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1. Creating advisory groups, working groups, project boards and commissions

1.1 *Who this guidance is for*

This guidance is to assist colleagues tasked with sourcing external ('independent') advice for Scottish Ministers. This may take the form of setting up: short life advisory groups; working groups; project boards; commissions; or, arranging individual appointments. While the context and functions of such groups and roles may vary, the main aim will be to provide external expertise and sometimes oversight.

It is essential that relevant processes are followed to ensure that such groups and appointments are established and managed in a way that is legally and financially sound, and that risks to ministers and the Scottish Government are properly considered. Failure to do so can result in legal challenge, reputational damage, and expose both ministers and staff to difficult situations that could be avoided.

1.2 *Understanding the different types of appointment*

The appointments landscape can be complex, and different processes must be complied with, relevant to the type of appointment being made. In summary, setting aside appointments that are made in the judicial context (where Courts and Tribunals team should be consulted), there are:

A) Regulated public appointments

These are appointments to a body listed in [schedule 2](#) to the Public Appointments and Public Bodies etc. (Scotland) Act 2003. In most cases, these appointments are enabled by legislation, although some exceptions do apply.

Regulated appointments are so called as the appointment process is regulated and monitored by the Ethical Standards Commissioner (ESC), and the appointment process is subject to the [Code of Practice for Ministerial Appointments to Public Bodies in Scotland](#).

The management of regulated appointments is overseen by the Scottish Government Public Appointments Team. **Please refer to** [Public appointments](#)

B) Statutory Ministerial appointments

These are appointments enabled by legislation, but to bodies that are **not** listed in schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003. The process to make these types of appointments is **not** regulated by the Ethical Standards Commissioner (ESC).

C) Ad-hoc (non-statutory) appointments

Scottish Ministers also make a number of miscellaneous type appointments that are not enabled by legislation and are **not** listed in schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003. Examples of these types of appointments are the chair or members of a review or inquiry body, members of ad-hoc taskforces / stakeholder groups or members of commissions. These appointments are often made in response to a policy ambition or political commitment.

D) UK Government appointments

Scottish Ministers may also be invited to have a say – but may not have overall responsibility – for appointments where Scotland has an interest. For example, Scottish Ministers may be consulted on appointments to a UK commission where all four nations are represented. These are usually bespoke arrangements and should be carefully scrutinised by the relevant policy or sponsor leads

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Exemption 36(1) FOISA

In each of the above categories of appointment, Scottish Ministers are required to adhere to the principles set out at section 5 of the [Scottish Ministerial Code](#).

This guidance relates to appointments (whether made singularly, or to a group) where there is no statutory basis, and where the appointments process is not regulated by the Ethical Standards Commissioner.

1.3 *Guidance aims*

The guidance in these pages is intended to help policy teams:

- think about whether establishing a group (or bringing in an appointee) is the best means of achieving business objectives
- fully consider what needs to be in place when setting up a group
- involve others to ensure that legal and financial risks can be managed
- ensure that the advice to Ministers reflects the obligations set out in section 5 of the Scottish Ministerial Code
- consider how effective, productive relationships can be formed and maintained between civil servants and any group (or appointed individual), and the actions that can be taken to deal with challenging working relationships should these arise. These actions sit alongside SG staff employment rights, including, for example, the right to raise a grievance about issues or behaviour they experience at work: grievance policy.

1.4 Powers to make an appointment

Appointments either have a statutory basis (i.e. there is legislation which supports the provision of them) or they are non-statutory in nature.

This guidance does **not** address specific questions regarding relevant powers to make an appointment. Where there are no statutory powers to make an appointment, reliance may have to be made on ministers' common law powers, derived from the Ram Doctrine, to make the appointment.

However, **REDACTED – exemption 36(1) FOISA**

Therefore, it is important that you discuss your proposal with **REDACTED 36 (1)** as soon as possible to determine if a ministerial appointment **REDACTED exemption 36(1)** to take forward your policy intention.

1.5 Before you begin

Ministers will often wish to see such groups or advisers appointed at pace. However, to get to a point where you can bring in external advice or establish an advisory group will take time. You will need to seek advice and guidance from multiple teams and specialists across government, and therefore ministers' expectations should be managed accordingly. It would be inadvisable, for example, for announcements to be made before risks have been properly considered and mitigated. Your HR Business Partner should be engaged at an early stage to assist with any set up and resourcing issues. Your DG will also have a role to play here, as Accountable Officer, and you should ensure that s/he is sighted on the action you are taking.

2. Arranging external advice for ministers

2.1 Before you set up a group or make an appointment

Before setting up a group, writing contracts, making any appointments, or offering advice about any of these matters to ministers, you should first consider:

- What is the task/action/advice needed by ministers?
- Can this be provided in-house by officials?
- Is there an established group, public body, or other channel that can meet ministers' needs or requests?

A minister may request external advice because, for example, officials do not have the necessary expertise, or because the advice of an appointee will provide a perspective beyond that of which officials can provide, and/or a further degree of independence may be of presentational advantage.

To test these assumptions, establish whether expertise is available in-house by referring to the relevant policy areas and specialist professions that are available e.g.: analytical services teams, economists, statisticians etc. If the advice is not available in-house, you should establish whether there is an existing body or service that could provide the required expertise. You should also consider if a framework contract should be put in place to cover any current or potential future skills gaps, or whether a contract is already in place that you can use.

On the issue of advice being independent, remember that a civil servant *“supports the government of the day in developing and implementing its policies, and in delivering public services”* and that civil servants *“are expected to carry out [their] role with dedication and a commitment to the Civil Service and its core values: integrity, honesty, objectivity and impartiality.”* For more information, see **the Civil Service Code**.

2.2 Cases where establishing a group/appointment may not be appropriate

If your impartial recommendation to your Minister is **not** to establish a group
REDACTED under exemption 30 (C)

Remember that accountability for economic, efficient and effective use of all resources sits with the Accountable Officer and so you may seek their guidance if necessary. See the **Scottish Public Finance Manual** which notes that “*Accountable Officers are personally answerable to the Parliament for the exercise of their functions and have a statutory duty to obtain written authority from, as the case may be, the Scottish Ministers or relevant governing body before taking any action that they consider may be inconsistent with the proper performance of their functions.*”

The Portfolio Accountable Officer for each Directorate General is the Director General and delegation of authority flows from the DGs to Directors and Deputy Directors.

2.3 *Internal and existing options for obtaining advice:*

(i) Existing Bodies

There may be an existing body or group which can perform the role you wish to establish: refer to the **Directory of Public Bodies** and also to this **list of groups** on the gov.scot website. Use these to take forward discussion on whether the body is able to accommodate the request for advice. You should also consider contacting relevant policy profession leads to determine if there are existing mechanisms that can serve the Minister’s purpose.

(ii) Commissioning advice through Scottish Government analysts

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

2.4 *Other options for obtaining advice:*

If advice is not available from policy teams or via Scottish Government analysts or through an existing body then you may need to pursue a different route. This route may not necessarily be through an appointment. Consideration should be given at the outset to all options for obtaining the relevant advice. Below is a list of the most commonly used models. It is important to make sure the solution identified for your policy area best fits your requirements before making commitments to individuals or groups.

(a) Adviser

If specialist, external advice is required to advise on a particular policy or programme, you may decide to secure the services of one person, i.e. an

adviser. You will want to fully scope out the role, to determine what the person will do, what deliverables they are to achieve, and by when. This type of model is generally not suitable to be carried out via an appointment and would be more suitable as a **contract for services**.

You should be time specific in when the role will start and end, and what will be delivered at the different stages of the adviser's time in post. An adviser may advise for a number of days per month over a fixed period, or to a maximum number of days within a set period.

Be specific about the sort of advice and how it will be drawn upon. Do you want papers written? Comments on policy or draft government papers? Engagement with stakeholders? Attendance at meetings with active engagement? How can you describe it so that you get what you need?

Sponsor teams should review progress at regular intervals and ensure that the provision of the advice is brought to a close when all deliverables are met or the time period ends. In order to be able to end the relationship early, for example if deliverables are not being met, ensure that there is an appropriate provision in the appointment offer letter or contract. [See below](#).

You will need to decide whether the adviser is remunerated for their input. [See below](#).

Examples of an adviser include: Independent Adviser on Poverty and Inequality, Race Equality Framework Adviser, Fair Access Commissioner.

Considerations:

- an adviser will normally require a dedicated secretariat resource and administrative support. Your HR Business Partner should be involved at the earliest point to assist with resourcing implications
- the adviser may need IT equipment for their role, which would be supplied and billed by iTECS
- the adviser may need to do their own independent research
- **REDACTED**
exemption 30 (c) FOISA
- an adviser would be expected to have the relevant expertise needed to complete the task, but you (or the adviser) may need to engage with others to broaden their experience further.

(b) Working group/advisory group

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

Working groups or advisory groups should meet periodically, for example quarterly, to consider board papers etc. There is usually a chair to lead the group. The chair may be an official, a minister or a relevant stakeholder. Some groups choose to operate with a joint chair, to ensure balance is maintained.

Before setting up, you should be clear about the purpose of the group and what it is to achieve. You will also wish to review the actions of any previous group that existed in this context, to ensure that previous work can be consolidated rather than repeated. Setting its scope and Terms Of Reference at the outset is important to ensure it remains focused and a useful instrument to achieving business goals. Terms Of Reference should make clear roles and responsibilities and expected standards of behaviour. You should communicate clearly to the group the review and end points for its work. Groups should **not** be established in perpetuity.

Careful consideration should be given to whether individuals appointed to working groups should receive remuneration or not. In cases where an individual is employed by an organisation (and therefore salaried), and is sitting on the working group to represent that organisation, remuneration would not be appropriate, as they are already being paid for their work. Travel and subsistence however, may be offered. In other cases, remuneration may be appropriate, for example, an individual who is giving up a day's work to share her lived experience on a working group. In all cases, budgetary decisions should be sustainable, agreed by your relevant Accountable Officer, and in line with Public Pay Policy.

Group examples include: the Ministerial Advisory Group on Child Poverty, National Advisory Council on Women and Girls, and the Drugs Death Taskforce.

Considerations:

- the legal powers to set up the group should be clearly set out
- the secretariat function for working groups will normally be provided by the sponsoring policy area who will have responsibility for preparing board papers etc. Your HR Business Partner should be involved at an early stage to support discussions on resourcing
- the group will not normally be expected to do their own communications or media, as the work will be guided by ministers
- the running costs for these types of groups should be fully considered, and policy teams should also bear in mind that there will be an ongoing cost to teams/directorates in terms of administrative time

Commission

A commission may be established where there is a long-term need for advice or scrutiny on a specific policy or policy area. This is normally high profile with

potential to draw significant levels of interest from the media and stakeholders.

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

A commission will be expected to set its own work plan, agreed by all members, with ministers making requests for particular advice. There is no guarantee these requests will be accommodated. As the commission will be setting its own work plan, be clear at the initial set-up about the purpose of the commission and build in review and end points. You should consider agreeing a protocol together with the commission on roles, responsibilities, expectations, and how and when you will communicate, to avoid misunderstandings arising.

The chair or ministers can recommend the appointment of members to the commission, however ministers should approve all appointments (see below, on appointments). If members are being remunerated, consider whether it is appropriate for the chair to make recommendations on appointments.

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

Considerations:

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- **REDACTED** - Exemption 30 (c) FOISA

- the chair and other members of the commission may need IT equipment and support in their roles, which would be billed by iTECS
- the commission may need help to do its own independent research

- **REDACTED** –Exemption 30 (c) FOISA

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3. Role and remit of the group, board or commission

3.1 Defining the operation of the group

When setting up an advisory group, short life working group, policy board, or commission, the role and remit should be agreed with ministers, together with REDACTED – exemption 36 (1)

FOISA

If group members are appointed to advise, outline what outputs will be required from them, when these will be due, and the interim reporting mechanisms that will keep the group on track.

Be clear on the expectations of the group at the outset. Sponsor teams should agree with ministers in advance how those appointed will operate. Employ **project management good practice** to ensure there is clarity on remit, governance, outputs, communications and that suitable controls are in place. You should also set an appropriate end date for the group, board or commission to complete its work.

Considerations:

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

Consider how the remit links to existing advice providers and stakeholders. This will help make sure there is no duplication and the rationale for this new group or role is clearly understood.

Once the remit, expected outputs and key relationship issues are developed, consider the funding required. You should then get the remit, outputs, key issues and budget agreed and signed off by ministers. You should then develop operational aspects as part of getting the group up and running.

Prior to the appointee taking up post (see section 4, on making appointments), discuss deliverables, remit and scope of the role with them. This will inform the letter of appointment. It is vital there is a clear understanding of the role formed and understood.

3.2 *Terms of reference*

You should formalise how the group will operate, what ministerial expectations are, what the governance arrangements are and what, exactly, the status of the group has (i.e. is it consultative, advisory, etc). Document this in a Terms of Reference (ToR). **REDACTED –** exemption under 36 (1) FOISA

The Terms Of Reference should also outline the rationale for the group, its relationship with ministers and officials, the precise remit of the group, board or commission and expected outputs. The document should be reviewed regularly. Members of the group, board or commission, and officials working with them should all have a copy of the Terms Of Reference. The ToR should also set an end date for your group, even if this is indicative. This will avoid groups being established and continuing long after they have served their purpose.

It is also worth noting that the ToR should reflect the terms and conditions of appointment where these cross over (i.e.: remit / functions of the group; working with the secretariat etc). The terms and conditions of appointment should be set out in writing.

Examples of these documents are available for various bodies, including the **Disability and Carers Benefits Expert Advisory Group**. While this is a helpful example, you should be confident that your own Terms Of Reference reflects the operational context and your own business aims.

You should draft the ToR before any group is finalised and then create a final version as part of the establishment of the group. If you do it this way, be very clear in advance what parts are non-negotiable and which parts require the group's input in order to shape. You want the terms of reference to work for ministers and the government. Ensure the ToR are understood and signed up to by all. The ToR should include the importance of the Civil Service Code and SG standards of

behaviour between members of the group and officials, and what processes will be followed if relationships break down.

4. Routes to arranging advice

There are different routes that can be used to secure the provision of advice. This section explains how you can arrange to have people join working groups, commissions, or come into the government as an adviser.

An appropriate route to enable a person to come into government to provide advice, is to use a **contract for services** or a **service level agreement**. If you are using these, you will need to seek advice from procurement colleagues as well

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4.3 *Making an appointment*

Another route to obtaining advice is through the making of an appointment. There are different types of appointment which require different processes to be followed (see section 1.2). The next section provides more information on types of appointment and the importance, in all cases, of complying with the Ministerial Code when you make an appointment by a Scottish Minister.

- *Public Appointments*

A 'public appointment' is a broad term and can include board members, chairs, non-executive directors, and other roles. A public appointment is usually one made by ministers, the Parliament or the Crown.

- *Are all public appointments regulated?*

No. A 'regulated public appointment' is a specific term and only applies in the Scottish Government where the following criterion is met:

- The appointment, or the body to which the appointment is being made, is in **Schedule 2** of the [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#).

Being added to the Schedule of that Act requires legislation. This is what makes it a 'regulated' appointment and it means that the appointment making process is subject to regulatory oversight by the Ethical Standards Commissioner. It is a policy choice of the sponsor team as to whether to make a ministerial appointment 'regulated' by having it added to the above Act. Sponsor and policy teams developing new public bodies or establishing new appointments should discuss the issue with the [Public Appointments Team](#).

There is often a statutory provision that gives power to Scottish Ministers to make the appointment.

- *Non-regulated appointments*

Where an appointment is not regulated (i.e. it is not in Schedule 2 of the Public Appointments and Public bodies etc (Scotland) Act 2003) there is no requirement to follow the Ethical Standards Commissioner's [Code of Practice](#) in making the appointment. However, **all** appointments made by ministers, or on behalf of Scottish Ministers, must still comply with **Section 5** of the [Scottish Ministerial Code](#)

4.4 Considerations when making an appointment

When an appointment is made by a minister, or on behalf of a minister, policy teams must consider the legal basis for the appointment, how they will source candidates, remuneration, the terms and conditions of appointment, and equalities issues. This

section provides more help on these subjects. You should first familiarise yourself with the different types of appointments that can be made (outlined above at 4.3).

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(b) Compliance with the Scottish Ministerial Code

Once the legal basis is established for a minister to make the appointment, consider how the appointment will be made in compliance with the [Scottish Ministerial Code, section 5](#).

Ministers must be satisfied that the appointment can be made on merit in line with their obligations under **paragraphs 5.3 and 5.6**. There is no definition in the Code about how to ensure that any appointment is made ‘on merit’. However, this could include:

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

Whichever methodology you employ, you should be satisfied that there is an audit trail that evidences the appointment has been made ‘on merit’ against a set of objective criteria or assessment process. It is highly unlikely that an individual who has been identified on any basis other than by an objective, transparent and fair consideration of their suitability will satisfy the “on merit” test, set down in the Code. To appoint such a person who would not satisfy that test, could expose Ministers to suggestions of unfair advantage to certain individuals or “cronyism”.

Where the appointment cannot be made in a manner that complies with the Ministerial Code, then the appropriate route to follow may be a contract for services.

(c) Sourcing candidates

Sometimes ministers may have already identified someone (or a group of individuals) for appointment to a role. However, it is imperative that the Ministerial

Code is complied with and the appointment meets the 'on merit' test, as outlined above.

If the on merit test cannot be satisfied, use the most appropriate way to source candidates for ministerial consideration. This can be achieved through:

- open recruitment – it will be for the individual sponsor or policy team to oversee this
- using a shortlist of suitable, competent individuals provided by policy teams

Where ministers have identified someone for appointment to a role, and the on merit test can't be satisfied, then it is likely the appropriate route to follow is a contract for services. In this instance, you should seek advice from procurement colleagues
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(d) Compliance with Public Sector Equality Duty

In all cases, you will wish to be satisfied that candidates can fulfil the requirements of the role they are being asked to carry out. However, you should also be mindful of Scottish Ministers' commitment to inclusion and diversity in public life, and **ensure the appointment making process fully complies with the Public Sector Equality Duty**. The duty came into force in April 2011 and covers age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. The general equality duty is set out in **Section 149 of the Equality Act 2010**. [Equality Act 2010 \(legislation.gov.uk\)](http://legislation.gov.uk)

(e) Candidates' existing interests

When considering any individual for appointment, it is important to make sure their external interests do not conflict, or appear to conflict, with the role. Ask candidates to declare their interests and political activity – consider these and keep a register. You may find it helpful to read the [Standards Commission guidance](#) on the [Model Code of Conduct](#), which has a section on register of interests, and the [On Board guidance](#) issued by the Public Bodies Support Unit.

As you consider the interests declared, think about the reputational and other risks for each interest and where appropriate ask ministers if the risks are acceptable before any offer is made. Potential risks may be managed by a conditional appointment letter being offered (the condition might be that an action is carried out which removes or reduces the risk. For example, someone stepping down from another role to avoid a conflict of interest arising). Once in post, appointees should notify the sponsor team of any intention to take up new posts, or engage in additional activities or political activity that were not previously registered.

Political activity is sensitive personal data and, along with other candidate information you hold, must be collected and processed in line with [UK General Data](#)

[Protection Regulation \(UKGDPR\)](#); ensure you have a retention policy that outlines for how long you will hold the data.

(f) Offers, records of appointments, and terms and conditions

It is important that you issue a formal record of the appointment that fully outlines terms and conditions, and retain a copy of this for your records. This can be done by issuing a letter of appointment. When preparing a letter of appointment, use this **draft letter of appointment**. This template has been drafted for the purposes of regulated appointments but may provide a useful **starting point** for non-regulated appointments. This letter **should be adapted to your own context**, but make sure you **REDACTED – under exemption 36 (1) FOISA**

Letters of appointment should, at a minimum detail:

- the legal basis on which an appointment is being made
- the status of the appointee (i.e. that they are not civil servants and that no employee or service agreement is formed via the terms and conditions)
- what the appointee is expected to do and within what timeframe (and the maximum amount of time they should spend on that task)
- expected levels of conduct of the appointee
- who owns the 'product' of the task(s)
- remuneration and expenses (if applicable)
- relationship with the Scottish Government (if a secretariat is provided of civil servants) and
- the grounds for ending the appointment

Before offering any terms of appointment, drafts of letters should be **REDACTED – under exemption 36 (1) FOISA**

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Conditional offers

It may be appropriate to make an offer of appointment subject to certain criteria being met, for example a basic disclosure check being provided satisfactorily (see below) or evidence of the right to work in the UK, or reducing risks in respect of conflicts of interest. Avoid announcing an appointment until the criteria in the offer letter have been met.

Length of appointment

The length of an appointment should be agreed at the outset. This will largely be determined by the task involved and the outputs expected. You will also wish to agree the number of days per week, or per month that you expect the appointee to dedicate to their role. It may be possible to reappoint, however you should avoid creating an expectation that reappointment will occur.

Budget

A budget must be in place to cover any expected remuneration and travel and subsistence for the period of the appointment. **(see section 5: “remuneration”)**

5. Remuneration

When you are making an appointment, you should consider whether individuals should be remunerated or not. For instance, if you wish to appoint an individual to your group who works for a particular organisation, it may not be appropriate to remunerate them, as the work they will perform is part of their professional role, for which they already get paid. However, there will be other cases where remuneration, or receipt of expenses is appropriate. In all cases you should consider ministers' commitment to Fair Work ([Do you have Fair Work?](#)). As Accountable Officer, your Director General must ensure that all spending decisions can be justified and maintained for the life of the appointment.

5.1 *Equal Pay*

In the case of groups, there may be cases where some members of the group are remunerated and others are not. For example, individuals who are on a group representing the organisation they work for, will not be remunerated, but other individuals who are giving up a day's work to serve on the group to share their lived experience, may well be remunerated. However, you should always be mindful of equal pay risks. This legal protection also applies to holders of public office, including ministerial appointees.

Both men and women can cite a comparator of the opposite sex in an Equal Pay claim. The comparator need not be on the same group, body, or indeed organisation, they just need to be carrying out a similar role and in receipt of a higher level of remuneration. A claimant may choose to bring a sex discrimination claim in the Employment Tribunal as well as, or instead of, an equal pay claim.

To manage the risk of equal pay claims, it is therefore important to seek, and accept, the advice of Public Sector Pay Policy colleagues (and the Remuneration Group) who provide advice on what is an appropriate level of reward for the role that is being undertaken. Disregarding this advice, and setting remuneration higher than advised, can act as a comparator for all successful claims, with resultant financial impact felt across Government.

5.2 *Determining a fair level of remuneration*

Public Sector Pay Policy must be consulted to determine the appropriate level of remuneration. This must be done **before** individuals are approached, and **before** any announcement is made. In this way, remuneration can be arrived at fairly, avoiding ministers from back tracking on who they have already announced, or having to accede to unreasonable levels of reward. Remember, that it is for the Scottish Government to determine what is an appropriate level of remuneration, not the appointee themselves.

Remuneration levels must be in line with [pay policy](#).

If you decide that appointees are to be remunerated, think about:

1. How will they be paid?

There are different methods by which an individual can receive their remuneration.

(a) Ministerial appointments are normally paid through payroll. However, you should engage your HR Business Partner as early as possible, who will liaise with SG payroll colleagues to determine whether this is possible. The [Tax Planning and Tax Avoidance section](#) of the Scottish Public Finance Manual (SPFM) gives advice on payroll and taxation. If this is to be done through SG payroll, contact relevant colleagues via the HR Business Partner.

(b) If someone is recruited as a contractor (rather than an appointee) to provide advice, consult colleagues in procurement and consider procurement notices on tax arrangements of Scottish public sector workers and [Change to tax legislation for temporary workers](#).

(c) You should consider why the individual does not qualify as an employee for tax purposes as set out in [HMRC/IR35 guidance on employment status and off-payroll working](#) through an intermediary (IR35) and read [guidance on interim workers and IR35](#). A simple way to determine this is whether the individuals concerned can appoint or delegate the work to another person. If they cannot – and they are appointed as an individual – then it is not a contract for a service (and therefore also no VAT is payable on the daily fee).

2. What is a reasonable rate of remuneration?

In all cases, it is for Public Sector Pay Policy colleagues to determine the appropriate level of remuneration in line with pay policy. It is not for the sponsor or the individual themselves to suggest a sum based on what other people receive, or what they believe the individual deserves based on 'reputation'. Public Sector Pay Policy colleagues will determine the appropriate tier from the Pay Policy Daily Fee Framework ensuring that it is in line with pay policy and will gain the necessary approval (via Scottish Government senior officials or the remuneration group) set out in the [Public Sector Pay Policy Technical Guide](#). The pay policy is a means of ensuring consistency, equity, and responsible use of the public purse.

3. How to approach the issue

To assist Public Sector Pay Policy colleagues in their determination of the appropriate level of remuneration, you should provide them with details of the scope of the role, what duties the individual will be asked to perform, whether there is budgetary oversight, and the impact of the role. Remuneration should be based on what role the individual is being asked to carry out, rather than, for example, how much that individual could earn in the private sector, or how much their reputation might command elsewhere.

4. Fiscal responsibility

Erroneous comparators should not be used as a means of justifying high levels of remuneration. For example, an individual performing a relatively simple role should not expect to receive the same high level of remuneration as one of their peers/colleagues who has been appointed to perform an entirely different, more complex role for a different team. Comparators, where these are relevant, should be based on the function and role performed, not on the reputation or professional standing of an individual.

6. Remuneration Group

Some remuneration proposals may need to be escalated to Remuneration Group (RG) for consideration. This is usually only those proposals above a certain level or where there is a disagreement on the appropriate tier determined by Public Sector Pay Policy. Public Sector Pay Policy Team provide a template for such proposals for RG to consider, providing official comments and support for the Sponsor Team. One of the key roles of RG is to ensure that decisions taken on all remuneration proposals apply pay policy fairly and consistently and give due consideration to equality and diversity.

7. Presentational issues

In considering an appropriate level of remuneration, you should consider what the public, parliamentary and media reaction would likely be to the level of daily fee or total anticipated fees that you are considering as reward. Would it be considered excessive, or an appropriate use of public money?

5.3 *Expenses*

You should consider whether claims can be made for expenses that are incurred as a result of the appointee carrying out their role. The basic principle is no appointee should be out of pocket as a result of expenses arising from their appointment, **provided such costs are considered reasonable.**

Sponsor teams should have clarity on what expenses can and cannot be claimed for, and confirm with the appointee exactly what is and is not permissible, at the outset.

Public Pay Policy states that appointees' terms of appointment should provide that travel expenses should be paid at standard Scottish Government travel rates and have regard to the Scottish Government's Travel Management policy on air and rail travel.

You should engage with your HR Business Partner who can provide support.

In line with [HMRC guidance](#), expenses for travel and subsistence must be paid through payroll to account for the tax and NI contributions due.

Follow the [guidance on travel and subsistence](#).

6. Timescales and Induction

This section summarises how long the appointment process takes, what you need to do in this time, and what induction processes you should consider to ensure your appointee is able to commence their role.

6.1 *Timescales*

Timescales vary for the process of making appointments, but any estimate should be based on:

- the need identified
- how urgently the advice is needed
- how developed the role profile is
- whether a short list of candidates has already been identified for the role (remembering that appointments should be made on merit)

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

The appointment process for **regulated ministerial appointments** typically takes 20 weeks.

However, even for **non-regulated appointments**, (i.e. those which are either statutory non-regulated, or ad hoc using common law powers) you should remember that you will need to **REDACTED – under exemption 36 (1) FOISA** and Public Pay Policy, and therefore you should build in adequate time for colleagues to provide you with the necessary advice.

Once the appointment is confirmed, the time taken to get started will vary depending on the subject matter, the appointee's familiarity with Scottish Government operations and the skills and experience of the secretariat. It can take time for appointees to become familiar with the role and produce the required outputs. It will also take time for appointees (where this is applicable) to be issued with security clearance and passes, IT and other equipment.

6.2 *Baseline Personnel Security Standard (BPSS) and Basic Disclosure checks*

There is more information on BPSS here. **REDACTED – exemption 30 (c) – FOISA** Note that BPSS is more than a Basic Disclosure certificate. Securing BPSS should be considered as a conditional clause in an offer letter of appointment.

6.3 Induction process

You should prepare a formal induction for those being appointed, following the Public Bodies Support Unit's [On Board guidance](#). The induction should include:

- background briefing from the relevant policy unit
- a programme of introductory meetings with key individuals (internal and external)
- introduction to the policy area such as directorate structure and responsibilities and an overview of other areas if the policy is cross-cutting
- details of the reporting structure, for example, the chair reports to the lead minister on a regular basis
- a clear outline of the requirements, such as the focus on a particular piece of work, or subject area, the output required or expected and timelines for this
- details of a sponsor contact/secretariat who can answer any questions, and details of an appropriate escalation contact
- arrangements for maintaining regular contact between the sponsorship division and those being appointed to ensure there are no undisclosed issues
- the SG standards of behaviour expected between group members and civil servants. These can be found here: [Standards of behaviour](#)

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

6.4 Extending a role or a group, or changing its functions

Sometimes the advice required by Ministers will evolve over time. An appointee, advisory group, short life working group or commission set up specifically to do a focussed piece of work may then be asked to take on follow-up functions or roles as the work progresses. If this happens, you will need to carefully consider if the original remit can be extended in this way and **REDACTED** –

under exemption 36 (1)

FOISA

You should make sure that all those involved (group members, appointees, ministers, other relevant policy teams who have an interest in the work) have agreed and are clear about any new roles, remits and expected revised outputs. You should check the terms of reference document to see if this needs to be updated to reflect any changes in a revision of role. You should check letters of appointment to see if these are still valid or whether an amendment is necessary, or a new letter needs to be drafted, cleared and issued. If the appointment was set to end on a particular date, then you will need to issue a new appointment letter, to cover the new term of appointment. If the role has changed significantly but remains lawful, you may also need to revisit the issue of remuneration.

7. Support for appointees

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

It's important those who are appointed are supported and their remit is clearly defined. If you're unable to consider all the issues described in all parts of this guidance before the appointment is made you should do so as soon as you can.

7.1 *Secretariat*

In most cases, a basic level of administrative support is needed to organise meetings, facilities or venues, organise travel and collate background information from Scottish Government policy officials where necessary. **REDACTED – under exemption 36 (1) FOISA**

You should also engage with your HR Business Partner to provide support on the staffing implications that might be involved.

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

REDACTED – exemption 30 (c)

FOISA

7.2 *Line management of secretariat*

Consider whether secretariat members should be line managed within the sponsoring unit or directorate. Depending on the grade of the most senior secretariat member, management within the unit or directorate may be preferred for close policy contact, maximum influence and working on a day-to-day basis alongside colleagues on related issues. Involve your HR Business Partner who can assist with these discussions.

However, managing outwith the directorate may help in avoiding any conflicts of interest arising. These might arise between policy leads, who may be defending a particular policy stance, and secretariat staff, who are working for an adviser who may be critical of that position. This can also help make sure the adviser(s) are seen

by external stakeholders as being autonomous. If line management is outside of the directorate, close links to the sponsoring policy area will need to be developed.

7.3 Performance management of appointees or group members

The Terms of Reference for the group, or the letter of appointment for an appointee, should make clear how the government will know that the appointee or group is achieving what the group or individual is there to do, as well as what they are meant to achieve. Individual review points should be built in and a named role within the government should have responsibility for assessing whether or not aims and objectives are being met and how.

7.4 Base location

You should consider whether the secretariat will be housed within the sponsoring policy area, or another area of the Scottish Government. In some instances it may be appropriate to consider external premises. However, sourcing accommodation will require significant time and there will be cost implications. Consideration must be given to the line management and overall wellbeing of secretariat staff. You should follow current government guidelines on Covid. [Coronavirus \(COVID-19\) guidance index](#) . **Your HR Business Partner should be your first point of contact.**

7.5 Recruitment of secretariat

The advisory group, short life working group or commission cannot influence the recruitment of civil servants. If the secretariat is made up of Scottish Government officials, it's important they are recruited through open and fair recruitment in line with Scottish Government guidelines. You should involve your HR Business Partner to have early discussions.

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

7.6 Analytical services

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

7.7 Communications support

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

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

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

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

7.8 Digital engagement and web support

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

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

7.9 Publications

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

7.10 Branding

You should not create or commission any new brand identities, logos or visual representations in order to brand a programme of work for either internal or external audiences. You can apply for an exemption though. If you want to apply for an exemption, submit a business case to the [contracts and publishing team](#).

7.11 Filing and storage

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

7.12 IT hardware

IT hardware can be loaned to individuals where sponsor teams feel it is appropriate. You should contact **iFix Portal – Workstation Services** for assistance.

7.13 Security and passes

REDACTED – exemption 30 (c) – and out of scope of FOI



7.14 Data protection

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

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

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

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

7.15 Freedom of Information (Fol)

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

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

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

7.16 National Directory of Public Bodies

The [National Directory of Public Bodies](#) records information about devolved public bodies. The Directory is maintained by the Public Bodies Support Unit and one of the recently added sections requires the recording of organisations which are **not** public bodies. If you are setting up a Ministerial organisation please liaise with the Public Bodies Support Unit so that consideration can be given as to whether the entity should be shown in this section of the Directory.

7.17 Conduct

The Model Code of Conduct sets out the conduct expected of those who serve on the boards of public bodies in Scotland. The Code has been developed in line with the nine key principles of public life in Scotland. More information on this can be found here: [Members of devolved public bodies: model code of conduct - December 2021 - gov.scot \(www.gov.scot\)](#). Where an organisation is listed in schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 then the requirements and regulation applying as a consequence of that Act should be understood.

8. Support for SG staff

The Terms of Reference and terms of appointment must cover the standards the group is working to and state the grounds of removal from the group – refer to the [Civil Service Code](#), the [SG values](#) and the [SG Standards of Behaviour](#) in these documents. Cover these items in the appointees' induction session to give external appointees a chance to discuss and ask questions about them.

As outlined above at (7.1) **REDACTED** –

under exemption 36 (1)

8.1 *Where to find support*

In the vast majority of cases, arranging external advice for Ministers is constructive and beneficial to all parties. On rare occasions, however, secretariats and sponsorship teams may need support if working relationships with appointees or members of external groups don't quite go to plan.

If this happens to you, discuss it with your line manager as soon as possible and make your senior team aware; also inform your Director General.

8.2 *Unacceptable Actions*

Colleagues may wish to refer to the Unacceptable Actions Policy that sets out the steps to protect our staff or to ensure that our ability to work effectively is not undermined.

If you wish to discuss a situation, you can contact the Propriety & Ethics team, with the agreement of your line manager: **Redacted** – exemption 30 (c)

