

HM Treasury

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Dear Accounting Officer

NAO USE OF CONSULTANTS

From time to time the NAO uses consultants or secondees to assist in value for money work. This practice can raise a number of issues for departments and I attach a paper which provides guidance on the handling of proposals from the NAO in these circumstances. The paper has been agreed with the NAO as a framework within which the NAO will make arrangements with the department concerned. It will of course remain open to departments and the NAO to reach specific agreements covering the particular circumstances of any case.

2. I am circulating this letter only to Accounting Officers and Principal Finance Officers in Government departments.

Yours sincerely

J S BEASTALL
Treasury Officer of Accounts

NAO USE OF CONSULTANTS

1. From time to time the NAO engages the services of outside organisations or persons to assist it as consultants in particular value for money examinations, or as secondees to work in a particular subject area over an extended period. This practice can raise a number of issues for departments. This note provides guidance on the handling of proposals from the NAO to use consultants and/or secondees. It has been agreed with the NAO.

2. The guidance seeks to set out the general principles, though not all of it will be appropriate to all departments. Moreover, some departments may, by the nature of their business, face issues of a more specialised nature of importance to them but not of relevance to the generality of departments. In these cases the department involved would need to resolve such issues separately with the NAO.

3. The NAO may on occasions wish to use consultants in a number of ways:
 - (a) to be available to advise NAO on a study and findings without participating directly in that study;

 - (b) to use their existing knowledge and academic research to provide views on a department's activities and procedures relevant to a study;

 - (c) to review key documents and/or reports and provide a critique on them to the NAO but not participate directly in the study concerned;

 - (d) to work within an NAO study team and subject to NAO normal management but to be engaged on a short term basis to examine and advise on specific aspects of a study (either producing a separate report later to be reflected in the NAO draft report or contributing to the NAO drafting process);

 - (e) to be engaged for the duration of a study and to act for all purposes as a full member of the NAO study team;

 - (f) to undertake a study and report back to the NAO.

4. There are a number of issues on which prior agreement between the department concerned and the NAO will be necessary before a study involving consultants gets under way. The main issues which can arise, and which are dealt with in this note, are:

- S The choice of consultants.
- S Access to departmental papers.
- S Security and confidentiality.
- S The status of the consultant's report.
- S Possible use by consultants for other purposes of information gained during their work for the NAO.

The Choice of Consultants

5. The principal areas which will need to be addressed in considering proposals to use consultants are the following:

- (a) **The competence of the proposed consultants.** The NAO will discuss with the department whether the prospective consultants can in principle be expected to produce soundly based and authoritative conclusions. However participating in those discussions the department does not of course commit itself to accepting the findings and conclusions which eventually emerge from the consultants.
- (b) **Potential conflicts of interest.** In the selection of consultants for a particular study, care will be taken to avoid circumstances which could give rise to potential conflicts of interest. The NAO will consult the department about the choice of consultants, to establish for example whether any of those under consideration had recently been engaged by the department on work related to the subject of the examination; or were candidates for future work for the department; or had a commercial interest in the area under examination; or were otherwise not acceptable to the department. Each case will need to be considered

on its merits. The department and the NAO will balance how recent, and how directly relevant to the NAO examination, a proposed consultant's prior involvement has been against the need for a competent consultant who can provide authoritative conclusions. Where the particular individuals to be engaged, while not personally likely to be subject to conflicts of interest, belong to a firm other parts of which have an interest in the area of the examination, the NAO and the department will need to consider the adequacy of the protection given by professional codes of practice and conduct, or undertakings which the NAO might obtain from the individuals and firms concerned.

6. In the case of the Revenue Departments, a relevant consideration would be that consultants could come into contact with the way the departments deal with their own clients, and might also learn about general techniques which the department employs which would be of interest (if illicitly disclosed) in the professional circles from which the consultant might be drawn.

7. In order to allow due consideration of all the implications, the NAO will consult the department about any plans to use consultants for a particular examination, including the names of those consultants under consideration, in advance of any involvement in that examination. It is recognised that the NAO may sometimes plan to use consultants at the preliminary study stage and sometimes in later stages; and that sometimes the intention to engage consultants may arise when the examination is already under way. Nevertheless, the department must be consulted sufficiently in advance to allow full consideration of the implications and agreement on the particular arrangements that might apply in each case and time for any necessary security clearance procedures.

Access to Departmental Papers

8. Legislation grants access rights to the C&AG and these extend to his staff and to any consultants he employs in the discharge of his functions. However, the NAO acknowledges that it may not always be appropriate for consultants to have the same full degree of access as for NAO staff, and that special conditions may be required. The NAO will therefore be prepared to consider representations which a department may wish to make about the need to restrict

access to consultants. Where it is agreed that access should be limited the appropriate arrangements should be agreed in advance in writing between NAO and the department.

9. In the case of the Revenue Departments the necessary additional safeguards against disclosure of information about individual taxpayers will apply.

Security and Confidentiality

(a) Security

10. If the consultants are to have any access to classified information, it will be for the department to decide on the need for security clearance of the personnel and/or company concerned, and on any physical security measures which may be necessary. For some departments security clearance may also be necessary where consultants will not have direct access to classified information but require unescorted access to certain buildings. In either case the NAO will arrange the necessary clearances after discussion with the department concerned.* As consultants will be providing services to persons prescribed under section 12(1)(g) of the Official Secrets Act 1989 for the purpose of the performance of the functions for which those persons are prescribed, the consultants will be government contractors for the purposes of that Act. Under the 1989 Act, a government contractor is, in general, liable to the same penalties as a Crown servant if, without lawful authority, he discloses official information protected by the provisions of the Act. The NAO will need to draw this fact and the relevant provisions of the Act to the consultant's attention.

(b) The Protection of Commercial Confidentiality

11. Much information provided to departments is commercially confidential, and subject to specific copyright or other disclosure restrictions which may preclude the circulation of

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In many Government departments some security clearance will almost certainly be necessary. The level of clearance will need to be established on a case by case basis, and, particularly if a high level of clearance (eg positive vetting) is considered essential, then lead times will need to be adjusted accordingly to allow for the procedures to be completed. For positive vetting these can be lengthy. But lower levels of clearance can take up to a month too, even in straightforward cases.

documents provided outside UK Government departments and establishments. Although it is accepted that this does not prevent access by NAO staff, it cannot be assumed that the providers of such information would wish NAO consultants to have the same access to commercially sensitive information. It may be possible to overcome such difficulties by concluding a confidentiality agreement with the consultants. It will be for the NAO to take the necessary action, in consultation with and with assistance from the department, to secure the agreement of the sources of the information in that connection. Early consultation with the department will be necessary to identify those whose agreement will be required.

Clearance of Findings

12. Relationship with the consultant and the handling of findings and conclusions are essentially matters for the NAO. However, the NAO has agreed that the consultant's report will normally be made available to the department if desired, and the text of any reference to the consultant's work in a subsequent NAO report - as direct or supporting evidence, or by inclusion of the consultant's report or a summary - will be cleared with department's in the usual way.

Use of Information by Consultants

13. In addition to questions of access to classified or commercially confidential information, assurances will normally be necessary that consultants will use the information obtained only for the purposes of the NAO examination; and that any access to official papers which may be agreed does not include the right to disclose information to third parties or to retain any copies of official papers. It will be for the NAO to obtain the necessary undertakings from their consultants; the NAO will provide copies of these to the department in order for it to satisfy itself that they are adequate. In the exceptional case where a consultant requests permission to publish the results of their work separately, or use it for other purposes, and the NAO would be content to permit this, the final decision on the release of the material will rest with the department. In cases of Crown copyright material it will be for HMSO to decide how the material is published.

NAO Secondees

14. In addition to consultants the NAO employs a number of long-term (up to three years) secondees. Some of these secondees may come from Government departments, others may be

from consultancy and accountancy firms, academia or industry. In general, the use of secondees on examinations should not give rise to the sort of problem which may result from the use of consultants, but it is possible that the use of certain individuals on particular examinations could involve potential conflicts of interest. The NAO will inform the department of proposals to use secondees on examinations, so that any possible sensitivities can be considered. The NAO will ensure that its secondees meet all the normal security measures which may be required by the department.

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