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The Rt Hon Nicky Morgan MP  
Treasury Committee  
House of Commons  
London, SW1A 0AA

17 January 2019

Dear Nicky,

Pre-appointment scrutiny by select committees has been a part of the public appointment process since 2008. It has applied to a number of appointments where an added level of scrutiny of the overall process provides an additional safeguard to verify that the recruitment meets the principles set out in the Governance Code for Public Appointments. In this way, select committees play a valuable role in holding the executive to account.

As you may be aware, in the Government's response to PACAC's inquiry into pre-appointment scrutiny of public appointees by select committees, the Government committed to publishing revised guidance on pre-appointment scrutiny, including criteria about which posts should be subject to scrutiny. Following engagement with the Chair of the Liaison Committee, the Government has now finalised these criteria and I am pleased to be publishing updated guidance today. This includes a list of the posts which the Government believes should be subject to pre-appointment scrutiny as assessed against the criteria.

I recognise that there are some additional posts for which bespoke arrangements have been agreed between your committee and the Treasury. These have not been included in the list of posts annexed to the guidance published today, as they are outside of the scope of this list. However, we would expect similar principles from the guidance, where relevant, to apply.

It is for select committees themselves to decide which decisions of the Government, including appointments to a role, they wish to scrutinise. Pre-appointment scrutiny operates by way of the Government agreeing to make certain information available to parliament, including the identity of the proposed candidate, in advance of Ministers taking a final decision about that Public Appointment. The roles that the Government has agreed, by convention, to undertake this process with, are those set out in Annex D of the new guidance.

In relation to all other Public Appointments, and outside of the appointment process itself, it is of course, open to the relevant select committee to take evidence from anyone they choose, including the individual that a Minister has decided to appoint to that role.

We have committed to an annual update of this list and the process for this, and the criteria against which any public appointment role will be assessed, is set out in the guidance. There will be a regular opportunity for roles suggested by select committees to be considered for addition to the list. Any changes to the list will need to be made by agreement between the Select Committee, the Chancellor and the Cabinet Office.

The new guidance also sets out more detail about the information that departments should provide to select committees, how to improve the support given to candidates who are subject to pre-appointment scrutiny, and a clearer approach to timely and respectful engagement with select committees before and after their scrutiny.

We hope that setting out the guidance in this way gives you clarity and assurance on the process, and provides you with an opportunity, in the future, to suggest other roles that might meet the criteria for inclusion.

I am copying this letter to the Chancellor of the Exchequer and the Permanent Secretary at HM Treasury.

A handwritten signature in blue ink, appearing to read 'Oliver Dowden', with a long horizontal line extending to the right.

**Oliver Dowden CBE MP**



Cabinet Office

# Cabinet Office Guidance: pre-appointment scrutiny by House of Commons select committees

January 2019



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## Foreword

There are over 1,000 public appointments made by Ministers or under delegation every year. These appointments are to a wide range of public bodies and are made following the Governance Code for Public Appointments, which sets out the principles by which they should be made. The Commissioner for Public Appointments provides independent assurance but Ministers are ultimately accountable and responsible for the decisions taken about appointments.

Pre-appointment scrutiny by select committees has been a part of the public appointment process since 2008. It has applied to specified appointments, selected against criteria that are set out in this guidance. For these posts, the added level of scrutiny of the overall process provides an additional safeguard to verify that the recruitment meets the principles set out in the Governance Code for Public Appointments. This updated guidance provides an updated list of posts that the Government considers to be subject to pre-appointment scrutiny and sets out expectations on departments to make sure the engagement with select committees and candidates is carried out appropriately. The Liaison Committee of the House of Commons has also published guidelines for select committees conducting pre-appointment scrutiny. While these are not binding on government, you should consider those alongside this guidance.

This guidance is made in support of paragraph 10.1 of the Governance Code on Public Appointments and replaces the Cabinet Office Guidance: pre-appointment scrutiny by House of Commons select committees issued by the Cabinet Office in 2013. The Governance Code can be found online at:

<https://www.gov.uk/government/publications/governance-code-for-public-appointments>

Any questions arising from this guidance should be raised with your departmental public appointments team. If additional advice is required, any questions should be directed to the Cabinet Office's Public Appointments Policy Team at:

[publicappointments@cabinetoffice.gov.uk](mailto:publicappointments@cabinetoffice.gov.uk)

## Introduction

1. Pre-appointment scrutiny by select committees is an important part of the process for some of the most significant public appointments made by Ministers. It is designed to provide an added level of scrutiny to verify that the recruitment meets the principles set out in the Governance Code on Public Appointments. This scrutiny may involve the relevant select committee requesting and reviewing information from the Department and the Minister's preferred candidate. The select committee may also choose to hold a pre-appointment hearing.
2. This guidance sets out those posts which require pre-appointment scrutiny by a select committee, the criteria and process for amending this list, and the procedure for departments to follow in public appointment competitions where pre-appointment scrutiny is involved.
3. In certifying that an appointment has been made in accordance with the Governance Code on Public Appointments, as required by paragraph 7.3 of the Code, the relevant accounting officer or senior representative must also satisfy themselves that the relevant requirements in this guidance have been adhered to.
4. Pre-appointment hearings are held in public and involve the select committee taking evidence from the Minister's preferred candidate. These public hearings take place before an appointment is confirmed, but after the selection process has taken place. In the majority of cases it will be for the relevant departmental select committee to hold the hearing.
5. There may be occasions where the involvement of other select committees may be necessary. This should be considered on a case by case basis and resolved by the Chair of the relevant select committee and the appointing Minister. The House of Commons Liaison Committee and the Cabinet Office should also be consulted.
6. Where a public appointment is subject to pre-appointment scrutiny, it is a matter for the relevant select committee to decide whether to undertake such scrutiny, including whether to hold a pre-appointment hearing. Following a review of the information provided by the Department, the select committee may decide that a pre-appointment scrutiny hearing is not required before it publishes its report, if it agrees with Minister's choice of candidate.

## Roles subject to pre-appointment scrutiny

7. The only public appointments which are subject to pre-appointment scrutiny are those set out in the list at Annex D. Changes to this list, including adding new posts, must be agreed between the appointing Secretary of State, the relevant select committee Chair and the Cabinet Office, applying the criteria in paragraph 8 below.
8. The Government uses the following criteria to assess whether a public appointment should be subject to pre-appointment scrutiny as part of the appointment process:

- i. posts which play a key role in regulation of actions by Government;  
or
  - ii. posts which play a key role in protecting and safeguarding the public's rights and interests in relation to the actions and decisions of Government; or
  - iii. posts in organisations that have a major impact on public life or the lives of the public where it is vital for the reputation and credibility of that organisation that the post holder acts, and is seen to act, independently of Ministers and the Government.
9. In most instances, such posts will be the chair of the board of an organisation or an individual office, rather than all non-executive members of that organisation.
10. The Cabinet Office will update and re-issue the list at Annex D annually to capture changes to bodies or departmental responsibilities, bodies being created or ceasing to exist.
11. When establishing a new public body, departments should ensure that they consider whether any public appointments to that body would meet the criteria in paragraph 8. They should seek guidance from the Cabinet Office and also discuss this with the relevant select committee Chair in a timely manner before establishment of the new body. Following this engagement, the agreement required by paragraph 7 should be sought.
12. The list will be published on the websites of the Cabinet Office and of the Liaison Committee. Where a body is moved as a result of a machinery of government change, there is a presumption that the post will remain subject to pre-appointment scrutiny.
13. In cases where there is disagreement about whether an appointment should be added to the list, the relevant select committee may consult the Liaison Committee and the Cabinet Office.

## Early engagement with select committees

14. Where a post is listed at Annex D as being subject to pre-appointment scrutiny, it is important that the appointing department engages early with the relevant select committee. Consideration should be given to ensuring that wherever possible engagement takes place outside of recess, recognising that during recess periods it may take longer for select committees to respond.
15. The Department should consult the Chair of the select committee about the proposed selection process before a recruitment exercise begins. This includes sharing the job description and person specification, a proposed outline of the timetable for the campaign and any relevant information about the proposed advertising strategy. If the appointment is to be made pursuant to any statutory provision, it is helpful to inform the committee of any statutory requirements the Minister must take into account when making the appointment (see paragraph 34 for further details).
16. In order to finalise the timetable for the campaign, the clerks to the relevant select committee and the Department should work to identify a suitable date for any pre-appointment hearing to take place. Wherever possible, departments should

ensure that the end of the selection stage does not coincide with the beginning of any long parliamentary recesses. Departments must allow sufficient time in their planning for information to be provided to the relevant select committee in a timely manner.

17. Having provided the information in paragraph 15 to the Chair of the relevant select committee, the Department should allow for at least one week for the committee to meet, consider the information and to feed back its views. The Department should provide written reasons where any suggested amendments or recommendations have not been incorporated. This response must be approved by the appointing Minister.
18. There may be unforeseen delays to campaigns, for example where a number of candidates are unable to make the planned date for interview. In such circumstances the Department should keep the clerks to the relevant select committee apprised of progress and make arrangements for a revised timetable for any pre-appointment hearing in good time.
19. If an incumbent is being reappointed, it is good practice for the Department to inform the relevant select committee.

## Before the hearing takes place

### Preparing the select committee

20. At least seven working days in advance of the scheduled date for the pre-appointment hearing, unless otherwise agreed, the Department should provide the relevant select committee with the information required to conduct pre-appointment scrutiny (see Box 1, below).
21. When sharing information with the relevant select committee the Department should recognise that the information shared may be published and must be content that such publication would be lawful. Departments should also ensure that candidates are aware that the relevant select committee may publish all information submitted to it, unless explicitly agreed otherwise. Confidential information relating to the appointments process – for example names and other personal information on other applicants, completed copies of diversity questionnaires, copies of the selection panel's assessments, etc. – should therefore not be shared.

### Preparing the candidate

22. All those involved in the selection process for a public appointment that is on the list at Annex D and therefore subject to pre-appointment scrutiny should be made aware of this fact, and the possibility of a pre-appointment hearing from the outset. This should be stated clearly in all publicity relating to the post so that all applicants are aware and should set out what this part of the appointment process may entail. Required wording for job specifications is included at Annex A.
23. Departments should be conscious that the majority of candidates will never have appeared before a select committee and therefore should ensure that they allow sufficient time for the candidate to be properly briefed and supported before they attend any pre-appointment hearing. This includes making time available with relevant Senior Civil Servants and the appointing Minister, should that be appropriate.

### **Box 1. Providing information to select committees**

#### Information about the preferred candidate

Name of the preferred candidate

Their current CV (redacted for publication)

Declaration of relevant interests made by the candidate

Declaration of relevant political activity made by the candidate required under paragraph 9.2 of the Governance Code on Public Appointments

Proposed terms of appointment and remuneration (if any)

#### Information on the campaign (see Annex B for proforma)

Timeline of the campaign.

Where relevant, an outline of any specific advertising strategy employed.

Details of the Advisory Assessment Panel (name, organisation, and role on the AAP).

Overview of the field:

- number of applicants;
- number of candidates invited to interview;
- number of candidates found appointable; and
- aggregated diversity data (where this can be suitably anonymised).

Where the select committee uses a pre-appointment scrutiny questionnaire, early engagement should be made with the clerk so that the questionnaire is obtained in advance and can be returned, completed, at the same point as the information above. Where the questionnaire is provided later it must be returned at least five working days in advance of the scheduled hearing so that the select committee has the opportunity to consider its contents. The areas where you may be expected to provide information to the select committee as part of the questionnaire are set out at Annex C.

24. Departments should discuss any information that they propose to share with the relevant select committee (Box 1 above) with the candidate and allow them the opportunity to comment on this. Where the relevant select committee is using a pre-appointment questionnaire, the Department should provide support to the candidate so that it can be completed in a comprehensive and appropriate manner. The Department should also discuss with the clerks to the select committee any particular issues or sensitivities, and should also remind the candidate that they can discuss any reasonable adjustments they require to reflect their specific needs with the select committee clerks.
25. The candidate will need to be able to withstand parliamentary and public scrutiny should they take up post and the select committee may wish to test this. Candidates should be encouraged to speak directly to the clerk to the relevant select committee, who will normally be happy to discuss the select committee's likely approach.

26. While the content of the questioning of the candidate during the hearing is a matter for the committee, the Public Administration and Constitutional Affairs Committee's Tenth Special Report of Session 2017-19 into Pre-Appointment Hearings recognises that "Chairs of committees have a particular responsibility to ensure courtesy and moderation in the questioning of candidates.". Questioning during hearings should be relevant to a candidate's professional competence and personal independence and relate to how an individual would plan to undertake the role and the experience and expertise they would bring. In the past, candidates have not been expected to understand the intricate workings of the body for which they would have responsibility, though such questioning may feature in evidence sessions after an individual has taken up post. Candidates should be made aware that they are entitled to appeal to the Chair of the committee if they do not feel it appropriate to answer a question put to them. Candidates' attention should also be drawn to the relevant sections of the [Liaison Committee's guidance](#) about pre-appointment scrutiny. The candidate will need to be aware of the provisions in the [Code of Conduct for Board Members of Public Bodies](#) and be prepared to explain to the select committee how they will meet them. They may also wish to draw on the Code of Conduct for Board Members of Public Bodies to explain how they plan to handle their affairs.

## The select committee report and the Minister's decision

27. Once the name of the candidate who will be subject to pre-appointment scrutiny is in the public domain, the Minister may explain the reasons for selecting the proposed candidate. If they do so, they must also be clear that the final decision will not be taken until the select committee has reported and the relevant steps in paragraphs 28 to 35 below have been followed.
28. Following the evidence session, the relevant select committee will usually prepare a report to the House containing its views on the suitability of the candidate. The candidate and the Minister will usually receive the report under a 24-hour embargo, to allow the candidate and the Minister time to consider the report and prepare a response to any specific points it contains.
29. On receipt of the report, the Government will consider the contents carefully before deciding whether to proceed with the appointment. In the majority of cases where an open and transparent process has been followed, the candidate has been selected on merit, and where engagement of the select committee has taken place, the select committee is likely to agree that the Government's preferred candidate should be appointed.
30. Previously, where select committees have had concerns about the appointment of the Government's preferred candidate, they have raised these concerns in private correspondence or discussion with the Minister as an alternative to issuing a report in the first instance. In these circumstances, the select committee can agree that the Minister shall inform the candidate of the select committee's reservations before a formal report is made to Parliament.
31. In a scenario where the select committee, the candidate and the Minister cannot reach any compromise (for example, the candidate choosing to withdraw), then the select committee can be expected to issue its report and the Minister will then proceed to make his or her decision.
32. In relation to the findings of the select committee, Ministers should weigh the views of the committee carefully against the evidence from the appointments

procedure to reach a final view. They must ensure that the decision is made fairly, taking all relevant considerations into account.

33. Where the select committee's report raises concerns about a candidate and the Minister, having considered the evidence, is minded to proceed with the appointment, the Minister should write to the Chair of the relevant select committee setting out the Minister's position about each of the findings and explaining their overall decision. Where possible, this should be provided to the Chair of the relevant select committee for them to share with the members of the select committee in advance of a public announcement. However, it is also important that if a Minister has decided to proceed with the appointment, that they are able to respond to any resulting public debate about the candidate.
34. Where the appointment is a statutory appointment, there may be significant legal constraints as to what the minister may lawfully take into account in reaching a final decision. If the Minister is minded not to proceed with the appointment in such cases, departments must seek legal advice before any decision is made. Pre-appointment hearings and select committee reports are proceedings in Parliament and subject to Parliamentary privilege: legal advice should therefore be sought if there is any prospect that these proceedings might be questioned in a court or tribunal. Departmental legal advisers may wish to seek advice from Government Legal Department lawyers within the Cabinet Office Legal Advisers Team. The Cabinet Office should also be consulted.
35. Where the relevant select committee recommends against the appointment of a candidate and the Minister decides not to proceed with the appointment, if the report of the advisory assessment panel has identified more than one appointable candidate, the Minister may alternatively propose one of the candidates from that list for appointment. In this instance a further pre-appointment hearing would most likely be held to assess the new candidate. The Department should make an early approach to the select committee clerk to identify a suitable date for a second hearing. It is also open to the Minister to choose not to proceed with the appointment and to re-run the competition. If this is the case, the Department should notify the relevant select committee of this decision.

## Other roles subject to pre-appointment scrutiny

36. Some roles which are not formally public appointments but are similar in nature are also subject to some form of pre-appointment scrutiny. These are listed at the end of Annex D. The principles and spirit of this guidance should be followed by departments, where relevant, in preparing for the respective parliamentary scrutiny of those roles.
37. In some limited cases, roles may be subject to 'pre-commencement' scrutiny, after the Government has reached a final decision on the candidate for appointment, but before they have taken up that role. The select committee is not involved in the appointment process. This guidance does not extend to such roles, although principles about preparing the candidate should be observed.

## Annex A: Suggested wording for candidate packs

### Pre-appointment scrutiny

This role is subject to pre-appointment scrutiny by the [INSERT RELEVANT SELECT COMMITTEE] select committee.

Pre-appointment scrutiny is an important part of the appointment process for some of the most significant public appointments made by Ministers. It is designed to provide an added level of scrutiny to verify that the recruitment meets the principles set out in the Governance Code on Public Appointments.

The pre-appointment scrutiny aspect of the appointment has two parts.

First, information concerning the appointment and the Minister's preferred candidate will be shared with the relevant select committee. As part of this process you will need to be content for your name and your CV to be shared with the Select Committee as the Government's preferred candidate. You may also be required to complete a pre-appointment hearing questionnaire which could include, among other things:

- declarations of any relevant potential conflicts of interest,
- what you see as the priorities and key risks for the organisation,
- questions about how you would lead the board and work with stakeholders,
- your commitment to standards in public life and how you would handle being in the public eye.

Normally any information provided to the select committee by the Government or a candidate will be published.

Second, it is likely that the select committee will decide to call the Government's preferred candidate to a public hearing before the select committee to answer questions relating to their suitability to the role. You would not be expected to have an in depth technical knowledge of how the body works or an exact plan of what you would do in the role, however you will be expected to provide a credible representation of your understanding of the work of the body and what your role in its future would be.

The proposed date for a pre-appointment hearing for this role is on [INSERT].

The Government is committed to making the public appointments as accessible as possible so that no one is deterred from applying. The Department will provide support to you to help you prepare for the hearing and the clerks to the select committee will also be available to discuss with you how the hearing will run. You will also be supported by the Department in working with the select committee should you require any adjustment to enable you to participate fully in the hearing process.

For more information about pre-appointment scrutiny, please see the 'Cabinet Office Guidance: Pre-appointment scrutiny by House of Commons Select Committees'. [ADD LINK]

The Liaison Committee also publishes [guidelines](#) to select committees for pre-appointment.

You may also find it helpful to review the Code of Conduct for board members of public bodies here: <https://www.gov.uk/government/publications/board-members-of-public-bodies-code-of-conduct> which sets out the expectations which the Government places on non-executive members of public bodies.

## Annex B: Proforma for departments to provide campaign information to select committees

Campaign Launch Date	(date role was first published on the Public Appointments website)
Campaign Closing Date	(date campaign closed)
Reason for any changes in timetable to that originally published	
Advertising strategy	(note any additional advertising strategy undertaken)
Advisory Assessment Panel	Panel Chair: IPM/SIPM: Other Members:  (including name, position and organisation)
Number of applicants	
Number of candidates invited to interview	
Number of candidates found appointable	

### Diversity data<sup>1</sup>

**Table A: Gender**

	Percent Male	Percent Female	Percent Identify another way	Percent Not declared
Applicants <sup>2</sup>				
Shortlist <sup>2</sup> (applicants invited to interview)				

**Table B: Ethnicity**

	Percent White	Percent Ethnic minority	Percent Not declared
Applicants <sup>2</sup>			
Shortlist <sup>2</sup> (applicants invited to interview)			

**Table C: Disability**

	Disabled	Non-disabled	Not declared
Applicants <sup>2</sup>			
Shortlist <sup>2</sup> (applicants invited to interview)			

**Notes on diversity data**

1. Departments must consider their obligations under data protection legislation when sharing this data with select committees. Candidates must be made aware at the outset of the campaign that their data will be shared with the select committee in this way. The data should not be shared in a way which means that individuals are identifiable.
2. Departments should follow ONS guidance on [statistical disclosure control](#) to meet this requirement. Where there are fewer than 5 candidates in any given category, diversity data must not be shared as this is potentially identifiable. For example if you have six women and four men on a shortlist - you should not give any gender information.

## Annex C: Candidate questionnaires

Alongside the information that the Department provides to the relevant select committee, the select committee may use a questionnaire to elicit further information. This is to help consider whether a hearing is required and to help inform and focus the select committee's questioning. The answers will normally be published alongside the committee's report on the appointment.

Areas that questionnaires are likely to cover include:

- Motivation for applying for and taking on the role
- Potential conflicts of interest that are relevant to the role
- The candidate's view of the organisation
- Priorities for the role
- What the candidate views as success and how their performance should be judged
- How the candidate plans to carry out the role, including their relationship with the Government

## Annex D: List of posts subject to pre-appointment scrutiny

### **Regulated Public Appointments**

#### **Attorney General**

HM Chief Inspector of the Crown Prosecution Service

#### **Department for Business, Energy and Industrial Strategy**

Chair of the Committee on Climate Change

Chair of the Competition and Markets Authority

Chair of the Gas and Electricity Markets Authority

Groceries Code Adjudicator

Chair of the Regulatory Policy Committee

Chair of UKRI

#### **Cabinet Office**

Chair of the Advisory Committee on Business Appointments

Chair of the Committee on Standards in Public Life

Chair of the House of Lords Appointments Commission

Registrar of Consultant Lobbyists

Chair of the UK Statistics Authority

#### **Ministry of Defence**

Service Complaints Ombudsman

#### **Department for Digital, Culture, Media and Sports**

Chair of the BBC

Chair of the Charity Commission

Information Commissioner

Chair of OFCOM

Chair of Sianel Pedwar Cymru (S4C)

### **Department for Education**

Children's Commissioner for England

HM Chief Inspector of Education, Children's Services and Skills

Chair of the Office for Students

Chief Regulator for Ofqual

Chair of the Social Mobility Commission

### **Department for Environment, Food and Rural Affairs**

Chair of the Environment Agency

Chair of Natural England

Chair of the Water Services Regulatory Authority

### **Department of Health and Social Care**

Chair of the Care Quality Commission

Chair of the Food Standards Agency

Health Service Commissioner for England (office also held by Parliamentary Commissioner for Administration)

The National Data Guardian

Chair of the National Institute for Health and Care Excellence

Chair of NHS England

Chair of Monitor (known as NHS Improvement)

### **Home Office**

Independent Chief Inspector of Borders and Immigration

HM Chief Inspector of Constabulary and HM Chief Inspector of Fire and Rescue Services

Chair of the Gangmasters and Labour Abuse Authority

### **Ministry of Housing, Communities and Local Government**

Commissioner for Local Administration England (known as Local Government and Social Care Ombudsman)

Chair of Homes England

Chair of the Regulator of Social Housing

Housing Ombudsman

### **Department for International Development**

Chair of the Independent Commission for Aid Impact

Chair of the Equality and Human Rights Commission

**Ministry of Justice**

Chair of the Judicial Appointments Commission

Chair of the Office for Legal Complaints

HM Chief Inspector of Prisons

HM Chief Inspector of Probation

Prisons and Probation Ombudsman

**Department for Transport**

Chair of the Civil Aviation Authority

Chair of the Office of Rail and Road

**Department for Work and Pensions**

Chair of the Social Security Advisory Committee

Pensions Ombudsman

Pension Protection Fund Ombudsman

Chair of the Pensions Regulator

**Other posts subject to pre-appointment scrutiny**

Chair and Members of the Budget Responsibility Committee

Commissioner for Public Appointments

Comptroller and Auditor General

First Civil Service Commissioner

Parliamentary and Health Services Ombudsman

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