. The Office of the Chief Economic Adviser (National Accounts Division)

will lead on engagement with HM treasury following completion of a standard template about the new public body and discussion at the SG's Classification Working Group (which meets every month)

However, the final decision on national accounting classification is made by the ONS. The ONS must therefore agree to the classification of any public corporation, because they have a market role.

Functions

The choice of organisational option will vary according to the desired relationship with Ministers and the functions that the new public body will be required to perform. These functions are generally categorised as:

- **Public service delivery functions** – providing products and services to end users
- **Advisory functions** – providing specialist advice to Ministers, usually of a technical, scientific or other specialised nature.
- **Regulatory functions** – relating to legal and other issues where it has been determined that political interference or direct ministerial input is inappropriate.
- **Adjudicatory and appeal functions** – where for legal reasons bodies need to be wholly independent of the state, for example to comply with Article 6 of the European Convention on Human Rights and the Human Rights Act 1988. Tribunals, for example, aim to resolve conflicts in certain areas between the citizen and the state, or between individuals, which is generally simpler, less formal and cheaper than the more formal parts of the court system.
- **Partnership functions** – providing a forum for bringing together a wide range of interests. This may be done through nominated representatives of public, private and voluntary bodies.
- **Commercial functions** – relating to state-owned enterprises undertaken wholly or in part within the public sector (i.e. through a nationalised industry or public corporation).
- **Health Service functions** – relating to tasks carried out within or in support of the

Non Public Body Options

There are a number of organisational options which might meet the desired ministerial relationship and perform the required functions without the need to establish a new public body. These should be considered before any action is taken to establish a new public body. They include:

- Retaining the function(s) within a Scottish Government Directorate.
- Allocating the function(s) to an existing public body or establishing it as a separate arm of an existing body.
- Task Force, Advisory Committee, ad hoc Advisory Group and Working Group – these short-life bodies normally deal with a single issue and are strictly limited to no more than 2 years before reporting and disbanding, or requiring re-designation.
- Private sector company – functions which can be managed within relatively clear-cut pricing and quality guidelines may be suitable for contracting out to competent private sector companies.
- Self-regulation – in the case of a proposed regulatory body, self-regulation by responsible persons, if necessary with the encouragement of Scottish Ministers and some initial funding.
- Voluntary body – an existing voluntary body may undertake the required task. This will not normally be feasible where the Scottish Government has to finance the greater part of the voluntary body's expenditure.

Proposals to establish a new public body should only be progressed when none of the above organisational options can perform the required functions within the context of the desired ministerial relationship.

Public Body Options

Having discounted non-public body options, the types of public body which can be established at arm's-length from Scottish Ministers to perform the required functions are outlined below.

Each type of public body has fundamental differences with regards its budgeting, VAT position, legal status and staffing designation. Therefore, the type of public body being proposed must be fully considered prior to development of policy or public announcements in order to ensure the implications of the policy decision are properly understood and assessed by service specialists.

- ▶ **Executive Agencies** – although an integral part of the Scottish Government, Executive Agencies generally have a strong focus on the management and direct delivery of public services which do not require day-to-day ministerial oversight; in some cases they may also have responsibility for a discrete area of government policy. They are staffed by civil servants, including the Chief Executive who is directly accountable to Ministers. They are not statutory bodies but operate to a Framework Document approved by Ministers, which may be reviewed, amended or revoked at any time. This has the advantage that they can normally be set up by administrative action without the need for legislation.
- ▶ **Executive Non Departmental Public Bodies (NDPB)** – are not part of the Scottish Government or the Scottish Administration. They perform administrative, commercial, executive or regulatory functions on behalf of Government and operate within a framework of governance and accountability set by Ministers. They are funded by the Scottish Government through grant or grant-in-aid, but many generate additional income through provision of services. They are normally established by statute, employ staff (who are not civil servants) on their own terms and conditions subject to Scottish Public Sector Pay Policy, and manage their own budgets. They are accountable to a board whose members are normally appointed by Ministers and publish their own annual report and accounts.
- ▶ **Advisory NDPBs** – provide independent expert advice to Ministers and others or input into the policy-making process in relation to a particular subject. They are normally established by Ministers on a non-statutory basis, do not normally employ staff (administrative support is usually provided by the Scottish Government) and are not normally responsible for budgets or expenditure other than remuneration for board members. They are accountable to a board whose members are normally appointed by Ministers. Ministers are answerable to Parliament for the activities of the body and can dissolve the body at any time.
- ▶ **Tribunal NDPBs** – are established by statute and have specific responsibilities for prescribed judicial functions. They are not part of the court system and are independent of the Scottish Government. They have both specialist and lay members, do not employ staff and are not responsible for budgets or expenditure other than the remuneration of Tribunal members.

► **Non Ministerial Departments (NMDs)** – are headed by Non Ministerial Offices (NMOs) (Boards or statutory officeholders) who are not part of the Scottish Government but are part of the Scottish Administration in their own right. Staff are civil servants. The NMOs are generally funded by Parliament and are required to publish their own annual report and accounts. They are directly accountable to the Scottish Parliament, not Ministers, for the discharge of their statutory functions.

► **Public Corporations** - the Office for National Statistics (ONS) determines which public bodies are public corporations. It is crucial that Finance Business Partners, the Office of the Chief Economic Adviser (OCEA) and the Public Bodies Unit are engaged early in the process in order to take forward classification assurance procedures as the decision by the ONS determines the designation of the body

Public corporation designation reflects the fact that a body is considered to be a market body, and does not prevent it being structured along the lines of the bodies set out above, although HM Treasury accounting requirements for public corporations apply.

A body is classified as a market body if it derives more than 50 per cent of its production cost from the sale of goods and services at economically significant prices (that is, prices that have a substantial influence on the amounts of products that producers are willing to supply and on the amounts of products that purchasers wish to acquire) for all or most of the goods and services they produce; it is controlled by central government, local government or other public corporations; and it has substantial day to day operating independence so that it should be seen as an institutional unit separate from its parent department. Public corporations generally employ their own staff, who are not civil servants, manage their own budgets and report to a board whose members are appointed by Ministers.

► **Health Bodies** – currently comprise 14 territorial health boards, 8 special health boards and the Mental Welfare Commission for Scotland (MWCS). With the exception of MWCS, health bodies are part of NHS Scotland and provide healthcare services or management, technical or advisory services.

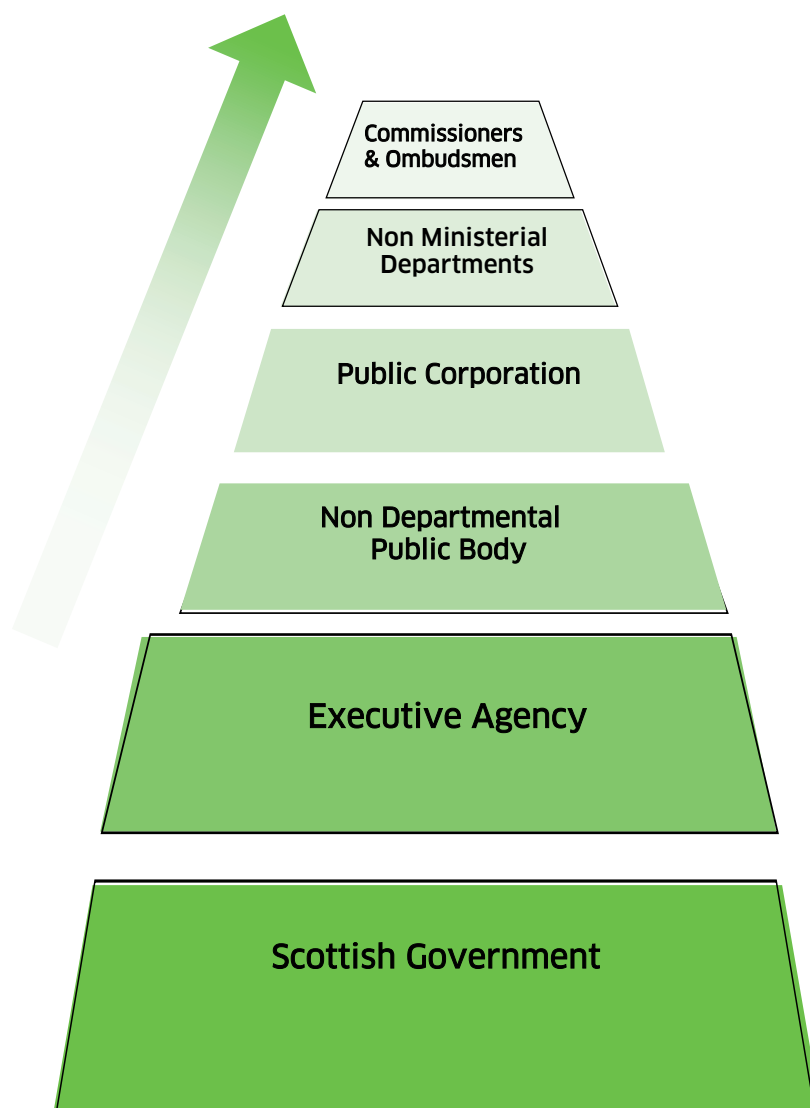
► **Parliamentary Commissioners and Ombudsmen** – are typically responsible for safeguarding the rights of individuals, monitoring and reporting on the handling of complaints about public bodies, providing an adjudicatory role in disputes and reporting on the activities and conduct of public boards and their members. The Jurisdictions of these officeholders usually covers Scottish Government activity, so it is important to ensure independence from the Scottish Ministers. Parliamentary Commissioners and Ombudsmen are appointed by the Scottish Parliamentary Corporate Body (SPCB) with the approval of the Scottish Parliament. Each officeholder is responsible for employing their own staff, who are not civil servants, and managing their own budgets from funding provided by the Scottish Parliament. Whilst these officeholders are independent in function (i.e. in undertaking their respective regulatory responsibilities), they are accountable to and report directly to the Scottish Parliament on the day to day operation of their offices (i.e. funding, accounts, staffing arrangements etc). Any proposed additions to this group must be discussed well in advance with the Parliamentary authorities given the SPCB's oversight of these officeholders.

► **Other Significant Bodies** – do not fall within the recognised categories of public bodies set out above but they have a direct relationship with either the Scottish Government or the Parliament and operate within a framework set by Ministers.

Desired Ministerial Relationship

The relationship between Ministers and the public body will be determined by the way in which the body is to be funded, the extent to which Ministers will provide direction and guidance, and the degree to which Ministers will exercise control over day-to-day operations. The nature of the relationship with Ministers will therefore vary from body-to-body, but it is generally considered to be as illustrated in **Figure 2**:

Figure 2. Arm's-Length Relationship with Ministers



Characteristics of arms-length bodies Executive Agency

Characteristics

Integral part of the Scottish Government;

Defined business unit, with a clear focus on delivery and, in some cases a discrete area of policy, headed by a Chief Executive;

Large enough to be independently accountable within the parent Portfolio;

Part of the Director General 'cluster';

Chief Executive is supported by an advisory management Board (with some external non-exec members) or a senior management team;

Staffed by civil servants, including the Chief Executive;

Relationship with Ministers and parent portfolio set out in the Framework Document;

Ministers approve and provide funding.

Accountability

Ministers set the policy and resources framework and are ultimately accountable to Parliament for the functions and performance of the Agency;

The Chief Executive is accountable for the operation of the Agency and is normally designated as the Accountable Officer;

Ministers hold the Chief Executive to account for the performance of the Agency, supported (as appropriate) by the relevant Director General/Director;

Accountable Officer responsible for the use of resources but Ministers remain accountable to the Parliament for the allocation of public funds;

Subject to relevant guidance issued by Ministers e.g. the Scottish Public Finance Manual;

Framework document defines the relationship between Ministers, Portfolio Accountable Officer (and Director where appropriate) and the Chief Executive;

Prepares its own annual reports and accounts which are presented to Ministers and laid in front of Parliament.

The Chief Executive is appraised by either the relevant Director General or Director within the Ministerial portfolio.

Some Agency Chief Executive's are non-ministerial office holders who are not subject to direction of Ministers in the discharge of statutory functions for which the office holder is responsible.

Non-Ministerial Departments

Characteristics

Part of the Scottish Administration and staffed by civil servants;

Headed by a Non-Ministerial Office holder in the Scottish Administration - either an individual or a body corporate with a separate legal identity and specific statutory functions;

Not subject to direction of Ministers in the exercise of statutory functions for which the office holder is responsible;

Established to deliver specific statutory functions that do not require direct accountability through Ministers to Parliament;

Funded direct from the Scottish Consolidated Fund rather than via Ministerial portfolios; Accounts not included in the Scottish Government's consolidated accounts.

Accountability

Ministers are responsible for determining the functions of the body and set the overall strategy, policy and organisational framework within which it operates including through founding legislation. Ministers may wind it up (subject to Parliamentary approval where required and in some cases only in certain circumstances specified in statute);

An Office Holder (which may be a body corporate, that is, a board) is responsible for the delivery and performance of statutory functions;

Budget approved by Ministers as part of the Spending Review process and considered by Parliament through the budget process (variations apply in the case of Registers of Scotland);

Corporate and business plans approved by Ministers (or the Lord President for SCS) in line with spending proposals (variations apply in the case of Registers of Scotland);

Accountable Officer is responsible for the effective and efficient use of resources by the NMD, is not the Office Holder and is directly accountable to the Scottish Parliament;

Prepares its own annual reports and accounts, which are presented to Ministers (or the Lord president for SCS) and laid in Parliament;

Individual statutory Office Holders appraised by the relevant DG/Director;

Body corporate NMDs hold the Chief Executive to account and the Chair carries out the appraisal of the Chief Executive;

Where the Office Holder is a body corporate, Ministers (or the Lord president for SCS) have responsibility for appointments to the body;

Details of arrangements above are set out in a Framework Document or other formal agreement.

Public Corporations

Characteristics

Are established by statute or under the Companies Act;

Operates within a strategic framework set by Ministers;

Are industrial or commercial enterprises, largely trading bodies, under direct control of Scottish Ministers;

Headed by a Board whose members are appointed by Ministers;

A body corporate, staff are employed by the body and are not civil servants;

Allocated and manage their own budgets.

Ministers appoint (and can remove) the Board.

Accountability

Directly accountable to Ministers, and through Ministers to Parliament.

Subject to relevant guidance issued by Ministers e.g. the Scottish Public Finance Manual;

Subject to a general or specific Ministerial power of direction (with appropriate safeguards in certain circumstances)

Chief Executive is designated as the Accountable Officer;

Relationship between Government and the Body set out in an appropriate Framework document;

Accountable Officer responsible for the use of resources but Ministers remain accountable to the Parliament for the allocation of public funds;

Board holds the Chief Executive to account;

Ministers ultimately accountable to Parliament for the functions and performance of the body and have the power to wind it up (subject to Parliamentary approval (as required));

Provided loans from Government;

Prepares its own annual reports and accounts which are presented to Ministers and laid in front of Parliament.

Ministers agree Corporate and Business plans.

Executive NDPBs

Characteristics

Operate within a Strategic Framework set by Ministers;

Have their own legal identity i.e. are established by statute or set up as companies limited by guarantee;

Carry out administrative, commercial, executive or regulatory functions on behalf of the Scottish Government;

Provide specialist advice to Ministers and others;

Headed by a Board which is appointed by Ministers;

A body corporate, staff are employed by the body and are not civil servants;

Allocated and manage their own budgets.

Accountability

Directly accountable to Ministers, and through Ministers to Parliament;

Chief Executive is designated as the Accountable Officer;

Accountable Officer responsible for the use of resources but Ministers remain accountable to the Parliament for the allocation of public funds;

Board holds the Chief Executive to account;

Ministers ultimately accountable to Parliament for the functions and performance of the body and have the power to wind it up (subject to Parliamentary approval (as required));

The relationship between Ministers, SG and the NDPB is set out in the relevant legislation and the Framework document;

Most NDPBs funded by Grant-in-aid (some are funded through sectoral levies) and receive an annual guidance letter;

Subject to relevant guidance issued by Ministers e.g. the Scottish Public Finance Manual;

Ministers agree Corporate and Business plans and appoint (and can remove) Board members; Subject to a general or specific Ministerial power of direction (with appropriate safeguards in certain circumstances);

Prepares its own annual reports and accounts which are presented to Ministers and laid in front of Parliament.

Advisory NDPBs

Characteristics

Are established by Statute or administratively by Ministers;

Operate within a strategic framework set by Ministers;

Carry out advisory functions, providing independent specialist/expert advice to Ministers and others;

Headed by a Board which is appointed by Ministers;

Do not normally employ staff (administrative support is normally provided by Scottish Government staff);

Are not normally responsible for budgets other than remuneration (where paid) and expenses for Board members.

Accountability

Directly accountable to Ministers, and through Ministers to Parliament.

Ministers ultimately accountable to Parliament for the functions and performance of the body and have the power to wind it up (subject to Parliamentary approval (as required));

The relationship between Ministers, SG and the NDPB is set out in an appropriate framework document;

Ministers agree the corporate/business plans (where produced) and appoint (and can remove) Board members;

Where no budget responsibility, not required to produce annual accounts.

Publish an annual report or statement of activity.

Costs met by the Scottish Government.

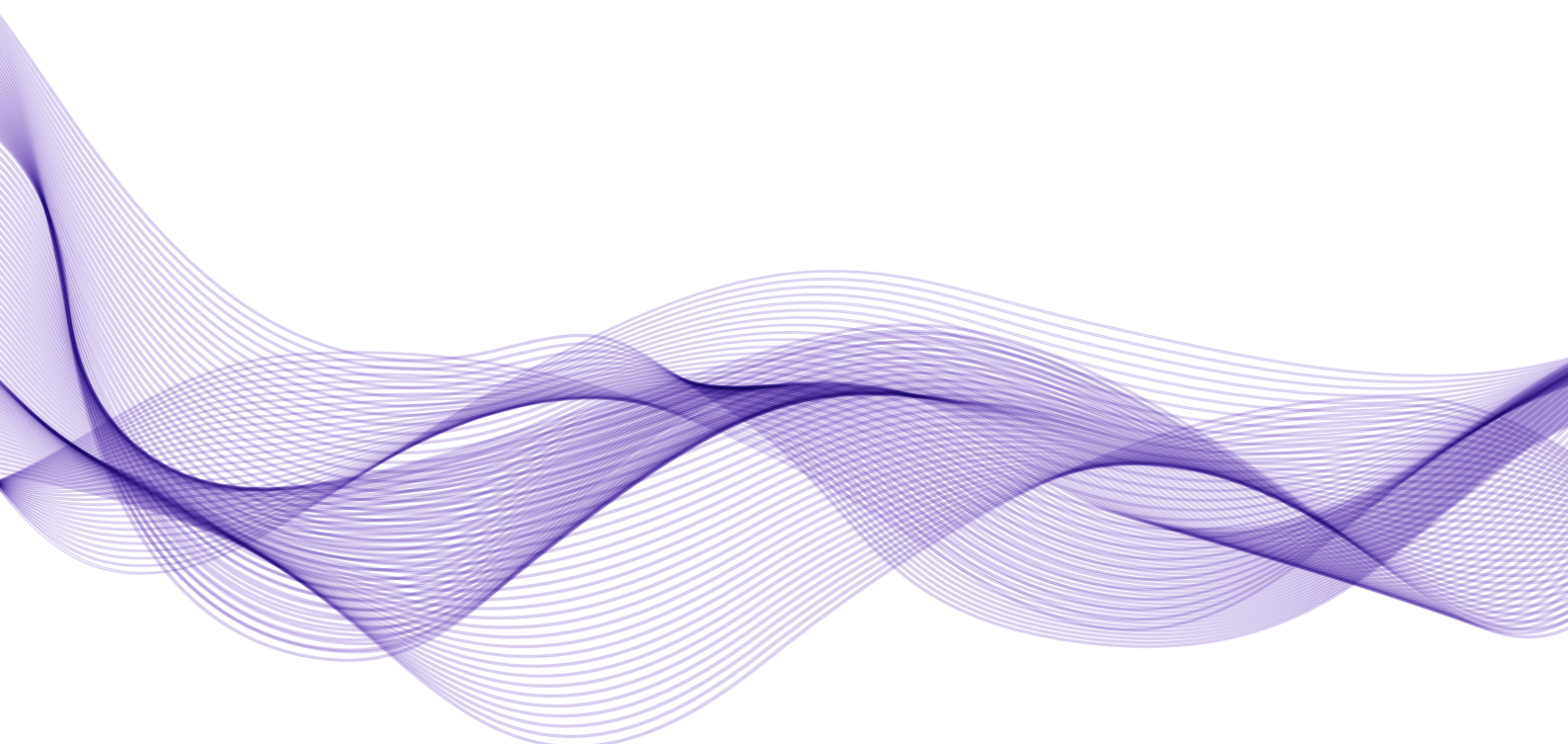
Figure 3: Overview of Financial Arrangements

Public Body	Budgeting within SG	Ability to use reserves and carry forward funding	Accounts Consolidated in Scottish Government Annual Accounts	Civil Servants	Part of the Scottish Administration VAT Family
Executive Agency	All budgets score against SG budgeting	No	Yes	Yes	Yes
Executive <u>NDPB</u>	SG Grant funding scores against SG budgeting	No	No	No	No
<u>NMDs</u>	All budgets score against SG budgeting	No	No	Yes	Yes
Public Corporation	Subsidy from SG scores against SG budgeting	Yes	No	No	No

It should be noted that **VAT** advice should be sought at the onset of the proposal as a simple change in the make-up of the body or funding route can significantly alter the VAT status of the body and therefore the costs of setting up the body. Further guidance is contained in **Guidance note 7**.

Constitutional Frameworks

Guidance Note 3



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- Determine constitutional arrangements for establishing the new public body
- Define the public body's functions, the method of funding, and specific powers and obligations
- Determine the appropriate powers and controls over the activities of the body – identifying those to be dealt with by legislation and those by other means
- Determine whether expenditure may be incurred in advance of Royal Assent
- Ensure that legislation includes powers to permit winding-up of the body at a later date
- Familiarise yourself with the guidance on Scottish Parliament Bills.

Key Reference Documents

Scottish Government – Bill Handbook

Scottish Parliament – Bill Guidance

Public Sector Pay Policy

Scottish Public Finance Manual (SPFM)

Finance Guidance Note 2009/0101

Drafting Matters

Guidance on Instructing Counsel: Common Legislative Solutions (still to be published - contact PCO for info)

Key Contacts

Equality Strategy, Legislation and Mainstreaming Team

Finance Pay Policy

Office of Scottish Parliamentary Counsel

Scottish Government Legal Directorate

Parliament and Legislation Unit

Overview

The constitutional arrangement for the establishment of a new public body will be determined by the choice of organisational structure, the functions that the body will be required to perform and the degree of independence from Ministerial and Parliamentary control.

Guidance Note 3 sets out the main methods of constituting a new public body. It highlights the key factors to be considered when determining the most appropriate constitutional arrangements for a particular body.

Administrative Action

Executive Agencies and those bodies which have an advisory function (i.e. Advisory NDPBs, some NHS Scotland bodies and short-term working groups, panels or commissions) can be established by administrative action. This is appropriate where the advisory body is short-lived or not required to employ staff directly (support being provided by the Sponsor Directorate or to own accommodation or property).

Legislation

Public bodies which have an executive, administrative, commercial or regulatory role are normally established through primary legislation. Some public bodies, as described above, can be established through administrative action, but to secure necessary accountability a legislative basis should be secured within 5 years of any public body (apart from Executive Agencies) established by administrative action.

Securing a slot in the Legislative Programme

The Scottish Ministerial Code states at paragraph 3.3 that "Ministers should not give undertakings either within or outside the Parliament to introduce primary legislation on any issue without the prior agreement of the Cabinet". **It is therefore important that when Cabinet is being asked to agree to the establishment of a new public body whether and when legislation will be required.**

The Scottish Government's legislative programme is announced each September as part of its wide Programme for Government. There is a limited number of slots for Bills in each annual legislative programme and bids are prioritised by the Minister for Parliamentary Business and the Cabinet Sub-Committee on Legislation ahead of final approval by Cabinet. It is therefore important that if you think you will need to progress legislation within a particular timescale that you engage as early as possible with the Parliamentary and Legislation Unit – they will provide guidance about timescales for securing a slot in the legislative programme, normal timescales for the development and parliamentary passage of legislation, and a range of procedural and handling issues associated with the legislative and parliamentary processes.

Content of Legislation

Legislation will typically define the body's membership, legal status, its functions, the method of funding, and other specific powers and obligations. Please consult the Parliament and Legislation Unit and also Public Bodies Unit before finalising any draft legislation; they can provide advice and assurance. Although not all of these will apply to the establishment of all new public bodies, the following provisions are frequently included in enabling legislation:

Powers and Obligations of the Public Body

- Power to appoint staff
- * Power to pay salaries, allowances and pensions
- * 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 Scottish Ministers to pay grant in aid, subject to terms and conditions set by Ministers
- * Power to create subsidiary organisations
- * Obligations to make suitable external audit arrangements; to submit accounts by a certain date; and to lay audited accounts before the Scottish Parliament and to publish them
- * the obligation to inform Scottish Parliament of its activities through an annual report
- A complaints handling procedure to be approved by the Scottish Public Services Ombudsman
- * Power to pay salaries, allowances and pensions
- * Power to raise money by levies or charges, and/or to borrow and lend
- * A declaration on whether the body should be subject to investigation by the Commissioner for Ethical Standards in Public in Scotland and therefore listed in Schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000
- * A declaration on whether the body should be covered by the Equality Act 2010 (Specific Duties) (Scotland) Regulation 2012. Advice on this should be sought from Equality Strategy, Legislation and Mainstreaming team
- * A declaration of whether members of the body are disqualified from membership of the Scottish Parliament as set out under Section 15 of the Scotland Act, and similarly from the House of Commons under the House of Commons Disqualification Act 1975

- * A declaration on whether the body will be covered by **Freedom of Information legislation** and subject to investigation by the **Scottish Information Commissioner**.

Ministerial Powers

The legislation should normally grant Ministers suitable powers of appointment and dismissal over the chair and members.

Additional Ministerial powers may include:

- A requirement that the body exercise particular functions subject to guidance from the Scottish Ministers, and/or in accordance with plans approved by the Scottish Ministers;
- General or specific Ministerial powers of directions;
- Exercise of certain financial powers - e.g. borrowing or capital expenditure - to be subject to Ministerial approval or consent;
- Staff numbers, terms and conditions, and superannuation arrangements to be subject to Public Sector Pay Policy, Ministerial approval or consent;
- Powers to require the production of information which Ministers need in order to answer satisfactorily for the body's affairs;
- Power to enable Scottish Ministers to indemnify staff and board members;
- Power to permit winding up at a later date, if fixed time is not established.

Take-up of Powers

The legislation setting up a public body will normally come into force at Royal Assent or by Commencement Order. Depending on the terms of the main legislation, the body will formally come into existence as soon as a quorum of board members has been appointed. However, it is not appropriate for the board to meet prior to the Minister announcing appointments to the Scottish Parliament.

In some cases the body will possess its full powers when the legislation comes into force; in others it will take on its main functions, staff, assets, and liabilities at a later "vesting" date (or dates) as stated in "primary" or "secondary" legislation (statutory instrument).

Financial Memorandum

Financial Memoranda are required so that the Parliament can have the best possible information on the costs (and benefits) arising from proposed legislation. Estimates of costs and benefits are therefore required regardless of budgetary considerations. Finance Guidance note 2009/0101 provides guidance on the preparation of the Financial Memoranda that accompany Scottish Government Bills. Guidance Note 8 provides advice on how to estimate the costs and savings associated with setting up a new public body. It is important to ensure that the costs of shared services are factored into such estimates.

Incurring Expenditure

Statutory bodies cannot hold corporate legal existence until Royal Assent to the enabling legislation has been obtained. Consequently, 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 after Royal Assent. Some expenditure may be incurred in advance, but only where it can be justified in terms of the public interest. Finance Directorate advice must be sought before any advanced expenditure is incurred.

Approval by the **Scottish Government Remuneration Group** will be required prior to the setting of daily fees, advertisement and the appointment of the chair and members of the new body. Advice should also be sought from the **Scottish Government Finance Pay Policy Team** over whether the chief executive and staff of the body is subject to the **Scottish Public Sector Pay Policy**. The final decision may be one for Ministers, but it is not necessarily determined by the type of body or the proportion of its budget raised externally. The Privy Council Office must be consulted where this is considered a possible option.

Royal Charter

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. There are a few examples of public bodies which have been established by this means (e.g. sportscotland).

Incorporation under the Companies Acts

A public body may be incorporated as a company by registration under the Companies Act 2006. Companies may be limited by guarantee or by shares, or they may be unlimited. 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 the debts of the company is limited (this is not the case for an unlimited company).

Incorporation as a company places statutory obligations on the body - to register its Memorandum and Articles of Association with the Registrar of Companies, to submit annual returns, to hold an annual general meeting etc. The company's board members also have a personal liability and responsibility to protect the interests of creditors and investors.

The accounts of a public body established as a company cannot be made subject to audit by the Auditor General for Scotland (AGS) on a statutory basis - although economy, efficiency and effectiveness examinations may be undertaken subject to specification by Order under section 23 of the **Public Finance and Accountability (Scotland) Act 2000**. Where the AGS does not audit on a statutory basis, any appointment of an Accountable Officer must be made on a non-statutory basis.

It is unusual for a public body to be a company limited by shares. Companies limited by guarantee are normally formed for charitable or non-trading purposes (although they may carry out some trading activities). Public bodies constituted in this way are usually financially self-sufficient and do not receive grant in aid.

If a public body is to be established as a limited company, formal arrangements must be made to ensure that Scottish Ministers retain control over its activities, including:

Ministerial approval for the terms of the Memorandum and Articles of Association
Ministerial appointments to the board
Conditions attaching to the provision of grant in aid.

A formal agreement must be drawn up which sets out the respective responsibilities, rights and obligations of Scottish Ministers and the company.

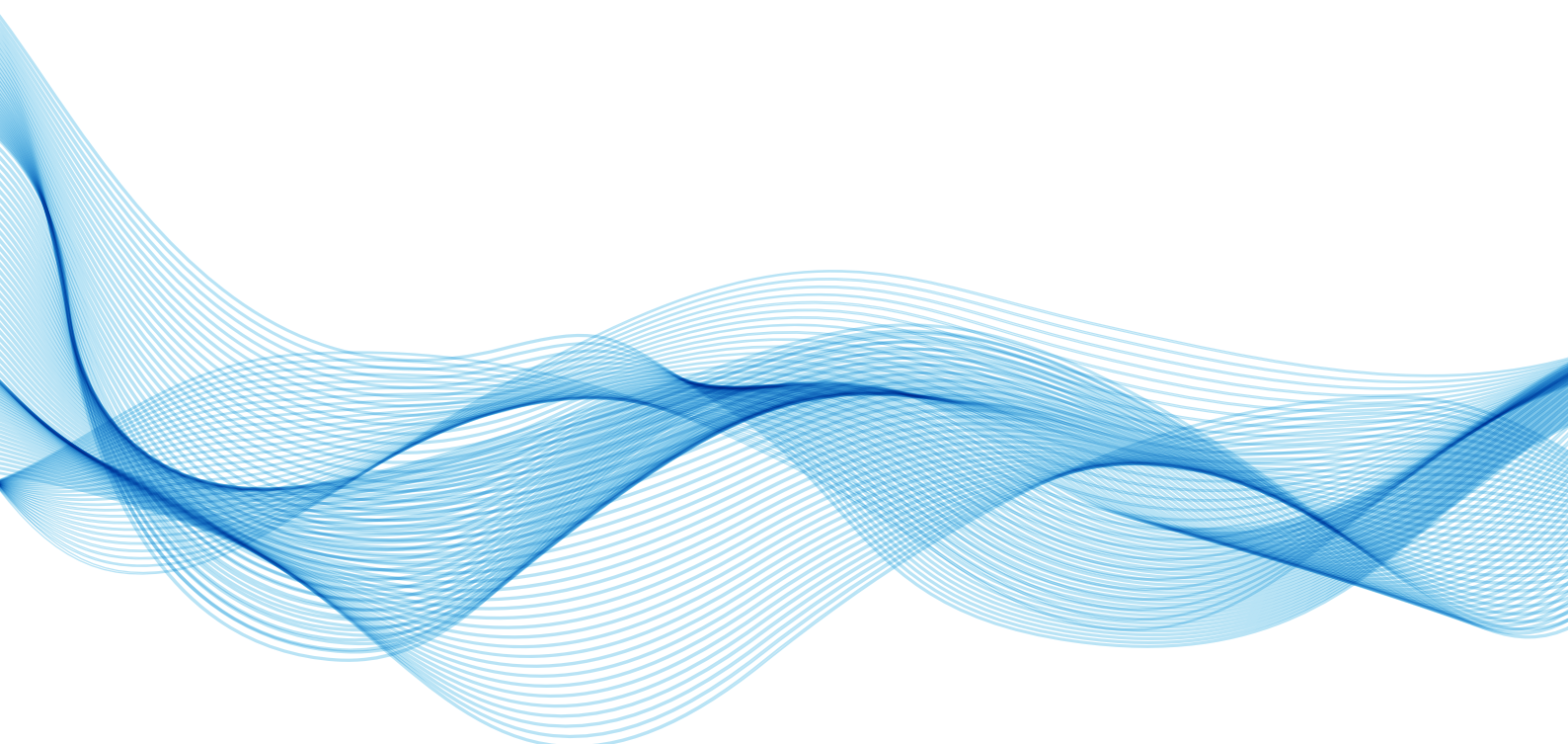
Charitable Status

Section 7(4)(a) and (b) of the Charities and Trustee Investment (Scotland) Act 2005 prevents public bodies which can be directed by Scottish Ministers or can distribute any of their property for a non-charitable purpose, from holding charitable status. However, **Section 7(5)** allows Scottish Ministers by order to disapply either or both **Section 7(4)(a) and (b)** for any body covered by the order.

A public body recognised by HMRC as a Scottish Charity presents significant implications on the level of control which Scottish Ministers can exercise over its activities. It requires legally enforceable conditions to be placed on the payment of grant in aid, so that proceeds from the disposal of assets are returned to the Scottish Government. Consequently, there is a presumption against new public bodies holding charitable status. Any proposals to establish a new public body as a registered charity must be referred to the Scottish Government Legal Directorate to ensure that appropriate provisions are made to protect the interests of Scottish Ministers.

Change Management

Guidance Note 4



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Integration of Independent Assurance Processes

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Post Implementation Review

Key Actions

- Research lessons learned from previous projects
- Determine Programme and Project Management (PPM) approach
- Ensure funding is available for project
- Appoint Senior Responsible Owner and Project Board
- Appoint Project Manager and team (including specialist resource) to oversee implementation of project
- Determine working groups and specialist resources required and, if so, establish membership of these groups
- Prepare Business Case
- Sign-off Project Initiation Document
- Develop Risk/Issues Strategy – create and maintain Risk Register
- Develop Communication Strategy, including stakeholder engagement
- Ensure Highlight Reports are completed at regular intervals suited to the pace and complexity of project
- Regularly review and update Business Case to ensure it remains valid and financially viable – report significant variances to Project/Programme Board
- Assess need and timing for Independent Assurance Reviews – including early Starting Gate and mandatory technology assurance mechanisms, which includes Digital First assessments
- Conduct Post Implementation Review within 6 months and record lessons learned.

Key Reference Materials

Common Causes of Project Failure

Scottish Government – PPM Guidance

Scottish Government – PPM Principles

Scottish Government – Project Toolkit

Scottish Public Finance Manual – Risk Management

Successful Project Delivery – Online Training Course

Key Contacts

PPM – Centre of Expertise

Overview

The establishment of a new public body requires a structured and controlled approach to change management. It requires people with experience in programme and project management techniques and access to key specialist skills, e.g. Digital technology/IT, Finance and Human Resources.

A structured approach to change management, aligned with the Scottish Government's PPM Principles, will increase the likelihood that the new body will be established on time, to the expected level of quality and within budget.

Guidance Note 4 provides advice on the principles of effective programme and project management, including the appointment of a Senior Responsible Owner and Project Manager, the preparation and maintenance of key project documentation and controls, and the on-going requirement for independent assurance to ensure that the project remains

financially viable and able to deliver the benefits described in the Business Case.

Project or Programme Management Arrangements

It is important from the outset to define appropriate change management arrangements. The choice of project or programme structures and controls will have a direct bearing on the governance, leadership, accountability and costs associated with the process of establishing the new public body.

PRINCE 2 guidance defines a project as a temporary organisation created for the purpose of delivering one or more business products according to an agreed Business Case; and

Managing Successful Programmes guidance defines a programme as a temporary flexible organisational structure created to coordinate, direct and oversee the implementation of a set of related projects and activities in order to deliver outcomes and benefits related to an organisation's strategic objectives; a programme is likely to have a life that spans several years.

The size and complexity of the new public body will determine whether programme or project management structures, processes and controls offer the most appropriate change management framework. This guidance has been written specifically from the perspective of project management, but can be easily scaled to support a larger programme of change supported by a number of related projects.

The Programme and Project Management Centre of Expertise provides a focal point for programme and project management activity within the Scottish Government. They:

- Support improvement in PPM capabilities
- Manage and support the delivery of the independent PPM assurance framework
- Encourage and support the use of post project evaluation and sharing of lessons learned.

The Programme and Project Management Centre of Expertise can also assist with **PPM Tool Kits** to support the creation of key project documentation.

Project Board and Team

Setting up a new public body requires people with project management skills and experience, rather than those primarily with in-depth knowledge of the policy area and business process. Consideration should, therefore, be given to the appointment of a Senior Responsible Owner, a dedicated project manager and a project team charged with setting up the new body.

Beyond the core project team, a wide range of skills and experience can be drawn from across the Scottish Government, the wider public bodies landscape and external providers to provide essential specialist advice and support, and to act as senior suppliers on project boards. Specialist functions and skills typically include:

- IT
- Procurement
- Finance
- Legal
- Legislation
- Property

➤ Personnel

➤ Pensions

Project Documentation



Every project requires a managed approach supported by clearly defined project controls. These controls are based upon a series of key project documents and activities, the most important of which are referred to below.

Business Case



At the earliest stage of development on proposals for the establishment of a new public body, an outline business case would have set out the strategic need for a new public body, arrangements around the constitution of the body (including its potential classification), estimates of costs and savings in setting up and running the body, the capture of baseline performance information and the measurable benefits and service improvements that the new body will be expected to deliver.

Following approval to develop proposals further, a full business case will be required to develop and assess all the options considered for the establishment of a new public body, including a robust financial analysis on expected costs and savings, a conclusion on its projected classification and a clear, unambiguous description of the benefits that the new body will be expected to deliver.

The business case will be used to support the development of a benefits realisation plan (**Guidance Note 7: Planning and Implementation**), future monitoring of costs and savings (**Guidance Note 8: Estimating and Recording Costs and Savings**) and benchmarking of performance measures (**Guidance Note 9: Measuring Operational Performance**).

As the business case underpins decision making throughout the project lifecycle; it should be reviewed regularly to ensure it remains relevant to the need to establish the new public body and ensures that the project remains financially viable.

Project Initiation Document

The project initiation documentation builds on the business case by defining all aspects related to the development and implementation of the project. It forms a “contract” between the project manager and project board, defining the governance, scope, roles and responsibilities, and resources required to deliver the project and provides a benchmark against which the project’s success will be measured.

Risk Register

Risk management is an essential control that identifies, assesses and mitigates any risks to the successful delivery of the project. A risk register based upon Scottish Government risk management principles should be maintained by the project manager and regularly reviewed by the project board to ensure early intervention and, where appropriate, escalation to senior management and Ministers. Identifying and addressing risks at an early stage mitigates the possibility of more serious issues arising later in the project lifecycle which could have a major impact on the project’s ability to deliver the new public body on time, to the expected level of quality and within budget.

Communications Strategy

Effective communications are fundamental to successful change management. A communications strategy must be prepared to manage communications and engagement with key stakeholders throughout the lifecycle of the project, including stakeholders who:

- Initiate the change
- Provide resources to the project
- Need to be engaged and informed – e.g. key roles in the organisation, unions, staff
- Are directly affected by the change – e.g. staff, local communities
- Watch the progress of the project – e.g. press, media

Other significant elements of the Communication Strategy should typically cover:

- The relationship between stakeholders' interests and power bases
- Processes by which stakeholder expectations are established, communicated, understood, and acted upon
- Differing stakeholder expectations
- Cross-cultural differences in organisational stakeholder environments
- Collaboration as a means of resolving stakeholder conflicts.

Highlight Report

The project manager should produce a regular highlight report on the current status of the project, planned activities, progress against key milestones, key risks and the latest financial position. Highlight reports are typically based on a "dashboard" template, with critical issues described in more detailed exception reports brought to the attention of the project board.

Independent Assurance Review

Independent Assurance Review (IAR) increases the likelihood that change initiatives delivered by policy, programmes or projects achieve the intended results and outcomes. The review process enables people who are not directly associated with the change initiative or the sponsoring directorate to bring a fresh perspective and constructive challenge to the delivery of the initiative – particularly projects of a complex and strategically important nature.

IAR gives accountable officers, senior responsible owners and ultimately Ministers confidence in the delivery of major commitments, such as the establishment of a new public body. IAR is mandatory for certain categories of change initiatives and the conditions which apply to these categories are detailed in **Major Investment Projects Section** of the **Scottish Public Finance Manual (SPFM)**.

The main components of IAR are:

- Scottish Government – Starting Gate
- Scottish Government – Gateway Review
- Scottish Government – Health check
- Scottish Government – Technology Assurance Framework (for projects and programmes with a digital or ICT element).

Integration of Independent Assurance Processes

Independent assurance activities should be co-ordinated throughout the “policy to delivery” lifecycle in such a way to ensure that appropriate assurance is delivered without overburdening the work of the project delivery team. The **Scottish Government’s Independent Assurance Framework** describes how the main components of independent assurance come together to support the delivery of major change initiatives.

Further information on IAR can be found on the **Programme and Project Management Centre of Expertise website**.

Funding

Senior Responsible Owners are responsible for the funding of their projects, including the cost of external advisers on gateway review and project health check teams. Advice on current costs is available from **Programme and Project Management Centre of Expertise**.

Post Implementation Review

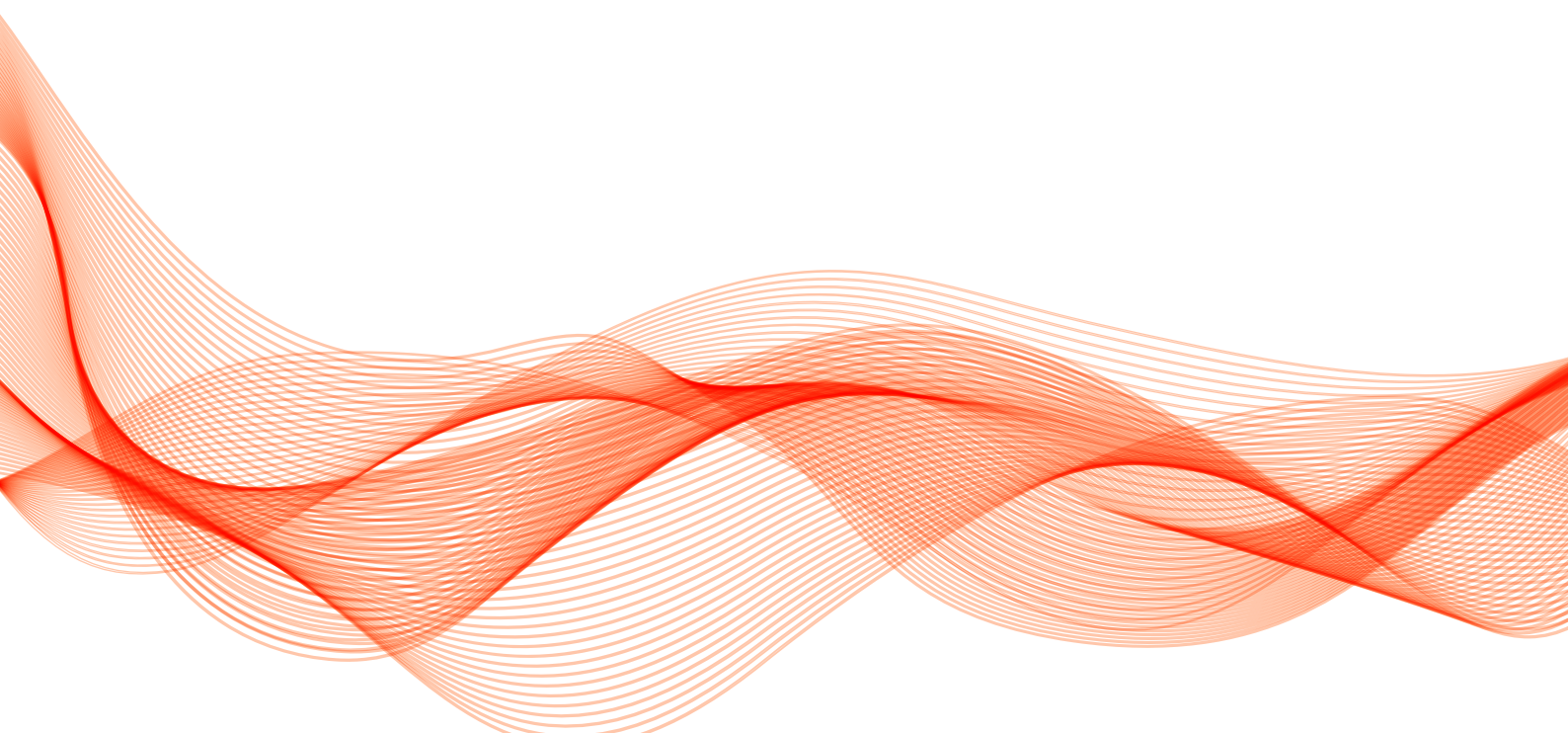
The project lifecycle always extends beyond the date when the new public body becomes operational. The project assurance methods described above apply during the active stages of planning and implementing the project, but there is also a need to assess the overall success of the project, the extent to which the new public body is able to deliver the long-term benefits identified in the business case and to capture any lessons that can be shared and used to inform future plans to establish a new public body.

To capture all these issues, a **Post Implementation Review** should take place within 6 months of the establishment of a new body. The review will provide assurance on the extent to which the project has delivered upon its core objectives and an early view on the new public body’s capability to deliver future benefits identified in the business case.

Although the first review should take place within the 6 months of the new public body coming into existence, the senior management team should schedule in further reviews to ensure that the body has the requisite capability and capacity to realise the medium and long term benefits identified in the business case and the benefits realisation plan.

Senior Leadership Team

Guidance Note 5



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- Consult with Scottish Government's Public Appointments Team (PAT) and Finance Pay Policy (FPP) on appointments to the board of new public body
- Consult with Finance Pay Policy (FPP) prior to appointment of chief executive and staff
- Ideally appoint chair then chief executive so they can be involved in appointment of board members and other senior staff respectively
- Appoint chair and chief executive at least 6 months before new body takes on full operational responsibilities to enable early development of the body's strategic direction and vision
- Establish clear lines of accountability with an appropriate underpinning framework
- Consider whether "shadow board" arrangements are required – if so, take steps to put these in place, including funding and remuneration arrangements prior to Royal Assent and the coming into force of legislation
- If a body is to be listed as a specified authority in **schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003** and subject to regulatory oversight by the Commissioner for Ethical Standards in Public Life in Scotland (Commissioner), consider laying of Section 3(3) Order of the 2003 Act to enable earlier regulated appointment of chair and members
- There may be occasions when policy/sponsor teams will advise Ministers to make appointments outside the regulated route (e.g. due to Parliamentary or legislative timeframes). When it is not possible to appoint members under the direct supervision of the Commissioner, ensure that the appointment process mirrors the Commissioner's Code as closely as possible
- Develop skills matrix to ensure correct mix of skills, experience and knowledge of chair and members
- Obtain official approval for the remuneration of the chair/board and chief executive via Finance Pay Policy prior to advertising such posts
- Ensure chair and members are aware of the requirements of the **Ethical Standards in Public Life etc. (Scotland) Act 2000** and the Model Code of Conduct for Members of Devolved Public Bodies in Scotland

Key Reference Documents

Additional Information – acceptance and remuneration of public appointments

Audit Scotland – Learning the Lessons on Public Body Mergers

Good Practice Guide – Ministerial Appointments to Public Bodies in Scotland

Code of Practice for Public Appointments – Guidance

Model Code of Conduct for Members of Public Bodies in Scotland

On Board Guidance for Members of Statutory Boards

On Board Guidance for Members of Management Advisory Boards

Public Appointments and Public Bodies (Scotland) Act 2003

Public Sector Pay Policy

Public Sector Pay Policy for Senior Appointments

Scottish Public Finance Manual (SPFM)

Commissioner for Ethical Standards in Public Life in Scotland

Finance Pay Policy

Public Appointments Team

Public Bodies Unit

Overview

It is essential that strong strategic leadership is in place as early as possible in any project to establish a new public body. The absence of the chair and chief executive in the early planning and implementation stages may delay vital decision-making on the development of the new public body's vision, strategy and operational objectives. Please be aware that not all of this guidance on the appointment of chairs and members applies to all new bodies, particularly in relation to Advisory NDPBs and Tribunals. General guidance on the roles and responsibilities of the board, chair, chief executive, Ministers and sponsor directorate is included in "[On Board: Guidance for Members of Statutory Boards](#)".

Guidance Note 5 provides advice on the appointment of the board and senior leadership team. It explains the importance of early appointments to the setting of the body's strategic direction. It also outlines how to plan for the appointment process, establish terms and conditions, identify the skills, knowledge and experience required, and clarify expected standards of behaviour for those appointed to senior leadership positions.

The early appointment of the senior leadership team (coupled with the development of a strategic governance framework as described in **Guidance Note 6**) will provide a platform for effective and efficient operational performance from day one of the new body's existence.



Appointment of Senior Leadership Team

Appointments to the boards of many of the public bodies covered by this guidance will be regulated by the **Commissioner for Ethical Standards in Public Life in Scotland** (the Commissioner) in accordance with the **Code of Practice for Ministerial Appointments to Public Bodies in Scotland**. The chair and board members will be subject to the Pay Policy for Senior Appointments. The **Scottish Government's Finance Pay Policy** team must be consulted and approval obtained from the **Scottish Government's Remuneration Group** for the proposed remuneration of the chair and board members prior to any advertisement, recruitment or appointment of such persons.

The Commissioner's regulatory powers come into force once the body has been listed as a specified authority in schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003, which happens following Royal Assent of the enabling legislation for the new public body and the relevant part of that legislation coming into force.

Likewise, unregulated appointments, or those made other than by Ministers, can only be confirmed following Royal Assent of the enabling legislation.

The role of the board is to hold the chief executive to account. As such, the staff of public bodies, including chief executives should not generally be made full members of the board, unless there is express statutory provision to the contrary or compelling organisational reasons.

This is to ensure appropriate separation of roles and responsibilities, objectivity in decision making and avoidance of potential conflicts of interest. It is expected that the chief executive, as accountable officer, will attend board meetings, and that the board may invite other officials as appropriate to report and provide advice.

However, the complex nature of the public bodies landscape means that there may be circumstances (for example, executive members on health boards) where staff will sit as members of the board. Each case must be assessed from a legislative, governance and separation of roles perspective to ascertain whether it would be appropriate for any member of staff to be a member of the board of a new public body. If staff are to be appointed to the board, the total number of such appointments must be fewer than the number of independent Board members (often referred to as non-executive directors).

Regulated and Unregulated Board Appointments

Public body boards can be grouped into two distinctive types: statutory corporate body boards and non-statutory management advisory boards.

Statutory Corporate Body Boards

These are boards of bodies established with statutory authority to carry out functions either on behalf of Ministers or at arm's length from Ministers. The boards have a single collective responsibility to make all strategic decisions and take independent actions.

Appointments to statutory bodies give individuals significant authority. **NDPBs, Health Boards, Public Corporations and most Non Ministerial Departments fall into this category.**

Ministers will expect appointments to these boards to be regulated by the **Commissioner for Ethical Standards in Public Life in Scotland** and to adhere to the **Code of Practice for Ministerial Appointments in Scotland (the Code)**. This offers the public assurance that appointments are made on the basis of merit, integrity, diversity and equality, and that the process is outcome and applicant focused. For help or information on the process, please contact the **Public Appointments Team** in the Scottish Government.

The Commissioner's regulatory powers come into force once the body has been listed as a specified authority in **schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003** as a "regulated" appointment following Royal Assent of the enabling legislation for the new public body and the relevant part of that legislation coming into force.

It may be necessary for policy/sponsor teams to advise Ministers to make appointments outwith the regulated route (for example, due to parliamentary/legislative timescales involved). In circumstances when it is not possible to appoint members under the direct supervision of the Commissioner, Ministers will expect the appointment process to mirror the Commissioner's Code as closely as possible.

Non-Statutory Management Advisory Boards

These boards are established in order to assist chief executives or statutory officeholders to make decisions for which those individuals have complete responsibility and accountability. Non-statutory management advisory boards do not have responsibility for decision making or accountability to Parliament and/or Ministers. Since the public body itself has no statutory identity, board members cannot be appointed under the Commissioner's Code. Appointments to these boards will often be made in a way that mirrors processes detailed in the Code. As there is no conflict of interest, members of these boards can be executive or non-executive. **Executive Agencies and some Non ministerial Departments (where there is a single statutory officeholder) fall within this category.**

Timing of Senior Leadership Appointments

The chair and chief executive should be appointed and in post at least **6 months** (either in a permanent or shadow capacity) prior to the new public body taking on its full statutory functions and operational role. This is considered to be the minimum practicable time to allow the chair and chief executive to contribute effectively to the development of a clear and strong vision for the new body and to develop a good working shared understanding of their respective roles and responsibilities.

Ideally, the chair should be appointed first. This will afford an opportunity for the chair to participate in, or be consulted on the appointment of the chief executive. Thereafter, both chair and chief executive should be involved respectively in the selection of non-executive board members and the senior management teams.

Although the chair should be consulted on the preparation of advice to Ministers on the appointment of members, they must be made aware that (subject to any contrary legislative provision) the decision on who is to be appointed rests with Ministers.

The public appointments process gives an indicative time line of a minimum of 4 to 5 months, which means that the time line for the sequential appointment of chair, chief executive and members is potentially around **11 months**. This is an outline minimum timescale only and planning for public appointments should ensure that sufficient time is allocated to complete the appointment process relative to the specific circumstances and requirements of the new public body. It is important to contact the **Public Appointments Team** as soon as possible to discuss the process and timescale for the appointing the chair and board members.

Which means that to avoid pre-empting the will of Parliament, the public appointments process should only commence upon Royal Assent of the enabling legislation. This effectively sets the timeline for the appointment of the chair, chief executive and members to the board of the new body. The resultant timeline may fall short of that which is required for the sequential appointment of the chair, chief executive and members, requiring concurrent or over-lapping appointment exercises to be run. Contact the relevant **Public Appointments Team** portfolio manager for guidance to ensure compliance with the Code.

It is possible to commence a public appointment exercise prior to the legislation coming into force by way of Scottish Ministers laying a **Section 3(3) Order under the Public Appointments and Public Bodies etc. (Scotland) Act 2003**. Such an order means that the new body is treated as if it was already in existence for the purpose of regulation of appointments.

The earliest a **Section 3(3) Order** should be laid is at the end of the Stage 1 consideration of the Bill, by which time the general principles of the enabling legislation will have been agreed. It is necessary to ensure that the lead Minister, the Minister for Parliamentary Business and the relevant Parliamentary Committees are fully informed and supportive of any intention to lay a **Section 3(3) Order**. The Commissioner should be advised about any intention to bring a body within their remit.

If appointments are regulated by the Commissioner, there is generally no requirement for Parliamentary approval of members. Please contact the **Public Appointments Team** at the earliest possible opportunity for advice on appointments procedures.

Shadow Body

To enable early engagement of the chair, board and chief executive in the setting of the vision, structure and corporate plan, it may be possible to create a shadow body before the new public body comes into existence.

A shadow body is technically an administrative division of the Scottish Government. It is a non-statutory body, has no legal existence and is unable to enter into contracts on its own behalf. 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.

This arrangement allows individuals who will have a future role in the running of the public body to contribute to decisions on its future role, responsibilities and management. As is the case with the appointment of the senior leadership team, if the new body is to be established through statute, care must be exercised to ensure that the will of Parliament is not pre-empted. However, the timing of any plans to set up a shadow body may be negotiated with the appropriate parliamentary committee and agreement may be possible after Stage 1 consideration of the Bill.

Preparatory work will also be constrained prior to the passing of the relevant legislation by the new services rules which determine that resources should not be used or expenditure incurred on work that is part of a new service until the specific enabling legislation has been passed.

Prior to constituting a shadow body consideration must be given to:

- The terms of reference for the shadow body which will essentially be an advisory role while in its shadow form;
- The terms and conditions of appointment, including remuneration, allowances and the expected time commitment;
- The constraints on its work and expenditure imposed by constitutional properties;
- The relationship between the sponsoring directorate and the shadow body;
- 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, appointments to the board would have to be canceled.

Members of Merged Bodies

The appointment of the chair and members of the new (shadow) body will most likely have followed a regulated appointment process. It is likely that the board of the new body will be formed around a mix of existing members from predecessor bodies and new members not previously associated with those bodies. It is vital that consideration is given to the balance of appointments to the board of the new body and the relationship between the new board (as a shadow body) and the existing bodies during the transitional period leading up to the new body being established and its predecessor bodies being dissolved.

Skills, Knowledge and Experience

To operate effectively, the board of a new public body will require members with the necessary skills, knowledge, diversity and experience to make appropriate and well informed decisions on the strategic direction of the public body, its vision and objectives, and the efficient use of public money and resources. Critical success factors are the calibre of these members, the diversity of the board - in terms of skills, knowledge, experience and perspectives and how they work together as a group.

A skills matrix will help inform decisions about the appropriate skills, knowledge and experience required of those to be appointed as members of a new public body. The matrix should identify the mix of attributes required of the chair and members to operate as an effective board. Consideration should be given to any sector specific knowledge and experience needed; to the range of skills needed by individual members, such as financial management, digitally enabled service delivery and customer service skills; and to board member diversity in terms of the protected characteristics included in the Equality Act 2010.

The Scottish Government's **Public Appointments Team (PAT)** supports the public appointment process which is regulated by the Commissioner. PAT supports all aspects of the process for regulated appointments and can also offer advice on unregulated appointments. The process includes:

- Engagement with the Commissioner
- Application of the Code of Practice
- Role of the Commissioner's Public Appointments Adviser
- Public appointments time-line
- Ministerial briefings
- Constitution of selection panel
- Role descriptions
- Person specifications
- Publishing opportunities - Attraction, advertising and outreach
- Application and assessment and method

The sponsor directorate will have a crucial role to play in taking this work forward.

Diversity

Boards play an essential role in driving continuous improvement in public services. Scottish Ministers particularly welcome applications from groups that are under-represented on Scotland's public bodies, with the aim of ensuring that the boards of public bodies reflect the wider Scottish population and have a gender balance by 2020. The appointment process should encourage applications from under represented groups and be accessible and free from barriers to successful application to ensure that membership of the public body reflects the diversity of the Scottish population.

Remuneration of Chair and Members

There are clear guidelines on the remuneration of chairs and members, with separate pay bands to reflect the relative size, complexity and challenges associated with different public bodies. Approval must be sought from the **Scottish Government's Remuneration Group** on the level of remuneration for the chair and members of a new public body before any positions are advertised and appointments confirmed.

The **Scottish Government's Finance Pay Policy Team** can provide information and advice on the remuneration packages for existing public bodies and a standard template for any submission to the **Remuneration Group** about the proposed remuneration packages for the new public body.

Specific guidelines on the acceptance and remuneration of public appointments and non-executive directorships by senior staff of public bodies is published on the Scottish Government's Public Sector Pay webpages under Additional Information and should be referred to when considering proposed remuneration packages for public appointments.

Induction

New chairs, members and, where appropriate chief executives should be provided with an induction pack which sets out their roles and responsibilities as members of a public body. The induction pack should make reference to the development of the body's vision, strategy and objectives, the body's relationships with Ministers, the Scottish Government and Parliament, and any other relevant information relating to their role in the governance and leadership of the public body. Members should also be provided with relevant guidance and training relating to the roles and responsibilities associated with membership of public bodies, advice on which is available from the **Public Bodies Unit**. More details on induction good practice are contained in the Unit's 'On Board' guidance. The **Public Bodies Unit** and **Public Appointments Team** jointly run corporate induction training 3-4 times a year for new board members, with a focus on Ministers' expectations of appointees. A formal appraisal of the board chair and members should take place annually. For further details on the appraisal process for board chairs and members please contact the **Public Bodies Unit**.

Ethical Standards and Conduct



Many of the public bodies listed in the 2003 Public Appointments Act are also listed in **Schedule 3** to the **Ethical Standards in Public Life etc. (Scotland) Act 2000**. Where appropriate, the enabling legislation will provide for a new public body to be listed on **Schedule 3** and on the relevant schedules in **Public Services Reform (Scotland) Act 2010**.

The **Ethical Standards in Public Life etc. (Scotland) Act 2000** places a statutory requirement on public bodies listed in Schedule 3 to produce and submit for Ministerial approval a Code of Conduct for members of their respective Boards. This is based on the **Model Code of Conduct for Members of Devolved Public Bodies**. The **Commissioner** also has a role in investigating complaints made about the conduct of members covered by such codes.

The Model Code of Conduct covers:

- **General conduct** – conduct at meeting, relationships with staff, guidance on allowances, expenses, gifts and hospitality, confidentiality requirements, use of the facilities of the public body and appointment to partner organisations;
- **Registration of interests** – procedures for registering financial and non-financial interests relevant to the work of the public body;
- **Declaration of interests** – procedures for declaring interests in meetings and other proceedings of the public body;
- **Lobbying and access** – guidance on ensuring transparency and probity when dealing with others on public business.

Members of public body boards must be made aware of the requirements of the **Ethical Standards in Public Life etc. (Scotland) Act 2000**.

Members of new bodies which are not to be listed in **Schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000** may still be subject to a code under the Public Authorities Regime or separate arrangements under company law. The Public Authorities Regime, set out in **Section 32 of the 2000 Act**, requires members of certain public authorities to 'have regard to' a **Code of Conduct**, also based on the **Model Code**.

Some new public bodies (e.g. Scottish Law Commission) might be covered by **part 4 of the Ethical Standards in Public Life etc. (Scotland) Act 2000**. Whilst these public bodies do not come under the statutory ethical standards framework they are nonetheless required to produce a **Code of Conduct** based on the **Model Code**.

There is an expectation that all new bodies will be included within the ethical standards framework introduced by the **Ethical Standards in Public Life etc. (Scotland) Act 2000** with the exception of bodies with non-statutory boards. Management advisory board members are not bound by the Ethical Standards in Public Life etc. (Scotland) Act 2000, but will need to comply with their board's code of conduct, which is likely to be based on the nine key principles outlined in the Model Code of Conduct.

It is important that codes of conduct are finalised as early as possible to ensure that individuals are fully aware of what is expected of them in their role as members of a public body.

Advice and information on the development and approval of a relevant code of conduct for a new public body is available from the **Public Bodies Unit**.

Appointment of Chief Executive

Responsibility for the appointment of a chief executive will normally be set out in the new body's enabling legislation and reflected in the framework document (described below).

There are three possible scenarios for the appointment of a chief executive:

- Ministers have direct responsibility for appointing the chief executive and for determining his or her remuneration and terms and condition of employment;
- The public body is responsible for appointing the chief executive, subject to approval of Ministers where appropriate (including the remuneration and terms and conditions of employment);
- The public body is solely responsible for appointing the chief executive.

Chief executives of Executive Agencies and Non Ministerial Departments are usually civil servants and required to adhere to the standards set out in the Civil Service Code. They are appointed through open and fair competition in line with the Civil Service Commissioner's Recruitment Principles.

Chief executives of other public bodies are not usually civil servants, but the appointment process and contractual terms and conditions generally follow the Civil Service Commission Recruitment Guidance.

The Scottish Government's Public Sector Pay Policy for Senior Appointments governs the remuneration (salary, pay range, annual increase, non-consolidated performance payment (bonus) and other non-salary rewards etc) for chief executives and describes how to determine the job weight and the remuneration from the outset. The Scottish Government's Finance Pay Policy team must be consulted on approval of the proposed remuneration package obtained from the Scottish Government's Remuneration Group prior to any advertisement, recruitment or appointment of a new chief executive.

The transfer of a Chief executive as a result of the abolition or merger of public bodies may be subject to the Transfer of Undertaking (Protection of Employment) Regulations 2006 and the Cabinet Office Staff Transfers in the Public Sector: Statement of Practice. Advice should always be sought from the Scottish Government's Directorate for People before any such transfer takes place.

Where the chief executive is the accountable officer, details of their duties and responsibilities should be set out clearly in the recruitment documentation. A letter confirming the appointment as the a countable officer will be issued on behalf of the Permanent Secretary as the Principal Accountable Officer usually by the sponsor director. This letter is issued in addition to the job description supporting the contract of employment.

Probation

A new chief executive should be subject to a **9 month probation period** to ensure that they are properly tested in the post. The appointment should only be confirmed if at the end of this period the chief executive has demonstrated that they can meet the normal requirements of the job and that their attendance and conduct have been satisfactory.

The appointment letter should make clear that an appointment may be terminated at any time during the probationary period for misconduct or in circumstances where the chief executive's service or performance is unsatisfactory and it is clear that they will not be able to reach the required standard before the end of the probationary period.

Accountable Officer

The Permanent Secretary to the Scottish Government is the Principal Accountable Officer (PAO) of the Scottish Administration and has a personal responsibility for the propriety and regularity of the finances of the Scottish Administration and for the economic, efficient and effective use of all related resources. The PAO in turn designates accountable officers, as appropriate, for parts of the Scottish Administration and associated bodies. A specific duty on the PAO is to obtain written authority from, as the case may be, the Scottish Ministers, the Lord Advocate or the non ministerial office-holder in question before taking any action that may be considered inconsistent with the proper performance of accountable officer functions.

Accountable officers are personally answerable to the Scottish Parliament for the propriety and regularity of the public finances for the body for which he/she is answerable. Accountable officers are required to ensure the economical, efficient and effective use of resources within their designated budgets and for any associated matters relating to Value for Money, judged for the public sector as a whole. There is a duty to obtain written authority from the relevant body for any action required that is inconsistent with the proper performance of the duties as an accountable officer and for notification, where considered appropriate, to the relevant portfolio accountable officer. Accountable officers within the Scottish Administration with a sponsorship role have specific responsibilities with regard to a sponsored body with its own accountable officer. These are set out in the Memorandum received from the PAO on appointment.

Scottish Ministers determine policy and are accountable to the Scottish Parliament for the policy decisions and actions of the Scottish Administration, including SG Executive Agencies, Non Ministerial Departments and bodies sponsored by the Scottish Government.

Declaration of Outside Interests

The chief executive should be expected to abide by the spirit of the **Ethical Standards in Public Life etc. (Scotland) Act 2000**. Prior to appointment, prospective chief executives should declare in writing details of:

- remuneration (salary, allowances, fee, etc.) received from other sources - in particular the name and contact details for the organisation or business and the nature of the work undertaken. The amount of remuneration does not have to be declared;
- directorships held (remunerated or unremunerated) - the name of the company should be declared along with details of the nature of its business;
- ownership or other right of interest in any houses, land or buildings which may be relevant to the work and operation of the public body;
- share holdings in any company or organisation that may be relevant to the work and operation of the public body - the value of which shares does not have to be disclosed;
- membership or holding office in other public bodies, clubs, societies or voluntary organisations whose activities are relevant to the work and operation of the public body;

Termination of Employment

If the board wishes to terminate the employment of the chief executive, then it is essential that early discussions take place with the sponsor directorate and Ministers before action is taken. The sponsor directorate should seek advice from other areas as it considers appropriate.

Business Appointments after Termination of Employment

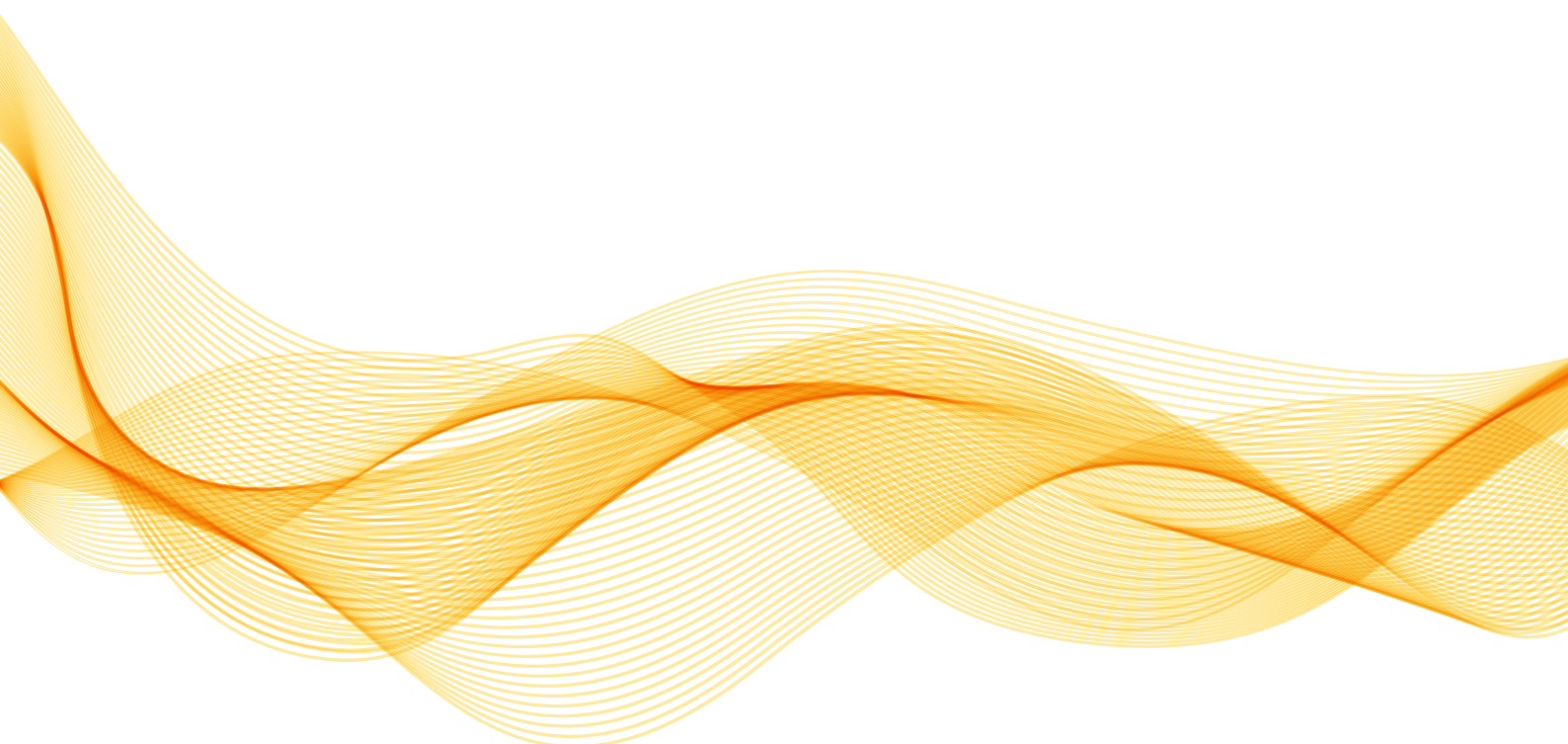
The terms and conditions of employment for a new chief executive should make clear the rules applicable to the acceptance of business and public appointments following resignation, retirement or termination of employment. Advice must be sought from the Scottish Government's Legal Directorate and the Public Appointments Team as to the specific nature and inclusion of such rules.

Announcing the Appointment

No announcement about the appointment of the chief executive should be made until the remuneration package has been approved by the Scottish Government, any outstanding contractual negotiations have been concluded; and the candidate has formally accepted the offer of employment.

Governance Framework

Guidance Note 6



The Scottish
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The Re-Use of Public Sector Information Regulations 2005

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Key Actions

- Agree framework document between Scottish Ministers and public body within **3 months** of the body coming into existence
- Consider memorandum of understanding to define communication and co-operation between new public body and other relevant parties
- Prepare data sharing agreements if required
- Prepare corporate plan for Ministerial approval, if required, within **6 months** of the body coming into existence – earlier if provided for in legislation
- Establish governance and operational arrangements to ensure compliance with the Data Protection Act 1998, the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004, the Public Records (Scotland) Act 2011, Public Sector Reform (Scotland) Act 2010, The INSPIRE (Infrastructure for Spatial Data in Europe) (Scotland) Regulations 2009 and The RRe-Use of Public Sector Information Regulations 2005.

Key Reference Documents

[Audit Scotland – Learning the Lessons on Public Body Mergers Good Practice Guide](#)

[Good Governance Standards in Public Services](#)

[Information Commissioner’s Office \(ICO\) Data Sharing Code of Practice](#)

[Model NDPB Framework Document](#)

[Scottish Public Finance Manual \(SPFM\)](#)

Key Contacts

[Data Protection & Information Assets Team](#)

[Finance: Governance and Risk](#)

[Freedom of Information Unit](#)

[Information Commissioner’s Office](#)

[INSPIRE Regulations](#)

[National Archives of Scotland](#)

[National Records of Scotland](#)

[Office of the Scottish Information Commissioner](#)

[SG Corporate Records Manager](#)

[Scottish Public Services Ombudsman](#)

[The National Archives](#)

[UK Information Commissioner’s Office](#)

Overview

The chair and members (the board) typically set the strategic direction for most types of public body covered by this guidance, while holding the chief executive to account for the body’s operational performance. The board is usually assisted in this role by committees/groups (notably the Audit Committee), while the chief executive is supported by an

executive management team. This typical governance structure relies upon a number of key strategic documents which describe the roles and responsibilities of the board, Ministers and the chief executive, the body's strategic and operational priorities, and arrangements for ensuring compliance with various statutory obligations.

Guidance Note 6 describes the primary documents which together form the basis of a governance framework, including a framework document, the corporate plan and Memoranda of Understanding with other public bodies. It also considers the impact of data, information and records management legislation, as well as the requirements of the **Public Service Reform (Scotland) Act 2010**, on the establishment of appropriate governance arrangements.

Framework Document



Every public body must prepare a **Framework Document** based on the model contained in the **Scottish Public Finance Manual (SPFM)**. The framework document should normally be agreed with Scottish Ministers within **3 months** of the body coming into existence.

Advance preparation during the planning and implementation stages of the project will facilitate the completion of the framework document within this required timescale.

The purpose of the framework document is to describe the key roles and responsibilities of Ministers, the portfolio accountable officer, the sponsor team, chair, board and chief executive, together with agreed performance and financial management arrangements and details of financial delegations and controls.

Framework documents vary from body to body to reflect individual constitutional, governance and operational arrangements. The **NDPB Framework Model Document** described in the SPFM provides a template which should be used by NDPBs and which may also inform framework documents for other types of public body covered by this guidance. Draft framework documents should be reviewed by the **Public Bodies Unit** prior to signature to ensure that all appropriate governance arrangements are covered.

Corporate Plan



The corporate plan sets out the vision, strategy and objectives for the public body. It defines the policy and resource framework within which the body will operate, informs funding decisions and provides the basis for performance and financial monitoring and reporting. It translates the long-term strategy for the body into planned action over a 3 year period.

The first corporate plan should be published by the public body, subject to Ministerial approval where appropriate, within **6 months** of the body coming into existence, or earlier if provided for in legislation.

It should provide a strong strategic focus on the purpose and benefits of establishing the new public body and the further organisational change and development that the body will take to secure these benefits. It should be developed around a business planning framework that enables the public body to demonstrate alignment with the **National Performance Framework**, making a clear connection between the public body's strategic objectives and performance targets and a meaningful number of national outcomes.

The corporate plan should contain:

- An agreed view on the long term strategic direction of the body;

- A clear analysis of the environment in which the body operates, including the public body's statutory duties, and the policies and priorities of the Scottish Government;
- The contribution that the body is making to advance equality of opportunity, in line with the requirements of the public sector equality duty;
- Clear aims and objectives for the plan period alongside agreed targets and indicators against which performance will be measured;
- A description of how the body is collaborating with Government and other partners in pursuit of shared outcomes;
- An account of how resources/spend are linked to the delivery of national and operational outcomes;
- Details of planned efficiencies describing how the body proposes to achieve better value for money, including the steps taken to reduce operating costs by actively pursuing opportunities to share services with other public bodies.

Additional guidance on the preparation of the first corporate plan is provided in **Guidance Note 8: Measuring Performance** – particularly the contribution of a strategy map, balanced scorecard and performance measurement framework to the development and delivery of the plan.

For new bodies coming into being as a result of mergers, it is vital that consideration is given to cover the transitional period of the new body coming into operation. As corporate plans will have been agreed and published for the predecessor bodies, consideration should be given to the closure and reporting of these plans, whether they are extended to cover the transitional period, and which elements should be carried forward for inclusion in the new corporate plan.

Publication of Predecessor Bodies Annual Report and Accounts

Predecessor bodies will still be legally required to publish annual reports and accounts for the period up and until they are dissolved. Time will need to be factored in to ensure that these are prepared and published within the required guidelines set out in the **Scottish Public Finance Manual (SPFM)**.

Memoranda of Understanding



It may be desirable (sometimes a statutory requirement to enter into a Memorandum of Understanding with other public bodies to set out how certain functions and activities will be jointly managed and controlled – for example the body's relationship with the **Scottish Public Services Ombudsman**. SG Tribunals and Administrative Justice Policy Unit should be consulted at an early stage if consideration is being given to transferring additional responsibilities to the Scottish Public Services Ombudsman.

A memorandum of understanding will generally outline the arrangements for co-operation and communication between the respective parties and typically includes:

- Definition of parties
- Common purpose of parties
- Legal status
- In scope – out of scope
- Governance arrangements

- Sharing of resources and information
- Communication
- Costs
- Staff
- Conflict of interest and resolution
- Periodic review.

Information, Data and Records Management

New public bodies are also required to establish formal governance arrangements and policies for the proper management and controlled access to personal data, public information and public records.

It is essential that a new public body has suitable governance arrangements in place from day one of its operations to ensure compliance with any statutory obligations under the Data Protection Act 1998, the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004, the Public Records (Scotland) Act 2011 and The Re-Use of Public Sector Information Regulations 2005.

If the new public body creates geographically referenced (or spatial) datasets, then they must also comply with The INSPIRE (Scotland) Regulations 2009. The regulations apply only to relevant spatial datasets. These are datasets that have a specific and defined geographic reference and come under one or more of the 34 environmental themes set out in the directive annexes.

Data Protection Act 1998

The Data Protection Act 1998 (DPA) requires every organisation processing personal data to register with the **UK Information Commissioner's Office (ICO)** – unless specifically exempted by the Act. The DPA requires organisations processing personal data to comply with eight data protection principles which include the security of data, and the collection, storage and processing of personal data. The information which must be included in the notification should include:

- Name and address of the organisation
- Contact name of the representative for the organisation (if applicable)
- Description of the personal data which the organisation processes and the categories of the data subject (for example personal details, financial details, health information)
- Description of the purpose(s) for which the data are being processed (for example staff administration)
- Details of recipient(s) whom the organisation may/will disclose the data to (for example for taxation purposes the organisation will have to share with HMRC)
- Names or a description of any countries outside the European Economic Area (EEA) which the organisation may transfer information to.

This information should be provided to the ICO along with the appropriate fee. The notification should be renewed annually and notification information is published on the ICO Register. This provides information for individuals regarding how the organisation processes data for specific purposes and the main contact for complaints.

The ICO provides an online self-assessment tool to assist organisations in deciding whether they are legally required to notify. Further guidance is also provided on the type of information which should be provided to the ICO.

The Information Commissioner has a range of powers to ensure that organisations comply with these principles – including enforcement notices, monetary penalties and criminal prosecution.

Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004

The Freedom of Information (Scotland) Act 2002 (FOISA) gives a right of access to all recorded information held by Scottish public authorities covered by the Act. The Environmental Information (Scotland) Regulations 2004 (EIRs) also give similar rights to access recorded environmental information from public authorities.

FOISA requires public authorities to develop a Publication Scheme for approval by the Scottish Information Commissioner, or (as all Scottish public authorities have done) adopt the Commissioner's own Model Publication Scheme. This requires them to publish a Guide to the Information that they make available.

Public authorities also have to respond to specific requests for information under either FOISA or the EIRs. Public authorities should therefore ensure that appropriate resource is available to meet obligations under FOISA and the EIRs - including the provision of advice and assistance to requesters.

The Scottish Information Commissioner promotes and enforces FOISA and the EIRs, considering appeals from those who are dissatisfied with the response made to their request for information and subsequent review. The Commissioner also maintains a statistical database and reports regularly on the information request for data provided by public authorities.

The Public Records (Scotland) Act 2011

The Public Records (Scotland) Act 2011 (PRSA) raised the profile of records management across the public sector in Scotland and introduced improvements and efficiencies in public record keeping.

Named public authorities in Scotland are obliged to **prepare and implement a records management plan** setting out arrangements for the management of their records. The plan must be agreed with the Keeper of the Records of Scotland and is subject to regular review. Where authorities fail to meet their obligations under PRSA, the Keeper has powers to undertake records management reviews and issue action notices for improvement.

The Keeper has published a Model Records Management Plan which named authorities must give regard to when preparing individual plans.

Public Services Reform (Scotland) Act 2010

The Public Services Reform (Scotland) Act 2010 (PSRA) sets out various responsibilities relating to the exercise of certain public functions.

Part 3 sets out duties on listed public bodies to provide information on:

- ▶ Certain types of expenditure; and
- ▶ Exercise of functions – including steps to promote and increase sustainable growth, and improve efficiency, effectiveness and economy.

Part 8 requires those public bodies listed as scrutiny authorities in schedule 19 to make arrangements for continuous improvement in user focus in the exercise of their scrutiny functions, including the involvement of users in the design and delivery of these functions. Schedule 20 lists scheduled scrutiny authorities who are required co-operate and co-ordinate activity with each other, and where appropriate Scottish Ministers.

The responsibilities set out in the PRSA will affect all new public bodies to some degree. It is important to be aware of these responsibilities and to factor any which may apply into the development of governance arrangements for the new public body.

The Re-Use of Public Sector Information Regulations 2015

The **Re-use of Public Sector Information Regulation** was established to provide a framework for the effective re-use of public sector information. Public sector information being information which is non-personal. The majority of requests for information are likely to be made via a freedom of information request, the re-use of public sector information regulation applies to the re-use of the information once a document has been supplied to an applicant or to information which is already made available by other means.

The regulation requires public bodies to make available a list of main documents available for re-use. This is similar to the FOISA publication scheme duties referred to above and the related Guide to information but provides more detail on the content of the documents. The regulation also provides guidance and restrictions on what charges can be imposed by public bodies. The regulation also seeks to ensure transparency around the terms, conditions and licencing of the information being provided.

The regulation includes an escalation and complaints procedure. Complaints in the first instance are referred to the **Office of Public Sector Information (OPSI)**. Decisions can be appealed and escalated to the Advisory Panel on Public Sector Information (APPSI).

The Scottish Public Service Ombudsman Act 2002 (as amended by the Public Services Reform (Scotland) Act 2010).

Complaints Handling Procedure

Any new organisation which will come within the SPSO's jurisdiction should have a Complaints Handling Procedure (suitably adapted and adopted) which complies with the model CHP from its introduction or as soon as possible thereafter. The SPSO will offer support to organisations to achieve this and can provide advice on which model is appropriate and best to adapt it to their needs.

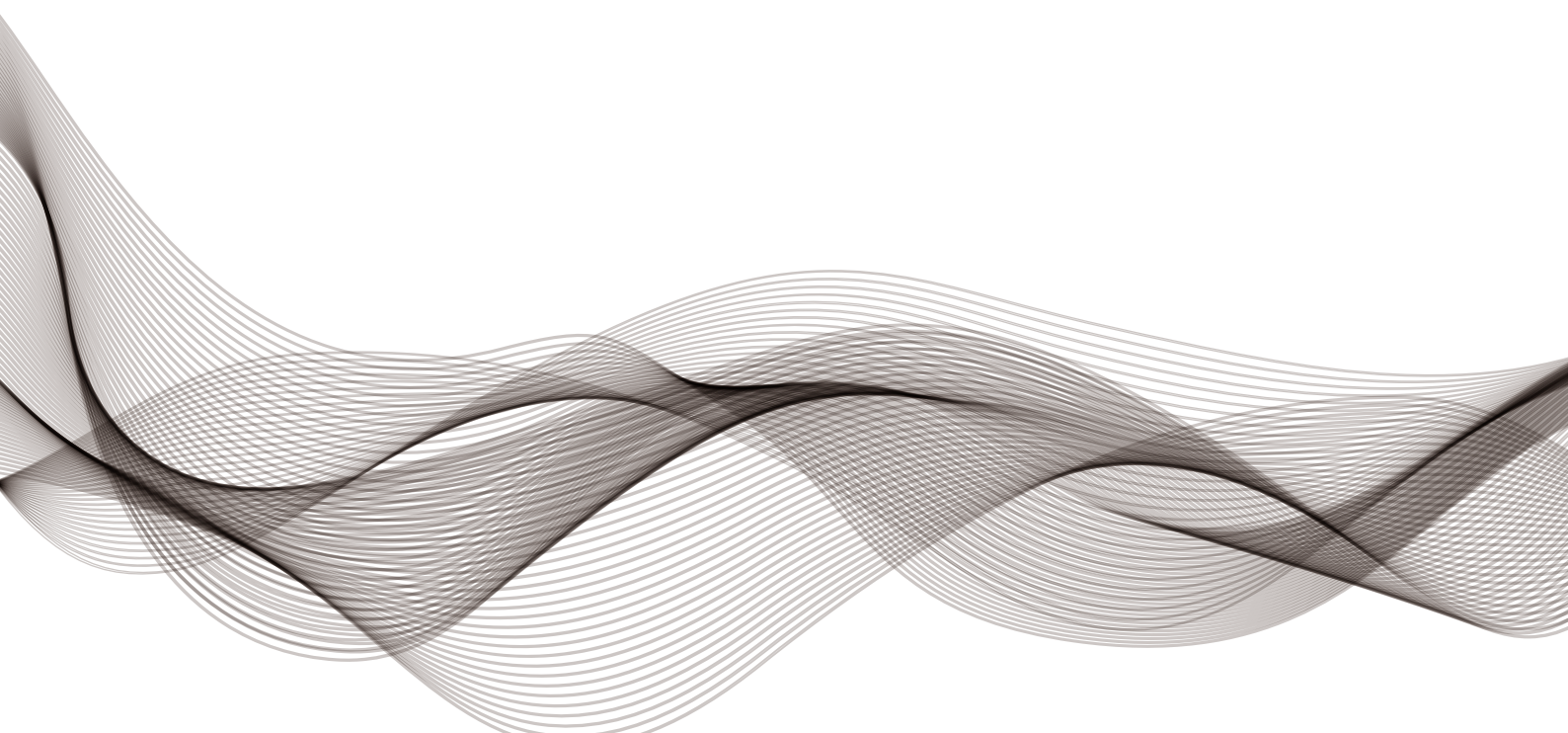
National Statistics

New public bodies may become producers of National Statistics. National Statistics is the name for official statistics which have been, or are scheduled to be, assessed for compliance with the **UK Statistics Authority's Code of Practice for Official Statistics** and are produced and published by the Scottish Government. The primary aim of official statistics in Scotland is to provide an accurate, up to date, comprehensive and meaningful picture of the economy and society to support the formulation and monitoring of economic and social policies by government and others.

For a body to become a producer of official statistics, this requires an amendment to the **Official Statistics (Scotland) Order 2008**.

Planning and Implementation

Guidance Note 7



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(January 2000, Revised December 2013)

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- Procurement
- Timing of Costs
- Expenditure in Advance of Legislation
- Consistency
- VAT Implications
- IT Infrastructure and Systems
- Business Processes
- Collaboration and Shared Services
- Service Arrangements
- Memorandum of Terms of Occupation and Memorandum of Terms of Understanding
- Security

Key Actions

- Prepare project schedule, linking key milestones, critical path and dependencies
- Prepare Benefits Realisation Plan, allocating responsibility for specific benefits to named individuals
- Prepare target operating model and share with stakeholders and staff
- Ensure appropriate communications are opened and maintained with staff, unions and stakeholders
- Establish policies and procedures for dealing with recruitment and/or transfer of staff – including impact of TUPE and COSOP and the development of new terms and conditions
- Establish pension provisions – including comparable schemes where appropriate
- Ensure staff remuneration is in line with public sector pay policy
- Establish financial systems and controls – including audit and risk management
- Establish funding arrangements and timing of expenditure
- Consider the VAT status of the proposed body
- Consider impact of VAT on cost of providing and receiving services
- Align accommodation requirements with efficient use of public sector estate and value for money ensure early engagement with Scottish Procurement and Commercial Directorate; Property Division for all property requirements and adopt requirements of SPFM
- Plan for Digital service delivery in line with Realising Scotland's Potential in a Digital World and the Digital First Service Standards
- Consider collaborative opportunities through the provision of shared services
- Implement appropriate written agreements for the provision of collaborative systems and services, including terms of occupancy agreements where appropriate
- Plan post implementation review within 6 months of the public body taking on operational responsibility
- Establish procurement systems and controls.

Key Reference Documents

[Audit Committee Handbook](#)

[Audit Scotland – Learning the Lessons on Public Body Mergers Good Practice Guide](#)

[Cabinet Office – Staff Transfers in the Public Sector Statement of Practice](#)

[HM Treasury The Green Book – Appraisal and Evaluation in Central Government](#)

[Pay Policy for Staff Pay Remits](#)

[Public Sector Internal Audit Standards](#)

[Public Sector Pay Policy](#)

[Realising Scotland's Ambitions in a Digital World](#)

[Digital First Service Standard](#)

[Digital First Service Standard assessments](#)

[Scottish Government Approach to Risk](#)

Scottish Government Procurement Policy Manual

Scottish Public Finance Manual (SPFM)

Key Contacts

Finance Pay Policy

Finance Corporate Reporting and Governance

Scotland's Digital Future

Scottish Procurement

Overview

The successful establishment of a new public body relies on effective planning and implementation, including preparation of detailed project plans, identification of key deliverables and milestones, a clear understanding of the user need, benefits to be delivered and a shared understanding of the body's future operating state.

Guidance Note 7 describes a range of project planning methods and tools which can assist in the planning and implementation of the new public body. These tools and techniques support the development and implementation of key organisational structures, processes and procedures, including HR, IT, procurement and financial management systems. They ensure that the new body has the required operational and corporate capability and capacity to deliver for the users and the benefits and service improvements identified in the business case.



Project Schedule

The Project Schedule sets out clear timelines against which key milestones will be met. It should include a critical path analysis, setting out priorities and interdependencies between key tasks in the period leading up to the establishment (and any post implementation period) of the new body.

The project schedule is often developed by working-up key dates and milestones from the date when the new body is expected to come into existence (the "vesting" date). Consideration must also be given to building in sufficient time at the front-end of the planning process to account for consultation with stakeholders and the preparation of enabling legislation, and for post implementation activities and review.

The content of the project schedule will vary depending on the size and complexity of the new public body, but should typically allow time for:

- Development of the vision
- Appointment of senior leadership team
- Identification of objectives and specific benefits for the new body
- Development and implementation of communication strategies
- Design of services with users, development and implementation of IT, HR, procurement, financial systems, processes and procedures
- Due diligence on contract and asset management, staff transfers and other staff issues, and completion of statutory impact assessments
- Development of a staff retention policy and staff transfer arrangements
- Consultation with unions
- Reviewing and updating the Risk Register and ensuring that all parties are aware of important changes in the status of risks

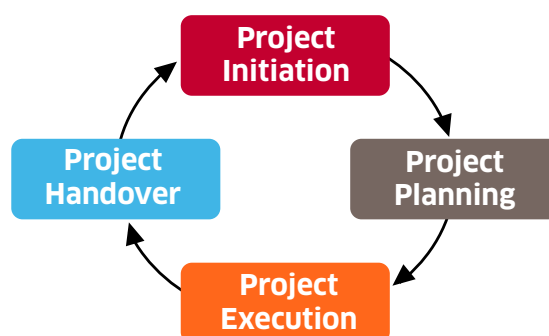
- Independent assurance reviews
- Agreement and apportionment of budgets.

The use of a project scheduling tool (e.g. Microsoft Project) supports detailed planning of individual project stages, activities, timelines, key milestones, interdependencies and resource allocation. It offers assurance to the senior responsible owner and the project board that the project is being robustly managed and reviewed on a regular basis.

Project Lifecycle

The project life cycle consists of four phases, **initiation**, **planning**, **execution** (including monitoring and controlling) and **handover** as illustrated in Figure 4.

Figure 4. Project Life Cycle



The project lifecycle should be extended to cover the **6 month period** following live operations. This will ensure a smooth handover from change to operational management status, facilitate completion of outstanding project activities, and provide a solid foundation for the delivery of longer-term benefits associated with the establishment of the new body.

A **post implementation review** should be conducted at the end of the **6 month** extension period and lessons learned should be reported to the Public Bodies Unit and the Programme and Project Management Centre of Expertise. This will allow future guidance and supporting materials to be updated and shared with other projects charged with setting up new public bodies in future.

Benefits Realisation Plan



The benefits that the new public body will be required to deliver and the criteria against which these will be measured must be clearly understood from an early stage in planning for the establishment of the new public body. These benefits would have been set out in the business case (**Guidance Note 5 – Change Management**), providing a starting point for the preparation and implementation of a more detailed benefits realisation plan.

A benefits realisation plan typically includes:

- A definition of each benefit as outlined in the business case
- A description of what each benefit will deliver
- Quantitative performance measures for each benefit
- Methods to monitor and record progress of performance measures
- Baseline data against which the benefit can be benchmarked
- Date when each benefit will be delivered
- An individual owner with responsibility for delivering the benefit

- Dependencies which may affect delivery of individual benefits
- Risks that may affect delivery of the benefit
- An indication of the cost of delivering/measuring the benefits
- Expected cost reductions and efficiencies from delivery of the benefit

Target Operating Model (Blueprint)



The successful establishment of a new public body and delivery of expected benefits is predicated upon a clear vision and shared understanding of the body's future organisational and operating state.

Many of the factors that will shape the future organisational and operating state of the new public body would have been considered through discussions with Ministers, preparation of the business case, consultation with stakeholders and parliamentary scrutiny of the enabling legislation. Information may also have been gleaned from the early development of the corporate plan – particularly consideration given to the body's vision, strategic direction and alignment with the Scottish Government's National Performance Framework (Guidance Note 9 – Measuring Operational Performance).

A target operating model (or blueprint) is a useful tool for consolidating all this information and setting out a clear and readily communicable vision of the body's future operating state.

There is no single definition of a target operating model – they are dependent on the context within which the organisation will operate. At the highest level a target operating model provides a visual representation of the body's vision and strategy; at a lower level it provides a detailed breakdown of how the public body will organise its resources, design its systems and processes and engage with stakeholders to deliver its core objectives.

A target operating model is typically structured around three key elements of:

- **PEOPLE** – organisation, skills, culture, governance, rewards, sourcing and location
- **SYSTEMS** – financial, procurement, IT (infrastructure, architecture, applications and data)
- **FUNCTIONS AND PROCESS** – who does what, where and how.

All elements should prioritise actions around the four pillars of Public Service Reform:

- **Prevention** – reducing future demand by preventing problems arising or dealing with problems early
- **Partnership** – developing local partnership and collaboration, bringing together public, third and private sector partners
- **People** – unlock the full creativity and potential of people at all levels of public service, empowering them to work together in innovative ways
- **Performance** – demonstrating a sharp focus on continuous improvement of the national outcomes, applying reliable improvement methodology.

The main factors to be considered when developing a target operating model are described in the following paragraphs. The extent to which these factors will apply to the establishment of a new public body will vary depending on the type of public body and the particular circumstances involved in its creation.

PEOPLE

Employment of Staff

Public bodies which are set up to perform executive, regulatory or commercial functions are normally given powers in the enabling legislation to employ their own staff, mainly achieved through:

- Recruitment of its own staff (who may or may not be civil servants))
- Staffing by civil servants on secondment from the sponsor directorate. Secondments potentially detract from the independence of the public body. They should be used on an exceptional basis and require Permanent Secretary and Ministerial approval (for example when the body would otherwise find it difficult to attract staff of appropriate quality at reasonable cost)
- Staff transferred permanently with the work from existing organisations.

Recruitment should be by fair and open competition and only commence following enactment of the enabling legislation and confirmation of funding arrangements.

The Scottish Government Finance Pay Policy team should be consulted on the likely staffing structure and grades prior to the appointment of any staff to ensure compliance with Public Sector Pay Policy.

Communications with Staff and Unions

Unions with members affected by the establishment of the new public body must be consulted and involved in accordance with the 'Memorandum of Understanding' between Scottish Government and the STUC, or similar provisions set out in any local partnership agreements.

The Scottish Government and unions have a partnership agreement which promotes management and unions working together in partnership to contribute positively to the work of the Scottish Government and its Agencies within the Scottish Government Main Collective Bargaining Unit. Similar partnership agreements will already be in place between other public bodies and unions. Project teams should liaise with the Public Bodies Unit on any local agreements that may be in place and the consultation requirements which will need to be met when engaging with unions.

Staff Transfers in the Public Sector Statement of Practice (January 2000, Revised December 2013)

The Cabinet Office Statement of Practice (COSOP) sets out the framework that Government Departments and Agencies are expected to work within to meet the provisions of the Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE) and ensure that staff involved in business transfers both in and out of the departments and agencies are treated fairly and consistently and that their employment law rights are protected.

The statement of practice also explains that in circumstances where TUPE does not apply in strict legal terms to certain types of transfer between different parts of the public sector, the principles of TUPE should be followed (where possible using legislation to effect the transfer) and the staff involved should be treated no less favourably than had the regulations applied.

Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply where an 'undertaking' (i.e. the whole or part of an identifiable business or business

activity) transfers from one employer to another. TUPE also applies when the identity of the employer changes, or in circumstances when an appropriate service provision is outsourced, brought back in-house or the contractor changes.

The application of TUPE will entirely depend upon the specific circumstances and facts of each individual situation. It could mean that contracts of employment for staff employed in the undertaking/service provider, immediately before the date of transfer, are transferred to the new public body. In which case, continuity of employment for the staff concerned will be preserved, as will existing terms and conditions of employment. The contracts of employment in such circumstances will be treated as though they had been made between the employee and the new public body.

Civil servants who transfer between public bodies and who retain their crown employee status are not subject to TUPE. They are, however, subject to the Cabinet Office Statement Of Practice for Staff Transfers in the Public Sector (COSOP).

TUPE does not outline specific time frames for informing and consulting employees but best practice suggests a minimum in line with statutory redundancy timeframes i.e. 30 days for less than 100 employees and 90 days for larger transfers.

Pensions

Employees in public organisations which are merging under TUPE Regulations or following the principles of COSOP will have their pensions protected to a varying extent.

COSOP applies where present pension arrangements cannot continue after the transfer and a “broadly comparable” pension scheme has to be provided. COSOP is not strictly legally binding, but the Scottish Government has undertaken to ensure that the spirit and guiding principles are followed where appropriate.

A professionally qualified actuary will be appointed to undertake a rigorous scrutiny of any alternative pension arrangements. No identifiable employee should suffer material detriment overall in terms of their future accrual of pension benefits under the alternative arrangements.

Where an organisation has a public interest but is a private organisation, transferring employees will have pensions protection under The Transfer of Employment (Pension Protection) (Amendment) Regulations 2013. The guiding principle is that the new employer should offer transferring staff membership of a pension scheme of a certain minimum standard. The pension schemes available will vary depending on the public bodies involved.

Harmonisation of Terms and Conditions

TUPE requires that staff maintain their current terms and conditions and precludes any changes, except under specific circumstances. Although harmonisation of terms and conditions is not included within the TUPE provisions, it can be achieved through agreement with unions and staff. This could potentially involve a buy-out arrangement, subject to budgetary constraints and cost implications (although this still carries the risk of legal challenge. It is worth recognising that in some harmonisations the new terms and conditions may be comparable or better and therefore there is no requirement for any buyout.

Good practice is for harmonisation of salaries to take place within 4 to 5 years of any TUPE transfer, thereby minimising equal pay claims.

Public Sector Pay Policy

The new body will be required to develop a pay remit in line with the **Public Sector Pay Policy for Staff Remits**. HR transition costs should be linked in with wider public sector pay policy, particularly the way in which they are accounted for in relation to pay policy guidance. This includes any one-off costs for the harmonisation of terms and conditions which must be fully costed and included in the public body's pay remit proposals, but which will not count against any **Public Sector Pay Policy** limits.

The **Scottish Government Finance Pay Policy Team** should be consulted early in the development of a pay remit for the new public body.

Employee Payroll and Tax

As described in the **Tax Avoidance and Tax Planning section of the SPFM** – all individuals (employees or appointees) who would qualify as employees for tax purposes must be paid through the payroll system with tax deducted at source.

Redeployment

In cases where public bodies/functions are abolished, or where duplicate services are merged, the number of jobs required may reduce. Every effort must be made to redeploy potentially surplus staff.

The Scottish Government has made a clear commitment that there should be no compulsory redundancies within the SG Main Department and Agencies. Staff wherever possible should be redeployed.

The Scottish Government has also announced a guarantee that there will be no compulsory redundancies in any changes it progresses across the public sector. Public bodies covered by this guarantee need to review organisational structures and retain posts only where there is a required business need. Staff affected by any reduction in the number posts should be redeployed or numbers reduced through natural wastage.

Staff on SG Main terms and conditions are covered by the **SG Resourcing Policy**, which includes arrangements for redeployed staff. Other public bodies should consider and put in place appropriate mechanisms to work with staff (and unions) to consider redeployment opportunities, including investing in skills and support to help staff with the transition into new roles.

Some limited voluntary early exit arrangements may be progressed where costs are affordable, where they can be shown to deliver value for money and where they can be met by the organisation(s) involved.

The Scottish Government's commitment does not affect staff entitlement to redundancy terms under their terms and conditions of employment or basic statutory terms.

Location and Mobility

The accommodation for a new public body must balance effective service delivery with the best possible value for money. The availability of existing accommodation within the Scottish Government and wider public bodies estate should be considered first when planning accommodation for the new public body, as should the cost of recruiting, relocating and retaining staff in that accommodation. Early consultation with Scottish Procurement and Commercial Directorate: Property Division is essential.

The establishment of a new public body could result in the location of a post being changed. Staff in SG Main may be entitled to assistance within the terms of the relocation

expenses rules. Staff on terms and conditions other than SG Main will be covered by any relocation provisions provided by their current employer.

Staff on SG Main contracts have an existing mobility clause (e.g. full-time staff at band B, and C level and the senior civil service). Rather than invoke the mobility clause, the first approach would be to seek opportunities for staff at, or within reasonable travelling distance of, their existing location.

Terms and Conditions

It is important that staff understand the terms and conditions under which they are to be employed by the new public body. A staff handbook should be developed which includes full details of terms and conditions, pay scales, performance-related pay, rules for recruitment, personnel management, staff conduct and disciplinary procedures.

A performance management system, including recruitment, appraisal, training and development, pay and grading (including job evaluation) and discipline should be set out in the handbook.

The new public body should also consider the early preparation of:

- A Code of Conduct for staff based on the Civil Service Code or Model Code for Staff of Executive NDPBs, as appropriate
- A Training and Development Plan
- Ensuring that all employment practices and policies comply with equality legislation and good practice
- Insurance Arrangements
- Communication channels for new staff (e.g. a newsletter or regular meetings)
- A staff/telephone directory.

SYSTEMS

Financial Management Systems

Public bodies must follow the guidance and rules outlined in the Scottish Public Finance Manual (SPFM) and the financial arrangements set out in the respective framework documents agreed with Ministers. It is essential that the new public body has effective processes and systems in place from the first day of its operational responsibilities to ensure compliance with the SPFM.

The SPFM provides guidance on, in addition to other issues, the development and implementation of the main financial systems and internal controls required by a new public body, including:

Financial management and control agreements

- The appointment of the chief executive as accountable officer
- Direction on the form and content of the annual report and accounts
- Financial delegations.

Funding arrangements

- Grant in aid and/or grant

Internal controls

- Preparation for and implementation of banking arrangements for the new body
- Personnel and payroll systems

- Superannuation arrangements
- Accounting systems
- Risk management policy
- Procurement policy and systems
- Audit services and committee
- Code of Practice on Access to Government Information, including a clear complaints procedure
- Registration with the Data Protection Commissioner.

Value for Money and Best Value

New public bodies must be best value organisations, that deliver value for money for the public sector as a whole. The HR practices set out above will ensure that best value is achieved on pensions, harmonisation of terms and conditions and the use of redeployment over voluntary severance schemes.

The principles of best value must also be applied to all other aspects of setting up and operating a new body, including up-front capital costs such as the development and implementation of complex IT systems. Scottish Ministers expect all accountable officers to comply with the duty of best value placed upon them. Boards (or equivalents of relevant public service organisations have corporate responsibility for promoting the efficient and effective use of staff and other resources by the organisations in accordance with the principles of best value. The Treasury Green Book helps projects to appraise costs and benefits to ensure that the public body has been established on the principles of best value.

Procurement

To ensure that value for money is achieved when procuring capital projects (including bespoke IT systems) or establishing contracts required for the new body to operate effectively from “go live” procurement advice and guidance must be sought from the Central Government Procurement Shared Service.

Timing of costs

The establishment of a new public body is effectively a restructuring of the delivery landscape – the accounting treatment of which is covered by the Financial Reporting Standard (FRS) 12.

Costs can be recognised when a constructive obligation to undertake restructuring has been given, as provided for under (FRS) 12. Finance must be consulted on the preparation of any plans to make provision for restructuring costs, and certainly before any constructive obligation to undertake restructuring has been made.

Expenditure in Advance of Legislation

Projects may be able to engage in preliminary spending on implementing organisational change in advance of legislation being passed. However, this can be a difficult and technical area, as non-preliminary spending is generally not permitted in advance of the enabling legislation gaining Royal Assent. Detailed guidance is provided in the Scottish Public Finance Manual (SPFM) and Finance Directorate should be consulted in advance of any spending proposals being prepared.

Consistency

Any financial arrangements around the establishment of a new public body must be consistent with existing financial guidance, particularly the:

Scottish Government Programme and Running Cost Budgets: spending from programme and running costs budgets, budget revisions and transfers and associated timing in managing project resources should be in line with existing guidance from Finance. Finance must, therefore, be consulted where budget revisions and transfers are being considered.

Ex Gratia payments: a formal approval procedure is in place to regularise such transactions, details of which must be submitted to Finance for approval. Submissions should cover:

1. The nature of the case, the amount involved and the circumstances in which it arose;
2. The reasons why the business area considers that the payment should be approved, whether legal advice has been sought and, if so, what has been advised;
3. Whether the investigation into the circumstances has shown any defects in the existing systems of control and, if so, what corrective action is proposed.

VAT Implications

It is important that the implications of VAT be considered during the setting up of any new body.

The ability of a public body to recover VAT depends on its VAT status. The VAT status can be one of 3 categories:

Section 33 Bodies – A body that is similar to local authorities in that it can reclaim virtually all of the VAT incurred.

In order to be classed as a section 33 body the body must be:

- Carrying out duties previously carried out by a local authority; and
- Have power of precept over local taxation.

The list of eligible bodies is held by HM Treasury.

Section 411 Bodies – Enables bodies to recover VAT on business activities (where public sector is in competition with the private sector) and on contracted out services as per the HM Treasury list of eligible services.

Section 41 of the VAT Act 1994 sets out the bodies that are eligible for s41 status. All bodies that are admitted must be part of the Scottish Administration namely an Agency of the Scottish Government or a Non Ministerial Department.

- Bodies that are ineligible for either – these bodies can only recover the proportion of VAT in relation to the income resulting from business activities.

These bodies are similar to any other business and will be subject to the same rules that apply in respect of registration limits etc.

As can be seen from the above a simple change in the funding route for a body could impact on its VAT status, which in turn could result in a significant increase in costs. It is essential to understand the new public body's VAT status to ensure that budget forecasts reflect the full cost of products and services. The **Scottish Government's Finance: Corporate Reporting and Governance Unit** should be consulted at an early stage to assist in considering the VAT implications of proposals.

Audit requirements

Due cognisance should be taken of the **Public Finance Accountability (Scotland) Act 2000** with regards audit requirements for new public bodies, with the Auditor General informed of the creation of new bodies prior to their establishment.

Digitally enabled Service delivery including IT Infrastructure and Systems

Realising Scotland's Potential in a Digital World confirms we will establish all new government organisations as digital businesses and ensure that all digital services developed by Scottish Government meet our Digital First Standards. In doing so:

- ► we will implement tough new assurance processes for Central Government projects to improve IT and digital delivery and make sure that lessons learned from previous experience are reflected and embedded in future practice. The processes have the power to stop projects that do not meet user needs or represent good value for money.
- ► Introduce shared technology platforms as a core part of the process of public service reform
- ► Engage with the public to build an understanding of how their data is being used for the public benefit, and of the arrangements in place to guarantee the security of their data
-

New public bodies can engage with the **Digital Transformation Service** set up to provide support to new and existing bodies delivering their business strategy to digitally enable transformation. In addition, the service can provide support to source specialist short term digital skills requirements where appropriate.

Sufficient time has to be built in to the development of digitally enabled services and to understand the shared technology platforms available to support these. This is particularly important when external suppliers are to be contracted to deliver the required solution. Sufficient time should also be allocated to the front end procurement activity for the appointment of the supplier. Procurement advice and guidance should be sought from the **Central Government Procurement Shared Service** about any proposals to contract for new bespoke IT systems.

SEAS

Scottish Government Enterprise Accounting System (SEAS) records financial information. It processes payments for grants, worthy causes, goods, services and expenses. It also records income. As it can take about 10 months to put these measures in place contact should be made with the **SEAS** team as early as possible for advice.

FUNCTIONS AND PROCESS

Business Processes

As the design of IT applications are dependent upon the business processes they are required to support the user need, the engagement, design and the planning of organisational structures, business processes, stakeholder expectations and IT should all be considered as part of a holistic and coherent strategy. Failure to plan for an integrated approach to the development of business processes and suitable IT platforms could present a major risk to the cost, timing and quality of services to be offered by the new public body.

Collaboration and Shared Services

All public bodies require operational, corporate and support services – for example, procurement, payroll, HR, IT, Finance, Estates, Legal and communications. Public Bodies must ensure that they achieve value for money in the development and delivery of these functions. There is a strong presumption against new public bodies developing free-standing operational, corporate and support functions and services.

Shared services, in its simplest form, is a ‘service or function that is shared between different organisations or departments’. Fundamentally, shared services provide an opportunity to use collaboration as an enabler for improving the quality and delivery of a service and in securing cost efficiencies.

Whilst there is a presumption that all existing and new public bodies will consider the use of shared services, there is no assumption that SG will always be best placed to provide these services. There are a number of successful collaborations taking place between public bodies and these opportunities will continue to be encouraged and supported by the Scottish Government.

New public bodies should fully consider opportunities for collaboration and sourcing such services from suitable existing sources within the Scottish central government sector.

Plans for the provision of these services must demonstrate that the arrangements selected are the most effective way of providing effective service delivery and value for money to the taxpayer.

The options for collaboration are likely to be affected by the status of the public body concerned, therefore early engagement with potential service providers is recommended.

Advice and guidance on the HR Shared Services offering is available from HR.

Service Arrangements

When making collaborative arrangements for the provision of operational, corporate and support services, it will be necessary to enter into formal service agreements with providers of such services – for example, the provision, operation and maintenance of IT systems. The use of collaborative arrangements does not necessarily exclude the public body from paying VAT which may be chargeable depending on the status of the public body, the service provider and the services being provided.

There is a range of documentation available to support the development and delivery of collaborative services. The range and type of document required will be determined by the services involved and will be agreed and defined during the set up process.

The **Scottish Government’s Central Government Collaboration Unit** will be able to provide appropriate guidance on collaboration opportunities.

Memorandum of Terms of Occupation and Memorandum of Terms of Understanding

A memorandum of terms of occupation (MOTO) is an internal document which encompasses standard expectations which pertain between government bodies when they share premises. This allows for some areas of customisation in practical arrangements for particular locations and particular bodies. A MOTO can only be used between Crown bodies. Where SG shares a building with other public bodies which are not part of the Crown, a memorandum of terms of understanding (MOTU) is required).

A Crown Body means any Minister of the Crown, the Scottish Ministers or Government Department, Department of the Scottish Ministers, person, agency, commission, corporation and body corporate carrying out functions on behalf of the Crown or the Scottish Ministers and any other similar body where the enabling statutory provisions state that it should be treated as acting on behalf of the Crown.

Advice and guidance on MOTO/MOTU agreements should be sought from the **Scottish Government Property Division**.

Government departments are not normally allowed to opt to tax buildings so rental charges to minor occupiers are exempt from VAT. The **Scottish Government's Finance: Corporate Reporting and Governance Unit** should be consulted at an early stage to assist in considering any VAT implications.

Security and Resilience

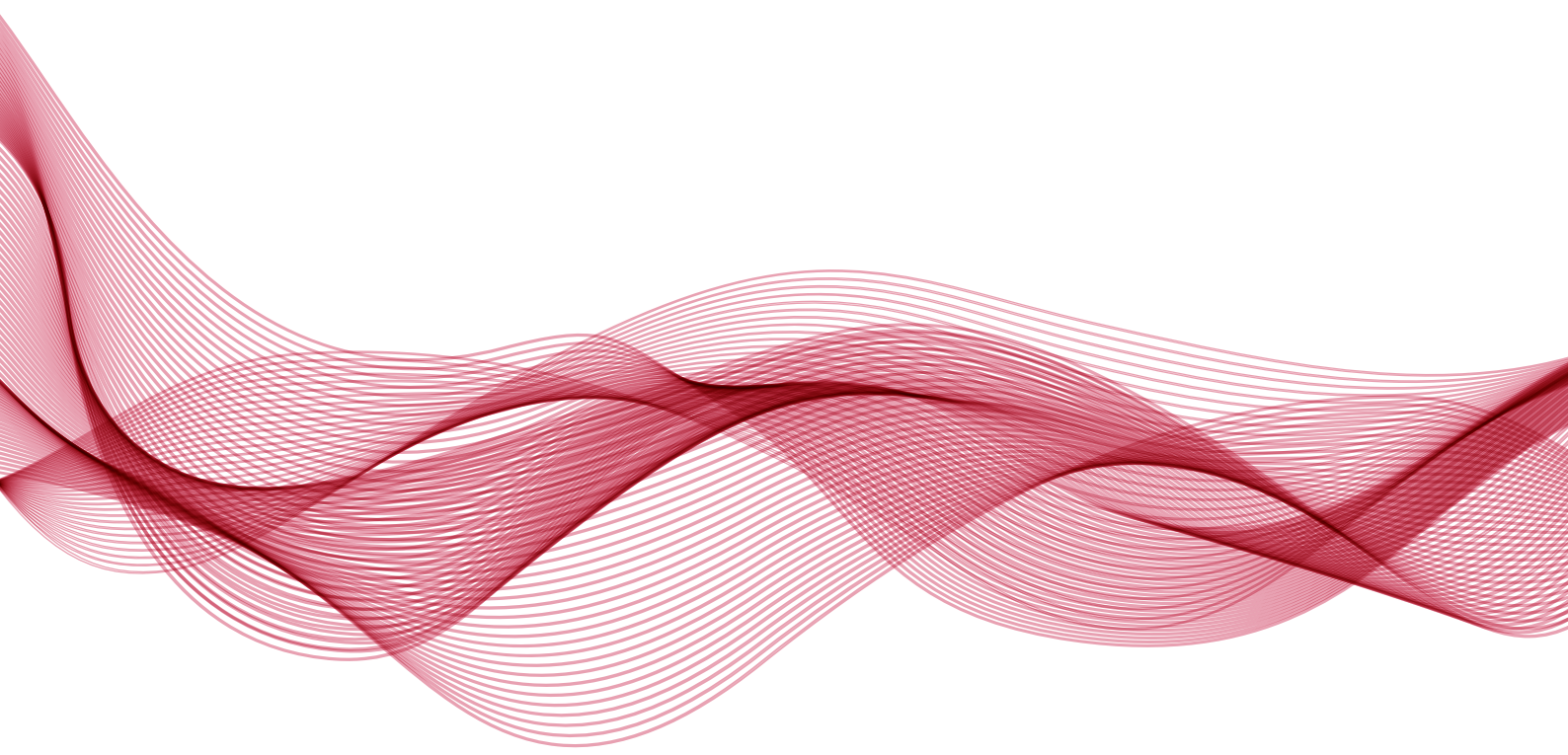
Organisations must meet minimum security requirements in relation to staff, buildings, data, networks and Information Technology. This includes implementing processes, staff awareness, systems, governance and defined roles. These must be largely in place before business activities can commence. The Security Policy Framework contains information on the standards, best practice guidelines and approaches required.

Organisational Resilience is fundamental to ensuring that public bodies are able to continue delivering vital public service in the face of disruptive challenges. Public bodies should ensure their resilience in respect of physical, personnel and cyber assets. **Preparing Scotland** provides guidance to assist Scotland plan, respond and recover from emergencies. It has a 'Hub' which sets out the philosophy, principles and good practice, and 'spokes' that provide detailed guidance on specific matters. These encompass a spoke on cyber resilience, with links to best practice guidelines on cyber resilience for public bodies in Scotland.

Further advice and guidance should be sought from the **Resilient Essential Services Team** and the **Cyber Resilience Unit** in the Scottish Government.

Estimating and Recording Costs and Savings

Guidance Note 8



**The Scottish
Government**
Riaghaltas na h-Alba



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Key Actions

- Estimate costs involved in establishing and maintaining the new body and assess these against likely benefits
- Capture existing baseline costs to allow comparisons between previous and future performance
- Monitor and review transitional costs throughout the project lifecycle to ensure the cost of establishing the new public body remains affordable – escalate significant deviation from original estimates
- Review and update estimated costs regularly to ensure that the proposed public body remains on track to deliver value for money
- Maximise efficiencies to be gained from the establishment of public body – staff reductions, estate rationalisation, IT service delivery
- Develop robust financial arrangements, including tools for recording transitional and operating costs against cost centres and codes
- Review and update the business case to reflect changes in estimated costs and savings to ensure that the new body remains a financially viable option and able to deliver value for money in future.

Key Reference Documents

[Audit Scotland – Learning the Lessons on Public Body Mergers Good Practice Guide](#)

[Scottish Public Finance Manual \(SPFM\)](#)

Key Contacts

[Finance Corporate Reporting and Governance](#)

[Finance Programme Management and Business Partners](#)

Overview

It is crucial that affordability of the proposed project is assessed, with Finance engaged at the onset of the policy proposal.

A Crown Body means any Minister of the Crown, the Scottish Ministers or Government Department, Department of the Scottish Ministers, person, agency, commission, corporation and body corporate carrying out functions on behalf of the Crown or the Scottish Ministers and any other similar body where the enabling statutory provisions state that it should be treated as acting on behalf of the Crown.

The original estimates of costs for the establishment of a new public body would have been based on the best information available at the time when the initial proposals and outline business case were considered. As more information comes to light during the consultation, legislative, planning and implementation stages of the project to establish the new body, the original estimates will be subject to further scrutiny, review and revision.

Guidance Note 8 focuses on three types of costs (baseline, transitional and operational) which must be closely monitored throughout the lifecycle of the project to establish a new public body. It emphasises the importance of developing robust financial management systems from the outset of the project to ensure that the costs associated with setting up and running the new public body are recorded accurately, reviewed regularly and communicated to key stakeholders.

This information is essential to ensure that costs associated with the establishment of the new public body are affordable and that they can be offset by future efficiency savings, benefits and service improvements.

Estimating Costs

The costs associated with the establishment of a new public body would have been fully scrutinised and tested in the options appraisal and cost/benefit analysis sections of the business case and the financial memorandum to any enabling legislation.

The initial costs would have been based on estimates derived from the best information available at the time. However, it is not always possible to estimate wholly accurate costs from the outset – there may have only been limited information available at the time, limited systems for monitoring and collating prior costs incurred by predecessor bodies, some costs may have been overlooked, while others may have been difficult to quantify and measure. As more information comes to light during the project lifecycle, the original estimates may be subject to further review and revision. It is for these reasons that robust financial management systems are required to record and report all of the costs associated with the establishment of the new public body.

Main Cost Groups

There are three main cost groupings associated with the establishment of a new public body:

- Baseline Costs (pre-implementation))
- Transition Costs (implementation))
- Operational costs (post-implementation).



Baseline Costs

Baseline costs relate to functions performed by predecessor bodies which are similar to functions which are expected to be performed by the new public body. Predecessor bodies may include the Scottish Government, existing public bodies which are being reconstituted or merged, or UK bodies whose functions are being transferred to a new Scottish public body. Regardless of origin, the capture of baseline costs will assist in the development of the new public body's financial strategy, providing a benchmark against which future operating costs, efficiency savings and value for money can be assessed.

Baseline costs are typically incurred through:

- Payroll
- Pensions
- Training and development
- Communications
- IT development and maintenance
- Accommodation and facilities management
- Corporate services
- Administration
- Professional services
- Contracted services.



Transition (set - up) Costs

Organisational change carries with it a number of transition costs. These can be unavoidable and initially difficult to estimate with a high degree of accuracy - for example the development and implementation of new IT systems, or the acquisition and refurbishment of new accommodation. It is important to control these transition costs (and future operational costs) to a level which can be offset by future efficiency savings or substantial improvements in service delivery.

Transition costs are generally associated with:

- Sponsor team
- Dedicated projected/programme team
- Recruitment and remuneration of the shadow board, chief executive and staff
- Training and development
- Communications and branding
- Harmonisation of staff pay and conditions
- Staff redeployment
- Statutory redundancy or voluntary severance
- Pensions
- IT system development and implementation
- Asset management
- Accommodation
- Procurement and contracts including contract rationalisation
- Independent Assurance Reviews.

Affordability and Budgeting for Transition Costs

Transition costs should be allocated against resource and administration budgets; while some will require a separate capital budget to cover investment in assets such as IT. These costs can require a commitment to upfront expenditure and should be closely monitored and controlled to ensure that the project remains affordable and that costs are justifiable when set against future efficiency savings and benefits.

Timing of Transition Costs

Transitional costs do not cease when the new public body takes on its statutory functions and operational responsibilities. There will be a handover period when the project and senior management teams work in parallel to ensure a seamless transition from operational management. Transition costs incurred during the handover period must also be captured and recorded against the total cost of establishing the new public body.

Operational (Running) Costs

Operational costs by definition are not incurred until the new public body takes on its statutory functions and operational responsibilities. Nonetheless, decisions taken during the planning and implementation stages of the project could have a significant bearing on the level of future operating costs. This requires estimates of operational costs described in the business case to be monitored, reviewed and updated during the project life-cycle and the impact of any changes assessed against future operational effectiveness and efficiency.

Operational costs typically result from such activities as:

- Payroll
- Pensions
- Training and development
- Recruitment
- Development and maintenance of IT systems and telephony
- Accommodation and facilities management
- Corporate, professional and contracted services
- General administration.

Attention is drawn to the implications of VAT on the costs of services and products, described in **Guidance Note 7**.

Other Staff Considerations

Allowance should also be made in the year one operating costs for any annual leave and flexi-time not taken by existing civil servants transferring to the public body for the accrual at year end.

Efficiency Savings

Efficiency savings should be set out in the business case. They are likely to result from one or more of the following aspects of the new body's operations:

- Reduction in staff numbers
- Streamlined processes
- Redesign of services enabled by digital technology
- Shared support services
- Asset rationalisation
- Contract rationalisation
- Administration budget efficiencies (e.g. sponsor and appointment arrangements)
- Other efficiencies.

As highlighted under operational costs, further information could come to light which may impact on the level of expected efficiency savings. For this reason, expected efficiency savings should be reviewed regularly throughout the project lifecycle to ensure that the estimates described in the business case remain valid and achievable. This will provide a platform for the board of the new public body to develop a financial strategy to support the delivery of expected efficiency savings in future.

Monitoring and Reporting of Costs

Robust management of costs and savings provides assurance to stakeholders that the project is being managed effectively and that budgetary forecasts and expenditure remain in line with those described in the business case. It also establishes a benchmark against which future operating costs and efficiency savings can be assessed, allowing the new body to be held to account for its financial and operational performance.

Appropriate financial management arrangements ensure effective monitoring and reporting of all costs and savings associated with the establishment of the new public body.

Financial management arrangements should cover:

- Baseline costs for future benchmarking of operational efficiency
- Estimates of transition costs set out in the business case, with provision for adjusting these costs as risks and issues are identified as the project progresses
- Operational budgets for the new public body – making adjustments for known changes in future years
- All other costs to be incurred in setting up the new public body – including amount and timing of both one-off and recurring costs
- All other operating costs and/or a contingency for these
- Efficiency savings.

Financial Management and Reporting Tools

A financial reporting tool should be used to be record expenditure against specific cost centres and codes. Scottish Government Finance Directorate can advise on the use of appropriate financial tools for a particular project.

It is important that the information captured in the financial reporting tools is robustly managed and communicated to key stakeholders at the right time. To this end, individuals should be assigned to monitor specific cost centres and highlight any variances from the original estimates described in the business case. These individuals should identify and instigate actions to mitigate the impact of any variances, with significant variances being escalated to the project board and Ministers at the earliest opportunity.

Separation of External Costs and Efficiency Savings

Costs and savings attributable to other government initiatives or efficiency targets should be recorded separately from those directly related to the establishment of the new public body. This will allow an accurate assessment of the costs and savings associated with the establishment of the new public body and avoid any distortion caused by the inclusion of costs and savings attributable to other interventions.

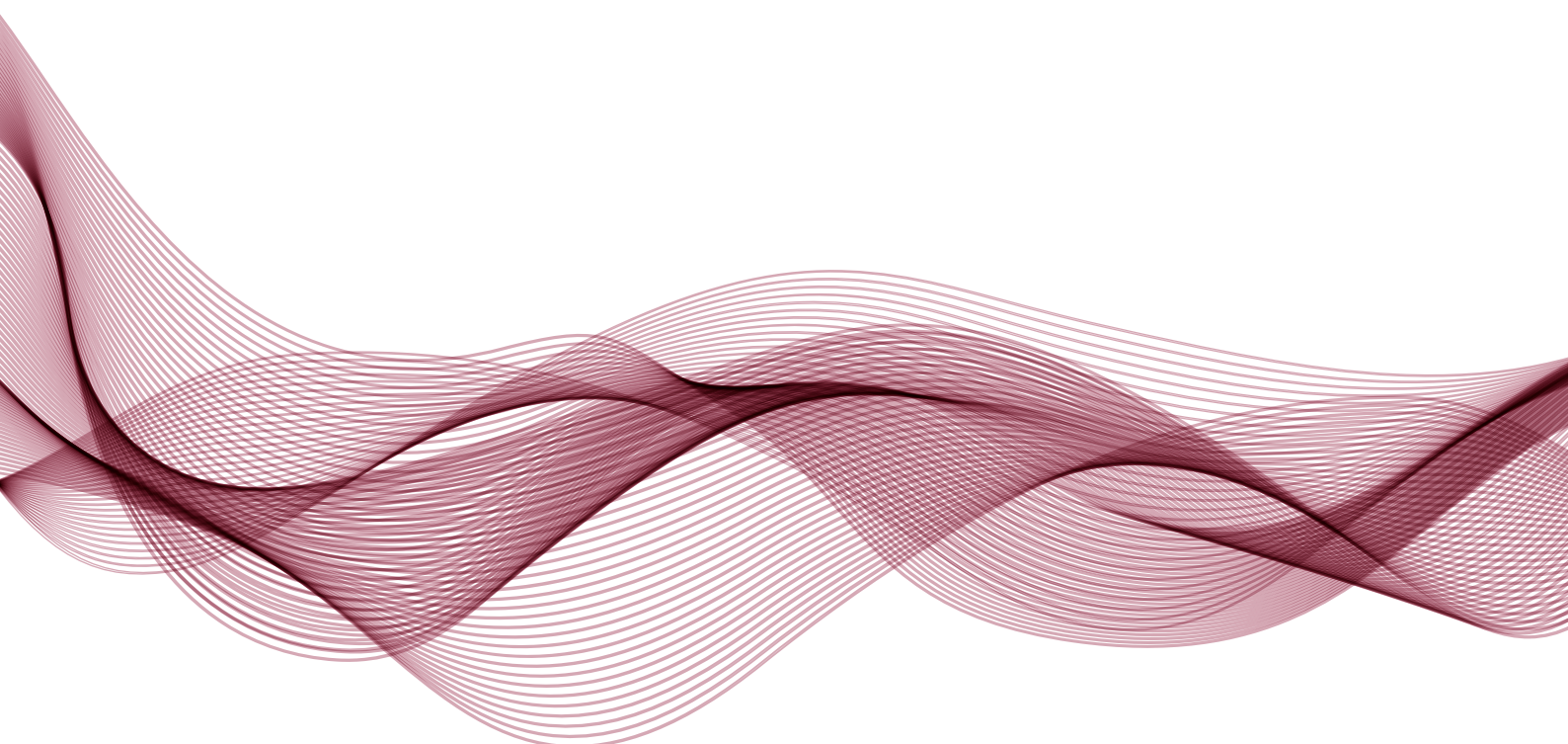
Reporting of Costs

Robust financial management arrangements help pave the way for the new public body to report operational and financial performance within **18 months** of coming into existence – primarily through publication of its annual report and financial accounts. They also facilitate the preparation of interim financial and performance reports, ideally within **6 months** of the new body taking on its functional and operational responsibilities. These interim reports will reassure Ministers and Parliament that the new body is managing its resources effectively and efficiently, and is on course to deliver the efficiency savings, benefits and service improvements identified in the business case.

Information showing anticipated budget against actuals over each financial year must be retained by policy areas.

Measuring Performance

Guidance Note 9



The Scottish
Government
Riaghaltas na h-Alba



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Key Actions

- Develop public body's purpose, vision, objectives and performance indicators - aligned with the **National Performance Framework** and **Government priorities**
- Make use of strategy mapping techniques and balanced scorecard approach in the development of business planning and performance measurement frameworks
- Capture baseline data and performance measurements from predecessor bodies and previous service providers to inform future performance measurements
- Publish performance information within 18 months of body coming into existence - highlighting benefits and service improvements delivered by the public body
- Consult widely with stakeholders and end users on development of performance measures to ensure service aspects of performance are included in performance framework
- Engage staff in the development of strategy and performance measures to ensure shared ownership and commitment.

Key Reference Documents

[Audit Scotland – Learning the Lessons on Public Body Mergers Good Practice Guide](#)

[National Performance Framework](#)

Key Contacts

[Scottish Government Analytical Services](#)

Overview

Public bodies are required to identify and report performance measures to demonstrate their effectiveness and efficiency in service delivery and the benefits they provide to the public.

Guidance Note 9 explains the importance of developing performance measures early in the project lifecycle. It suggests techniques for developing strategic objectives and key performance measures that cover the full spectrum of functions and services provided by the body, and to demonstrate alignment of these performance measures with the [National Performance Framework](#).

Developing Strategy and Performance Measures

A public body's ability to deliver effective and efficient services is dependent on its approach to corporate and business planning – specifically the development of its vision and strategic priorities and the alignment of these with a set of inter-related performance measures.

Consideration should be given to the development of strategic planning and performance measurement during the early stages of the project to establish a new public body. This is preferable to viewing strategic planning and performance measurement as the sole responsibility of the incoming executive team.

Strategy Mapping and Balanced Scorecards

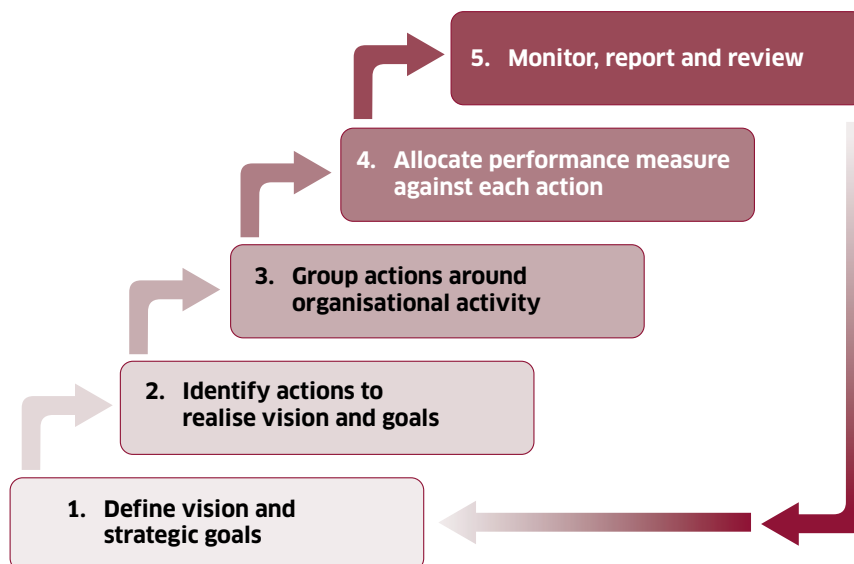


Strategy mapping and balanced scorecards offer a widely recognised approach to the development of strategic priorities, objectives and performance measures.

A strategy map assists in the identification and development of a new public body's purpose, vision, and future strategic direction. It is typically designed around a number of horizontal bands, linking causal relationships between such aspects of organisational development and performance as the requirement and availability of resources, the conditions necessary for learning and growth, and the activities and processes required to achieve the strategic vision.

A balanced scorecard builds on the strategy map, enabling the vision and strategic priorities to be translated into meaningful performance measures which reflect the full spectrum of operational, corporate and service delivery activities – rather than the traditional financial based approach, which only provides a narrow perspective of overall performance and service delivery.

Figure 4. Balanced Scorecard Approach to Performance Management



Performance Measurement Framework

A performance measurement framework forms a key component in a public body's corporate and business planning process. This allows the body's strategic objectives and key performance indicators to be formatted in such a way that demonstrates clear alignment with the National Performance Framework.

Responsibility for the development of the performance measurement framework rests with the senior management and board of the new public body. However, it is beneficial to develop an initial framework in the early stages of the project lifecycle to inform performance expectations from day one of the new body's operations.

Baseline Performance

The capture of baseline data and previous performance measures will inform the development of the performance measurement framework and allow for more accurate and meaningful comparisons to be drawn between the effectiveness and efficiency of the services delivered by predecessor bodies and those delivered by the new body. Delaying

the development of a performance measurement framework runs the risk that some or all of this information may become more difficult to source, as predecessor organisations are wound up, systems are decommissioned, data sets become outdated and key staff move on to other posts or organisations.

Timing of Performance Reporting

A new public body should, subject to contrary legislative provisions, be in a position to publish its first annual report and accounts within **18 months** of coming into existence. The early development of a strategy map, balanced scorecard and performance measurement framework, including key performance indicators to demonstrate the benefits and service improvements delivered by the new public body, will assist the body in meeting this timescale. It also affords opportunities for interim reporting of performance which might otherwise not be possible – ideally within the first **6 months** of live operations.

Stakeholder Engagement

Reporting financial and quantitative performance measures will clearly demonstrate the public body's operational effectiveness and efficiency – but not necessarily the complete picture.

As a balanced scorecard is intended to reflect overall performance, it is essential that stakeholders' perceptions about the quality of services provided by the new public body are also closely monitored and reported – particularly if they are to be compared with services provided by predecessor bodies.

Key points to bear in mind when engaging with stakeholders are:

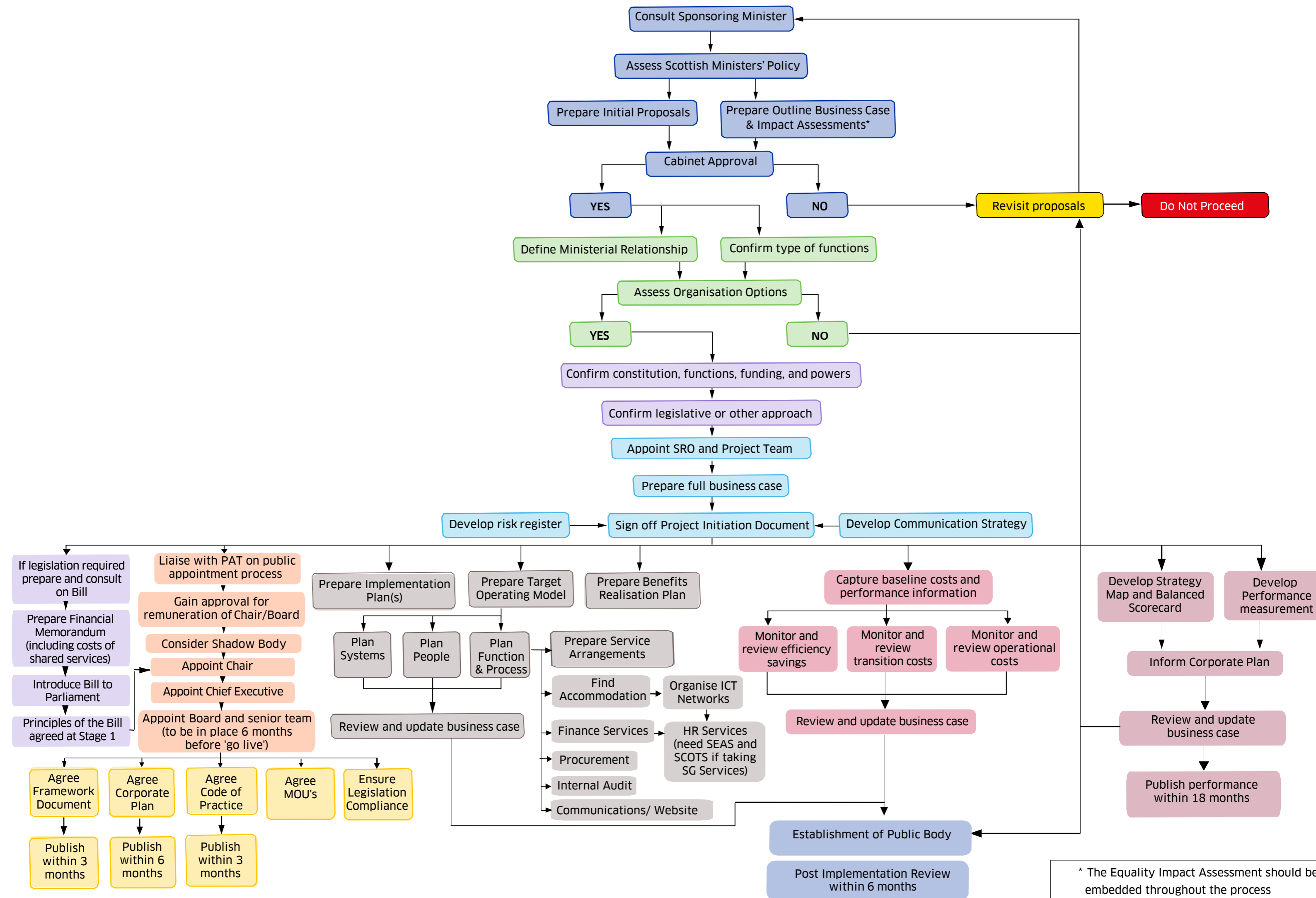
- Consult early, so that the information can be used to shape plans;
- Don't ask for views if you cannot make changes and be clear if there are some changes that you cannot make;
- Use different methods of consultation and choose the approach that is right for the situation and for the people you are consulting;
- Consult widely – users are not the only people whose views may be of use. Staff, especially frontline staff, may have important ideas and non users could identify possible barriers to using your services;
- Report back on views received and how this information helped shape service delivery and performance measurement;
- Evaluate and learn lessons for next time;
- Ensure effective engagement with people of all ages, from different cultural and language backgrounds, and particularly disabled people, following the 'Principles of Inclusive Communication' guidance.

Recognised methods of stakeholder engagement and consultation which can help shape future service delivery and performance measurement include:

- User groups
- Workshops
- Questionnaires
- Informal verbal feedback
- Complaints.

Staff Involvement in Setting Performance Measures

It is equally important that staff are fully engaged and actively support the changes to be brought about by the establishment of a new public body. This requires regular, open, informative and consistent messages when communicating with staff. It also requires staff involvement in the development of meaningful and achievable performance measures which will promote greater understanding and shared ownership of the public body's vision, strategic objectives and future operational performance.



* The Equality Impact Assessment should be embedded throughout the process