



CABINET OFFICE

PRE-APPOINTMENT HEARINGS BY SELECT COMMITTEES:

GUIDANCE FOR DEPARTMENTS

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PRE-APPOINTMENT HEARINGS BY SELECT COMMITTEES

GUIDANCE FOR DEPARTMENTS

INTRODUCTION

- 1.1 This guidance provides advice to Departments on pre-appointment hearings by Parliamentary select committees. It sets out the issues that Departments should consider when making appointments to posts subject to pre-appointment hearings and provides advice and guidance on the process and on the role of Departments, Ministers and select committees.
- 1.2 Any questions on the guidance should be directed towards Cabinet Office. Contact details are as follows:

Propriety and Ethics Team
Cabinet Office
70 Whitehall
LONDON SW1A 2AS
Tel: 020 7276 3541 /0387 /0269

BACKGROUND

- 2.1 Pre-appointment hearings enable select committees to take evidence from candidates for certain, key public appointments before they are appointed. Hearings are in public and involve the select committee taking evidence from the candidate and publishing a report setting out the committee's views on the candidate's suitability for the post. Hearings are non-binding - but Ministers will consider any relevant considerations made by the committee before deciding whether to proceed with the appointment.
- 2.2 Hearings have been introduced on a pilot basis. The purpose of the pilot is to monitor and assess the impact of pre-appointment hearings on the number, balance and quality of applicants.
- 2.3 The list of posts suitable for pre-appointment hearings is published in

the Government's response to a Liaison Committee report¹. This is reproduced at Annex A. Departments should note that pre-appointment hearings only apply to appointments of new candidates – and not to extensions or to re-appointments. Select committees already take evidence from serving post-holders as part of their on-going scrutiny of public bodies and public appointments.

THE PROCESS

- 3.1 The introduction of pre-appointment hearings has not changed the fundamentals of the public appointment process. There will continue to be a formal selection process, which will be open and transparent and underpinned by the overriding principle of appointment on merit. Where the post is regulated by the Commissioner for Public Appointments, the process will continue to follow the requirements set out in the Commissioner's *Code of Practice for Ministerial Appointments to Public Bodies*² and in any Practice Directions issued by the Commissioner.

INFORMING CANDIDATES

Advertisements and Information Packs

- 4.1 Applicants for posts which are suitable for pre-appointment hearings must be made aware before applying that they may be required to appear before a Parliamentary committee before the appointment is made. To this end, the advertisement for the post must include a reference to pre-appointment scrutiny. This is also a requirement of the Commissioner for Public Appointments' *Code of Practice*³. The following form of words has been agreed with the Commissioner and must be used in any advertisements or other form of publicity:

“In line with Government proposals to increase Parliamentary scrutiny of appointments to key posts, the preferred candidate for the post of [insert detail] may be

¹ Liaison Committee, First Special Report of Session 2007-08, *Pre-appointment hearings by select committees: Government Response to the Committee's First Report of Session 2007-08*, HC 594.

² *The Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies*, Office of the Commissioner for Public Appointments, August 2009.

³ Paragraph 5.35.

required to appear before a Parliamentary select committee prior to appointment.”

The accompanying information pack must also include a reference to pre-appointment scrutiny. As a minimum, this should re-iterate the form of words used in the advertisements. Departments might, however, take the opportunity to explain more about the pre-appointment hearing process.

The Selection Process

- 4.2 All those involved in the selection process – the appointing Minister, officials, recruitment consultants (where used), the Independent Public Appointments Assessor (if appropriate) and the selection panel – must be made aware that the post is suitable for pre-appointment scrutiny and that the preferred candidate may be required to appear before a pre-appointment hearing. Recruitment consultants should bring this to the attention of any individuals they encourage to apply. Selection panels should ensure that those short-listed are aware of the possibility of a pre-appointment hearing and understand what it involves.

Supporting the Candidate

- 4.3 It is important that candidates appearing before select committees are given sufficient notice of hearings in order to be able to prepare. It is also important that candidates are properly informed about the purpose, format and duration of hearings. Departments should ensure that candidates fully understand the process and are properly briefed and supported, particularly if this is their first time in front of a select committee.

WORKING WITH THE SELECT COMMITTEE

- 5.1 The Government is committed to maintaining a public appointments process that is efficient, effective and proportionate. As such, it is important that Departments liaise with select committees throughout the planning and selection stages to ensure that the introduction of a pre-appointment hearing does not result in a significant delay in making the appointment.

- 5.2 At the very beginning of the planning stage, the Department should contact the clerk of the relevant select committee to inform them that an appointment exercise to a post suitable for pre-appointment scrutiny is due to begin and to discuss the likely timetable for a possible hearing. This is also a requirement of the Commissioner for Public Appointments' *Code of Practice*⁴. It will be for the committee to decide whether or not it wishes to hold a hearing. Nevertheless, Departments should always factor in the possibility of a pre-appointment hearing into the planning and timetabling of the appointment. Departments should aim to ensure that the end of the selection stage does not coincide with the beginning of a long parliamentary recess.
- 5.3 It is ultimately a matter for Parliament to determine which select committee will scrutinise which appointment. In the majority of cases, it will be the relevant Departmental select committee. But there may be occasions where appointments are scrutinised by committees other than the Departmental select committee. If in doubt, contact one of the clerks of the Liaison Committee, who will be able to assist. Cabinet Office should also be informed.
- 5.4 Once the formal selection process is complete, and the preferred candidate identified, the Minister should write to the Chair of the relevant select committee announcing the Government's candidate for the post and inviting the committee to hold a pre-appointment hearing. This should only take place once all relevant Ministers have given their approval to the preferred candidate. (For certain posts, this will include Ministers in the Devolved Administrations and/or the Prime Minister.) Immediately after informing the committee, the relevant Department might issue a short Press Release announcing the name of the preferred candidate⁵. The Government, in its response to a recommendation from the Public Administration Select Committee (PASC), has agreed to give committees, where possible, up to three weeks in which to hold a hearing and publish their report⁶. With careful planning, however, and the agreement of the committee concerned, hearings can take place more quickly.

⁴ Paragraph 5.10.

⁵ This should be a short, simple press release. This will not replace the fuller Press Release that must be issued when the appointment is made.

⁶ Public Administration Select Committee, Sixth Special Report of Session 2007-08, *Parliament and public appointments: Pre-appointment hearings by select committees: Government Response to the Committee's Third Report of Session 2007-08*, HC 515.

- 5.5 Where a committee decides to hold a pre-appointment hearing, the Department should provide the committee with relevant background information. This should include the Information Pack and a copy of the candidate's CV. As this information may be published by the committee, Departments must obtain the candidate's permission before providing the committee with their CV. Confidential information relating to the appointments process – for example, personal information on other applicants, copies of the diversity or political activity questionnaires, copies of the selection panel's assessments, etc. – should not be released.

THE PRE-APPOINTMENT HEARING

- 6.1 The Liaison Committee has set guidelines for committees on pre-appointment hearings. These state that questions should be focussed on the professional competence and personal independence of the candidate. The guidelines also note that hearings may include questions about the candidate's past career and about the selection process for the post. The guidelines are reproduced in full at Annex B.
- 6.2 Following the pre-appointment hearing, the Committee will normally publish a report setting out their views on the suitability of the candidate. The Liaison Committee guidelines state that reports should be published as soon as possible after the evidence session. Departments and candidates should normally receive an embargoed copy of the report twenty four hours before the report is formally published.

THE MINISTERIAL DECISION

- 7.1 On receipt of the Committee's report, Ministers will consider any relevant considerations contained in the report before deciding whether to proceed with the appointment. "*Relevant considerations*" means any new, relevant facts about the candidate's suitability for the post. This might include, for example, an undisclosed conflict of interest or other information relevant to the candidate's application which was not declared during the selection process. There may also be occasions where a candidate's performance in front of the select committee is

considered relevant to the post in question – although this should be exceptional. “*Relevant considerations*” does not include any comments or recommendations which are clearly partisan in nature or which are not directly related to the post in question.

- 7.2 In the vast majority of cases, where an open and transparent process has been followed and the candidate selected on merit, the expectation is that the select committee will agree with the appointment of the Government’s preferred candidate. However, there may be occasions where a select committee recommends against the appointment of a candidate. In such cases, Ministers should give very careful consideration to the committee’s report and to the reasons why the committee considers the candidate to be unsuitable. Where the Minister is minded not to proceed with the appointment, Departments must seek legal advice (including about any Parliamentary privilege issues that arise) before any announcement is made. Departments’ legal advisers may wish to seek advice from COCAD in the Treasury Solicitor’s Department. Cabinet Office should also be informed.
- 7.3 Once the Minister has made a decision, he or she should formally notify the Committee Chair of the decision.

THE COMMISSIONER FOR PUBLIC APPOINTMENTS

- 8.1 The Commissioner for Public Appointments regulates, reports and monitors public appointments processes to over 10,000 public appointments. These include a number of the posts identified as suitable for pre-appointment scrutiny by Parliament.
- 8.2 The appointment process for posts regulated by the Commissioner must continue to follow her *Code of Practice* and any Practice Directions issued by the Commissioner. A copy of the *Code* and published Practice Directions can be found at: www.publicappointmentscommissioner.org The Commissioner’s remit does not extend to the pre-appointment hearing itself. This means, for example, that the Commissioner may not deal with any complaint about the conduct of a pre-appointment hearing by a Parliamentary select committee or about the conclusions or recommendations contained in a committee’s report.

- 8.3 For more information on the application of the *Code of Practice*, Departments should consult the Commissioner's office. Contact details are as follows:

Office of the Commissioner for Public Appointments
3rd Floor
35 Great Smith Street
LONDON SW1P 3BQ

Tel: 020 7276 2625

Fax: 020 7276 2633

Email: enquiries@publicappointmentscommissioner.org

THE DEVOLVED ADMINISTRATIONS

- 9.1 A small number of the appointments listed at Annex A are made in consultation with the devolved administrations. As now, Departments should ensure that the relevant devolved administrations are fully involved in the appointments process – for example, agreeing role profiles and person specifications, given the opportunity to put forward names of suitable candidates, kept informed of progress throughout the selection exercise and, at the end of the process, consulted on the preferred candidate. Only at this stage – once all relevant Ministers have agreed the preferred candidate - will the appointing Minister write inviting the relevant select committee to hold a pre-appointment hearing.

EXCEPTIONS

- 10.1 There may be exceptional circumstances where a select committee is not given the opportunity to hold a hearing for a post which has been identified as suitable for pre-appointment scrutiny - for example, if Parliament is not sitting and for unavoidable reasons the appointment needs to be made before Parliament returns or if there are market sensitive issues in relation to the preferred candidate. In such cases, Departments should liaise with the relevant committee to consider alternative arrangements, perhaps inviting the committee to hold a post-appointment hearing at the earliest opportunity. Cabinet Office can advise further.

LIST OF POSTS SUBJECT TO PRE-APPOINTMENT HEARINGS

Attorney General's Office

- HM Chief Inspector of the Crown Prosecution Service

Cabinet Office

- Chair of the Advisory Committee on Business Appointments
- Chair of the Charity Commission
- Chair of the Committee on Standards in Public Life
- Chair of the House of Lords Appointments Commission
- Chair of the Statistics Authority
- Commissioner for Public Appointments
- First Civil Service Commissioner
- Parliamentary Commissioner for Administration⁷

Department for Business, Innovation and Skills

- Chair of OFCOM⁸
- Chair of the Competition Commission
- Chair of the Higher Education Funding Council for England
- Chair of the Office of Fair Trading
- Chair of the Postal Services Commission
- Chairs of the Research Councils
- Director of the Office for Fair Access

Department for Children, Schools and Families

- Chair of the Qualifications and Curriculum Development Agency⁹
- Chair of Ofqual¹⁰
- Children's Commissioner for England
- HM Chief Inspector of Education, Children's Services and Skills

⁷ The same office-holder (currently Ann Abraham) holds the role of Parliamentary Commissioner for Administration and Health Service Commissioner for England.

⁸ Joint BIS and DCMS appointment.

⁹ The Government has announced that the Qualifications and Curriculum Authority (QCA) will lose its powers as the regulator of qualifications, tests and examinations, and develop into an agency for developing curriculum, assessment and qualifications, to be called the Qualifications and Curriculum Development Agency (QCDA). These reforms will be put on a statutory basis (subject to Parliamentary approval).

¹⁰ Ofqual will be established as the independent regulator: the guardian of standards across the qualifications, tests and examinations systems in England. Ofqual will be established on a statutory basis (subject to Parliamentary approval). Pending legislation, Ofqual has been set up on an interim basis under QCA's existing regulatory powers.

Department for Communities and Local Government

- Chair and Deputy Chairs of the Infrastructure Planning Commission¹¹
- Chair of OFTENANT
- Chair of the Audit Commission
- Chair of the Standards Board
- Chief Fire and Rescue Officer
- Local Commissioners for Administration in England¹²

Department for Culture, Media and Sport

- Chair of OFCOM¹³

Department for Environment, Food and Rural Affairs

- Chair of Natural England
- Chair of the Agricultural Wages Board
- Chair of the Environment Agency
- Chair of the Gangmaster Licensing Authority
- Chair of the Water Services Regulatory Authority (OFWAT)
- Rural Advocate

Department for Transport

- Chair of the Office of Rail Regulation

Department for Work and Pensions

- Chair of the Social Security Advisory Committee
- Pensions Ombudsman
- Pensions Protection Fund Ombudsman

Department of Energy and Climate Change

- Chair of the Committee on Climate Change
- Chair of the Gas and Electricity Markets Authority (GEMA)

Department of Health

- Chair of the Appointments Commission
- Chair of the Care Quality Commission
- Chair of the Food Standards Agency
- Health Service Commissioner for England¹⁴

¹¹ During the passage of the Planning Act, the Government agreed that Deputy Chairs of the IPC should also be subject to pre-appointment hearings.

¹² There are currently three Commissioners.

¹³ Joint BIS and DCMS appointment.

¹⁴ The same office-holder (currently Ann Abraham) holds the role of Health Service Commissioner for

Government Equalities Office

- Chair of the Commission for Equality and Human Rights

Her Majesty's Treasury

- Comptroller and Auditor General¹⁵

Home Office

- HM Chief Inspector of Constabulary

Ministry of Defence

- Service Complaints Commissioner

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
- Information Commissioner
- Prison and Probation Ombudsman

England and Parliamentary Commissioner for Administration.

¹⁵ The pre-appointment hearing for the posts of C&AG will follow the process set out by the Chair of the Public Accounts Commission in *Pre-appointment hearings by select committee*, House of Commons Liaison Committee, First Report of Session 2007-08 (HC384), pg 23. The C&AG designate will appear before PAC after the Government and the Chair of the PAC have agreed his/her name but before the debate on the motion for his/her appointment.

LIAISON COMMITTEE GUIDELINES FOR SELECT COMMITTEES

Pre-appointment hearings: guidelines

Preparing for the session

The Committee should aim to give the witness at least a week's notice of the session. Standard briefing should be available to the candidate on what to expect from the session. The candidate should also be informed how long the session is likely to last.

During the session

The Chairman should ensure that Members are aware that their questions must remain relevant to the professional competence and personal independence of the candidate. Questions eliciting background information about the candidate's past career and about the selection process for the post are also normally acceptable.

The candidate will need to be able to withstand parliamentary and public scrutiny should they take up the post, and the purpose of the session is to test this. Questioning may therefore be robust, and it may cover some areas that might not be appropriate at interview, such as party political activity. The Chairman should intervene, however, if questions are irrelevant, unduly personal, or discriminatory.

After the session

Immediately after the evidence session, the Committee should meet in private to agree a report to the House containing its views on the suitability of the candidate. This will ensure both that the evidence is fresh in Members' minds and that Members who were not present at the evidence do not influence the content of the report. It will also avoid unnecessarily prolonged speculation about a candidate's fate. The Committee may also wish to instruct the Chairman to write to the relevant Minister with any opinions that it prefers to express privately, to supplement the published report.

The Committee's report should be published as soon as possible after the evidence session. Reports should be subject to a 24 hour embargo to allow the candidate and the Minister to prepare a response to any negative comments. They should be provided under embargo only to the candidate and the Minister.