



Cabinet Office

Public Bodies Handbook – Part 2

# The Approvals Process for the Creation of New Arm's-Length Bodies: Guidance for Departments



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It is Government policy that new arm's-length bodies (ALBs) should only be set up as a last resort, when consideration of all other delivery mechanisms have been exhausted, and that approval for setting up a new ALB must be sought formally from Cabinet Office ministers and the Chief Secretary to the Treasury before any decision, or announcement, about any new ALB is made.

This guidance sets out the approval process to be followed by departmental officials when seeking to set up a new ALB within central government, specified for the purposes of this guidance as executive agencies, non-departmental public bodies (NDPBs) and non-ministerial departments (NMDs).

When considering setting up a new ALB, the following advice set out in *Managing Public Money* (MPM)<sup>1</sup> should be kept in mind:

*7.2.2 In general, each new ALB should have a specific purpose, distinct from its parent department. There should be clear perceived advantage in establishing a new organisation, such as separating implementation from policy making; demonstrating the integrity of independent assessment; establishing a specialist identity for a professional skill; or introducing a measure of commercial discipline.*

*7.2.3 ALBs cannot be given authority to make decisions proper to ministers, nor to perform functions proper to sponsor departments.*

*7.1.3 It can be important that an ALB is demonstrably independent. This in itself does not determine the ALB's form or structure. Independence is achieved by specifying how the ALB is to operate. Functional independence is compatible with financial oversight by the ALB's parent department and with accountability.*

When proposals are made to set up a new ALB, a fully costed business case must be presented to the Cabinet Office, and, where appropriate, HM Treasury, and approval of that business case sought from Cabinet Office and Treasury ministers. It should not be assumed that applications for new ALBs will be approved.

It should be used in conjunction with the *Classification for Public Bodies: Guidance for Departments* and with the rest of the Public Bodies Guidance Handbook, which covers in more detail relevant guidance on ALB related issues.

Guidance on mergers, transfers and closure of ALBs is within the separate guidance on executive agencies, NDPBs and NMDs.

This guidance replaces the document *The Approval Process for the Creation of Non Departmental Public Bodies* and relevant sections of *Executive Agencies: A Guide for Departments*.

Departmental officials should seek advice on the approval process from their department's central ALB team in the first instance. Any questions on the guidance or on ALBs more generally should be directed to the Public Bodies Reform Team in the Cabinet Office at: [publicbodiesreform@cabinetoffice.gov.uk](mailto:publicbodiesreform@cabinetoffice.gov.uk)

<sup>1</sup> For further advice on setting up ALBs see Chapter 7 and Annex 7.1 of MPM: <https://www.gov.uk/government/publications/managing-public-money>

## ONS classification

The ‘public sector’ is defined by the Office of National Statistics (ONS) with reference to the European System of Accounts 2010 in accordance with EU requirements for Government to produce accurate public sector finances and national accounts.

The National Accounts (or Sectoral) classification of entities as public or private depends on the level of government control over the general corporate policy of the entity being classified. This can be direct or indirect and may be evidenced by indicators that include any or all of the following:

- the ability to appoint those in control, or those who determine the policy of the entity;
- a right to be consulted over such appointments, or to have a veto over appointments;
- the provision of funding accompanied by rights of control over how that funding is spent; and
- a general right to control the day-to-day running of the body.

Once the ONS has classified a body as public sector, it is classified to a particular sub-sector based on its characteristics. These sub-sectors are:

ONS sub-classifications within Public Sector		
<p><b>Central Government</b> Government departments and their ALBs, and any other non-market bodies controlled and mainly financed by them.</p>	<p><b>Public Corporations</b> Market bodies controlled by either Central Government or Local Government. These include any type of public entity that is a market body.  A ‘market body’ is one which finances its operational activity by the sale of goods and services at economically significant prices (i.e. over 50% of their income is derived from these activities).</p>	<p><b>Local Government</b> Those types of public administration that only cover a specific locality and any non-market bodies controlled and mainly financed by them.</p>

The Cabinet Office guidance, the *Classification of Public Bodies*<sup>2</sup>, will assist you in identifying the appropriate form of public body within this context.

### Determining the status of the new body

Departments should not wait for the ONS to classify a new body. Instead they should seek the advice of the Treasury Classification Branch early in the policy development process who will determine the appropriate treatment of their proposal, pending ONS classification. This can be done by completing the ONS classification questionnaire<sup>3</sup> and submitting it to the Classification Branch through the relevant departmental Treasury spending team.

Where the Treasury Classification Branch indicates that a proposal is likely to be classified to central government, it is subject to the approval process set out in this guidance.

New bodies determined by the Treasury to belong in central government are added to the annual Designation Order for consolidation into departmental accounts.

### Cabinet Office Administrative Classification

Within the ONS classification of central government public bodies, the Cabinet Office operates a system of classifying public bodies in order to ensure a greater level of consistency in terms of the way bodies are set up, structured, funded, managed and overseen by their home departments. This is referred to as ‘administrative classification’ and the bodies classified by Cabinet Office are known as ALBs.

It is good practice to determine early which kind of body is most appropriate when setting up a new ALB. Types of ALBs include:

- **Executive Agencies:** These are clearly designated (and financially viable) business units within departments that are responsible for undertaking the executive functions of that department, as distinct from giving policy advice. They have a clear focus on delivering specified outputs within a framework of accountability to ministers. This category excludes Trading Funds which are a specific type of ALB established by statute<sup>4</sup>;
- **NDPBs:** These have a role in the process of national government but are not part of a government department. NDPBs operate with some independence and are not under day-to-day ministerial control, although a minister will be responsible to Parliament for their performance and effectiveness. NDPBs show considerable variety of structures and working methods, with scope for innovation and customisation. They are commonly used for trading activities;

<sup>2</sup> Cabinet Office, *Classification of Public Bodies: Guidance for Departments*, April 2016

<sup>3</sup> HM Treasury, *Introduction to Classification*, April 2013

<sup>4</sup> Annex B of the Executive Agency Guidance and Section 7.8 and Annex 7.3 of MPM include further advice on Trading Funds

- **NDPBs with Advisory Functions:** These NDPBs consist of external (non-civil service) experts who operate in a personal capacity to form boards or committees to provide ministers with independent specialist advice (free from political control); and
- **Non Ministerial Departments (NMDs):** NMDs operate similarly to normal government departments in the functions they perform (though usually they are more specialised and not as wide ranging in the policy areas they cover). They generally cover matters for which direct political oversight is judged unnecessary or inappropriate, and are usually funded by their own estimate.

*of the function in question, and on the extent to which ministers think it right to take a day to day interest in its affairs. Generally, the closer the ALB's functions are to the centre of government, the more likely it is to be an agency; while NMD status is appropriate for organisations of some size carrying out professional functions. The form and structure of the NDPB is very flexible, suiting specific and technical functions.*

*A7.1.3 Parliament is concerned that hiving off functions into an ALB should not diminish accountability. For that reason NMDs are rarely the right solution<sup>5,6</sup>.*

MPM advises that:

*A7.1.6 Decisions on the form of any particular ALB must ultimately be for ministers. They will depend in part on perceptions*

### ALB Comparable Characteristics

The table below sets out the key characteristics of the categories of ALBs. Departments should use the *Classification of Public Bodies Guidance*<sup>7</sup> to consider the appropriate ALB classification for their new body.

	Executive Agency	NDPB	NDPB with Advisory Funcs	NMD
Oversight / Accountability:	Dept sets policy, minister accountable to Parliament	Dept. usually sets strategic framework, minister accountable to Parliament	Dept. usually sets strategic framework, advice is impartial and apolitical, with minister accountable to Parliament	Sets own delivery policies, though dept. can set the strategic framework, usually minister accountable to Parliament
Sources of Income:	Included in home dept estimate	From dept. estimate, usually delivered as grant in aid; other sources can include levy powers and charitable donations	Included in dept. estimate	Usually from own estimate; other sources can include levy powers
Setup & Position In Government:	Part of home dept, established by home Dept, sometimes under legislation but without separate legal personality	Established and sponsored by dept. with own separate legal personality, outside of the Crown	Independent of but established by dept. without separate legal personality	Usually established by the PM as a dept. in its own right, with separate legal personality
Duration:	Permanent	At least three years	At least three years	Permanent
Appointments:	Minister appoints CEO via a civil service commissioners appointment, and non-exec chair	Ministers normally appoint the chair and all non-executive members, and are consulted on the appointment of the CEO	Minister appoints members	Sponsoring minister usually appoints board members
Staffing:	Civil servants	Public servants	Committee of independent specialists (supported by dept. civil servants as a secretariat)	Civil servants
Accounting:	Produce their own report and accounts but consolidate with home dept.	Produce their own annual report and accounts but consolidate with home dept.	Do not produce their own accounts – any income or expenditure forms part of the dept's accounts	Produce own annual report and accounts

<sup>5</sup> The sponsor department also has less control as each NMD has its own budget, Estimate and annual accounts. So if a ministerial department transfers work to an NMD, there is a greater risk of excess votes in each.

<sup>6</sup> While this is a matter separate from the administrative status of a body, it should be noted that it is not normally acceptable to use a royal charter to establish a public sector body since such arrangements deny parliament control and accountability.

<sup>7</sup> Cabinet Office, *Classification of Public Bodies: Guidance for Departments*, April 2016

## Chapter 2 | What should be considered when deciding whether a new ALB is required?

It is Government policy not to set up new ALBs except as a last resort and as such it should not be assumed that approval will be given for such an entity in any but the most exceptional circumstances.

New public bodies should only be created if there is a clear and pressing requirement, a clear need for the state to provide the function or service through a public body, and no viable alternative – effectively establishing new public bodies as a last resort.

Departments should consider whether the proposed functions are needed, and whether there are any alternatives to establishing a new public body (this requires at least a basic understanding of the various alternatives for delivering new services or functions – see next chapter). These initial considerations form the first part of the determinant factors that lead to the main types of public bodies available.

### The ‘Three Tests’

When developing proposals on setting up an ALB to deliver a function or service, departments should subject their proposal to the Government’s ‘three tests’. A proposal should only be taken forward if the service or function meets at least one of the three tests.

The tests are:

1. Is this a technical function, which needs external expertise to deliver?
2. Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality?
3. Is this a function that needs to be delivered independently of ministers to establish facts and/or figures with integrity?

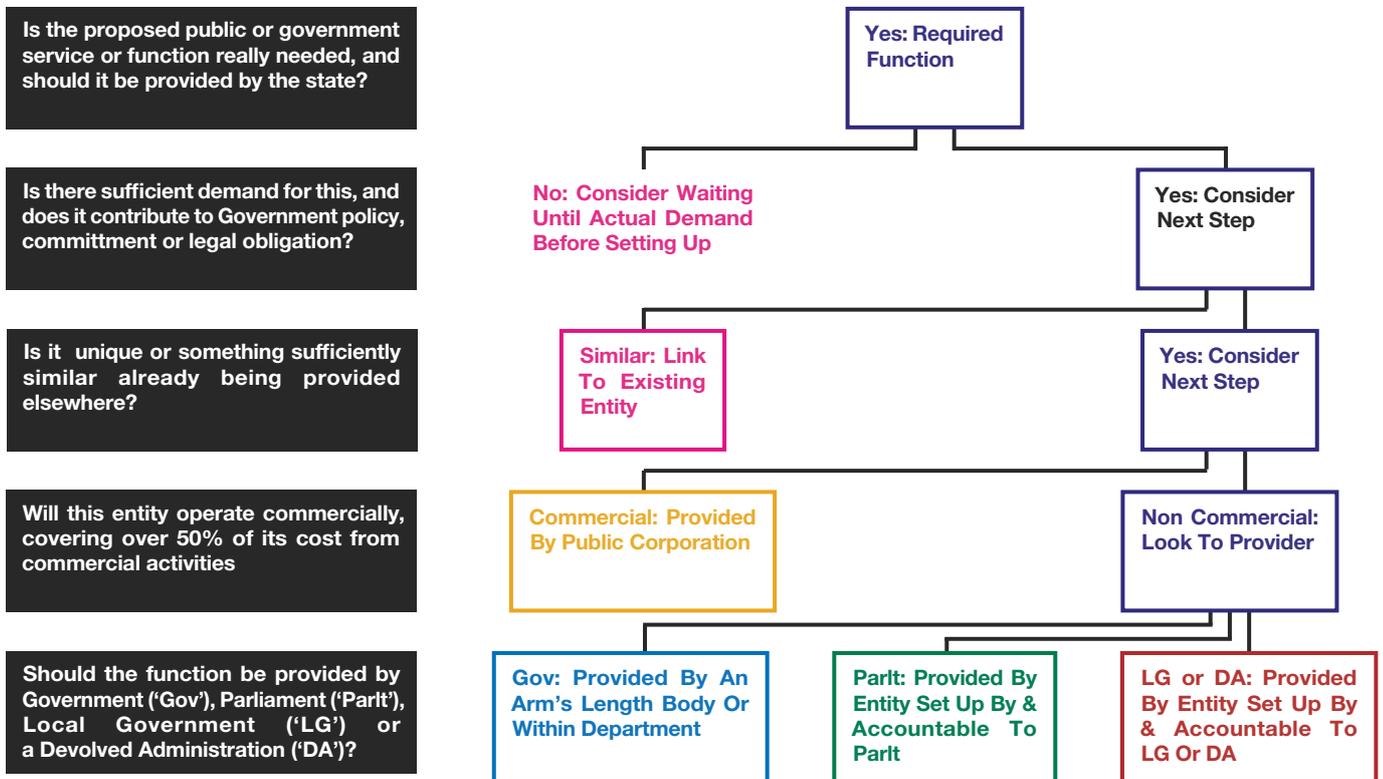
Cabinet Office approval for a new body will only be given where **at least one** of these tests is met.

### Factors to consider

The following decision tree sets out a range of issues that departments should consider when setting up new public bodies. This is not an exhaustive list and departments should think creatively when considering how new services or functions should be delivered.

However, as a minimum, departments should explore the options below before choosing the form of delivery for that function.

**Chart 1 Initial Questions on Setting Up Public Bodies**



For further guidance on considerations and characteristics of public bodies including arm’s-length bodies see Chapter 2 of the Classification Guidance<sup>8</sup>.

<sup>8</sup> Cabinet Office, Classification of Public Bodies: [Guidance for Departments](#), April 2016

### **Reclassification and declassification**

Cabinet Office must also be consulted over any proposals to reclassify or declassify ALBs.

If a body not currently classified within the Central Government sector is reclassified as such by ONS, it should ideally also be given an administrative classification within one of the three ALB categories. In such a case, the department should engage with Cabinet Office about the potential classification and the approval process required.

### **Mergers, restructures and closure of ALBs**

Cabinet Office and/or Treasury approval may be required for mergers, restructures and closures of ALBs. Information on mergers and closure of ALBs can be found in individual guides on Executive Agencies, NDPBs and NMDs.

Where the merger of two bodies creates a new ALB, the process for the creation of a new ALB should be followed.

## Chapter 4 | Alternative delivery models

As new public bodies should only be established as an absolute last resort, departments should consider all possible delivery models when exploring options for delivering new services or functions.

The following list sets out a range of options that departments should consider. This is not an exhaustive list and departments should think creatively when considering how new services or functions should be delivered with a view to efficiency and accountability. As a minimum departments should explore the following options:

Option	Questions
Do nothing/status quo	<ul style="list-style-type: none"> <li>Is the proposed function or service really needed?</li> <li>How does it contribute to the core business of the sponsor department?</li> <li>How does this contribute to wider government policy objectives?</li> <li>Is there a legal requirement for the function?</li> <li>Is there sufficient demand from customers or users?</li> <li>Is providing the function a justifiable use of taxpayers' money?</li> <li>What would be the cost and impact of not delivering the service or function?</li> <li>Does the function contribute to economic growth?</li> </ul>
Deliver function outside of central government <sup>9</sup>	<ul style="list-style-type: none"> <li>Why does central government need to deliver this function?</li> <li>Can this function be delivered by local government, by the voluntary/not-for-profit, or by the private sector?</li> <li>Is there an existing service provider, or providers, in the local government or voluntary sectors that could deliver this function?</li> <li>Can it be delivered by the private or voluntary sector under contract?</li> <li>Can it be delivered by a mutual, Community Interest Company or social enterprise?</li> <li>What are the risks and benefits of moving the function out of central government?</li> <li>Could efficiencies be made by delivering the function through a different model?</li> </ul>
Commercial model <sup>10</sup>	<ul style="list-style-type: none"> <li>Can the function be better delivered by the private sector or delivered under contract by the voluntary or private sector?</li> <li>Can the function be delivered by a mutual or social enterprise?</li> <li>Could the functions be provided by people that are not public servants?</li> <li>Could the body operate more efficiently and/or effectively if it were not subject to some of the constraints that apply to public bodies?</li> <li>Are there potential opportunities for the body to secure investment from outside of government? Could the public body increase its private sector revenues?</li> <li>Will the body require skills that it may not be able to recruit into a public sector organisation?</li> <li>Is this a service that could be sold to others outside of government, e.g. to private sector organisations or foreign governments?</li> <li>Is there an existing service provider, or providers, in the private sector that could deliver this function?</li> <li>What are the benefits and risks of moving to a more commercial model?</li> <li>Could efficiencies be made by delivery through a more commercial model?</li> </ul>
Public Corporation	<ul style="list-style-type: none"> <li>If the entity service or function cannot be delivered outside of the public sector, is it able to finance its operational activities from the sale of goods and services set at economically significant prices (and obtain over 50% of its income from these activities)? If so could it be established as a public corporation?</li> </ul>

<sup>9</sup> In the case of NDPBs with advisory functions, this option should include assessing whether the functions of the body can be provided by an expert committee engaging directly with users, stakeholders, sectors and communities.

<sup>10</sup> The Commercial Models Team in Cabinet Office can provide advice on potential innovative models ([commercialmodels@cabinetoffice.gov.uk](mailto:commercialmodels@cabinetoffice.gov.uk))

Option	Questions
Deliver it in-house	<p>Why does the function need to be delivered at arm's-length from ministers?</p> <p>Can the function be delivered more efficiently or effectively by the sponsor department or by an existing Executive Agency of the sponsor department, or by another department?</p> <p>What would be the costs and benefits of carrying out the function in-house?</p> <p>Could efficiencies be made by carrying out the functions in-house?</p>
Deliver through an existing central government body	<p>Are there any other areas of central government delivering similar or complementary functions?</p> <p>Does the function duplicate work undertaken elsewhere?</p> <p>Could the function be incorporated with those of another public body, or vice versa?</p> <p>What would be the costs and benefits of merging such functions?</p> <p>Could efficiencies be made by merging the functions, or some of its functions, with an existing body or bodies?</p>
A temporary body (with a lifespan of less than 3 years)	<p>Is the function something that only needs to be carried out for a limited period, for example a review of a particular policy area that will then report back to ministers? Could a time limited body be set up, and then closed once the work of the body is completed?</p>
Less formal structure	<p>Why does the function need to be delivered through a formal structure?</p> <p>Could the function be delivered by an informal stakeholder group?</p> <p>Could the function be delivered by an expert committee?</p> <p>What would be the costs and benefits of moving to a less formal structure?</p> <p>Could efficiencies be made by moving to a less formal structure?</p>
ALB options	
Delivery by a new Executive Agency	<p>Does the function pass at least one of the government's three tests?</p> <p>Is operational independence needed to deliver this function effectively?</p> <p>Could the function be better delivered by a new Executive Agency?</p> <p>What would be the costs and benefits of this model?</p> <p>Could efficiencies be made by delivering through this model?</p>
Delivery by a new NDPB	<p>Does the function pass at least one of the government's three tests?</p> <p>Does the body require some operational independence, as well as in terms of developing policy?</p> <p>What would be the costs and benefits of this model?</p> <p>Could efficiencies be made by delivering through his model?</p>
Delivery by a new NMD	<p>Does the function pass at least one of the government's three tests?</p> <p>Does the body require independence in operational terms, as well as in developing policy?</p> <p>What would be the costs and benefits of this model?</p> <p>Could efficiencies be made by delivering through his model?</p>

The Building our Industrial Strategy Green Paper committed to reviewing the location of ALBs to help support regional economic growth. Departments should ensure that all new ALBs are established outside London and the surrounding area (the Cabinet Office has defined this to mean a 60-mile radius outside London SW1A 2HQ).

Organisations can apply to be exempt but only if they have an unequivocal business need to be based in London. Naturally, a preference alone to be in the capital is not enough to gain an exemption. Similarly, location will be given greater consideration when there is any change in ALB structure.

Departments should engage with the Government Property Unit (GPU) to identify appropriate locations for any proposed new public bodies, prior to seeking approval for their creation. Cabinet Office approval for proposals to create new ALBs in London or the surrounding area will only be given where there is an evidenced, unequivocal business need for doing so.

## Chapter 6 | The approval process for setting up new ALBs

Formal approval for setting up a new ALB must be sought and received from Cabinet Office ministers and the Chief Secretary to the Treasury, before any decision or announcement about a new ALB is made. New bodies being established in shadow/incubator form also require approval before they can be announced publicly.

### Stage 1 – Departmental policy team triage

Departmental policy teams when considering creating a new body to undertake an initial triage assessment as to whether there is a need for new ALB.



### Stage 2 – Departmental central ALB team review

Central ALB partnership teams in departments to review initial assessments by policy teams. Central teams to categorise proposals into the following categories: likely candidates for ALB status (**RED**), unlikely candidates for ALB status (**GREEN**) and borderline cases (**AMBER**).



### Stage 3 – Cabinet Office assurance and approval

Cabinet Office Public Bodies Reform Team to validate **RED** and **GREEN** categorisations arrived at by departmental policy and central ALB teams, and to provide clarity on **AMBER** cases. Public Bodies Reform Team to provide the final assessment of new body proposal, ensuring compliance and consistency against guidance, and seeking ministerial approval for the creation of an ALB.

The steps are separated out to make the process easier for departments to navigate. In practice, however, some steps may take place concurrently.

### Stage 1 – Departmental policy/programme team triage

The first stage in the approval process is for the departmental policy/programme team (i.e. those who are initiating the proposal) to assess whether the entity they are considering exhibits the characteristics of an ALB. Ideally departmental central ALB teams or other central contact point should be sighted on any proposals as early as possible at this stage, as should the relevant Treasury spending team.

If there is no central ALB or governance team then contact should be made with the Public Bodies Reform team in the Cabinet Office in the first instance.

**Step 1** – The policy team should first look at the alternative delivery models set out in Chapter 4 to consider whether a new entity needs to be created to deliver the function or policy.

**Step 2** – The policy team should assess the proposal to determine whether it meets one of the Government's 'three tests' for creating a new public body (Chapter 2).

**Step 3** – The proposal should then be tested with the Treasury Classification Branch on how the proposed organisation is likely to be classified sectorally by the ONS. This can be done by completing the ONS questionnaire<sup>11</sup> and submitting it through the departmental spending team. If the Treasury Classification Branch indicates that the entity is likely to be classified as 'central government' by the ONS, it is likely to be in scope for classification as an ALB.

**Step 4** – The policy team should then test the proposed entity against the options set out in the Classification Guidance<sup>12</sup> to determine whether it has the characteristics of one of the three types of ALBs: a NDPB, Executive Agency or NMD.

**Step 5** – The policy team should ask the departmental central ALB team to review their assumptions formally.

<sup>11</sup> HM Treasury, *Introduction to Classification*, April 2013

<sup>12</sup> Cabinet Office, *Classification of Public Bodies: Guidance for Departments*, April 2016

## **Stage 2 – Departmental central ALB team review**

The second stage is for central ALB teams in departments to review the initial assessments made by policy teams.

**Step 6** – The central ALB team should help the policy team assess whether the entity under consideration exhibits the characteristics of an ALB, test the rationale/case for setting up a new ALB against the ‘three tests’ and the feasibility of alternative delivery options set out in Chapter 4 and in the classification guidance.

**Step 7** – The central ALB team should categorise the proposal using a ‘traffic light’ methodology to reflect whether a proposal is likely to have the status and characteristics of an ALB or not:

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**Red:** entity likely to be classified as central government and exhibit ALB characteristics.

**Step 8** – Engage with Cabinet Office to ratify potential classification as an ALB.

**Step 9** – Central teams should work with policy teams to develop a robust business case, setting out the rationale for creating a new ALB.

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**Amber:** borderline cases where it is unclear whether the entity would be classified as central government and exhibit the characteristics of an ALB.

**Step 8** – Engage with Cabinet Office and seek clarity on likely classification.

Follow the next step for either red or green as appropriate.

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**Green:** entity is unlikely to be sectorally classified as central government.<sup>14</sup>

**Step 8** – Engage with the Cabinet Office to ratify decision not to classify entity as central government.

**Step 9** – Proceed with setting up entity, keep Cabinet Office informed of progress.

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If the central ALB team does not consider the proposed body to be viable, the proposal should be strengthened further or discarded.

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<sup>13</sup> If a body is classified as central government, but is likely to be an informal body such as an expert committee then it should also be categorised as green.

### **Stage 3 – Cabinet Office assurance and approval**

The Cabinet Office, working with departments and with HM Treasury and the ONS as appropriate, will determine whether the proposed delivery model and classification is appropriate.

Early engagement with the Cabinet Office is important. This will ensure that the proposed classification is in line with the Government and department's intentions for the body in question. It will help to avoid what might be seen as an inappropriate classification, and allow the Cabinet Office to explore with departments the rationale for the body and any alternative delivery options.

If at this stage it is clear that the proposal has the characteristics of an ALB and that there appears to be a case for proceeding further, then the department would need to submit to the Cabinet Office and Treasury a full business case setting out the rationale for the proposal in detail, including consideration of alternative delivery options for further assessment (see Annex A).

**Step 10** – Departmental policy teams should seek agreement for the business case at official level with the Cabinet Office and Treasury officials through their central ALB team before proceeding further to ministerial clearance. If setting up a new NMD, the policy team should also engage with the Economic and Domestic Affairs Secretariat.

**Step 11** – The departmental Secretary of State or responsible minister should write to the Cabinet Office minister and the Chief Secretary to the Treasury to formally request their approval for the proposal to set up a new ALB.

Once formal approval has been received from Cabinet Office and Treasury ministers, an announcement about the ALB can be made.

Depending on the proposal, departments may at this point, also need to seek collective government agreement through the relevant Cabinet committee before making an announcement.

The Cabinet Office and Treasury can then provide advice and support on the steps that should be taken to set up of the body.

**Step 12** – The policy team should now develop a framework document, memorandum of understanding or equivalent setting out the relationship between the new ALB and its parent department. These will require Treasury agreement. Advice on this is in annex 7.2 of MPM. These documents should be periodically reviewed to keep abreast of experience and the changing context.

The principles set out in Partnerships between departments and arm's-length bodies: Code of Good Practice should be used to frame the relationship between the department and the new ALB.<sup>14</sup>

Once approval has been received, it is the responsibility of the department's Principal Accounting Officer (PAO) to ensure that the business case is published on GOV.UK (with suitable redactions should there be any commercial or other confidentiality issues).

<sup>14</sup> Cabinet Office Partnerships between departments and arm's-length bodies: Code of Good Practice February 2017

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# Annex A

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**Writing the business case**

For the approval of the creation of a new ALB there is a one-stage business case process in operation<sup>15</sup>. Any proposal for creating an NDPB, Executive Agency, or NMD must be supported by a proportionate, well structured, and fully costed business case.

The business case development process is key to making a decision, in terms of its scoping, options analysis and evaluation. The business case must never be perceived as simply the vehicle for gaining approval for the proposal, because the process itself is by nature an iterative one of development and revision and departments should allow sufficient time to develop it.

Where the case for creating a new ALB is made as part of the wider business case, the key points for the Cabinet Office should be drawn out in a separate annex.

### The business case must:

- follow HM Treasury's best practice Five Case Model<sup>16</sup>, and should make the strategic case for change, the economic case, the commercial case, the financial case and the management case;
- include an assessment of the service or function in question against the Government's three tests;
- clearly show that the department has explored the full range of options for delivering the service or function in question including an assessment of a long list of options, a fuller assessment of the short listed options and a full cost and benefits analysis<sup>17</sup> of the final preferred option; and
- state how the body will be set up, what the governance arrangements will be and how they will adhere to the Principles of Good Corporate Governance, and set out how the entity will be subject to review in line with Cabinet Office policy.

More detailed guidance on what needs to be included in a business case proposing the creation of a new ALB is below.

### Strategic case

The strategic context for the proposed entity should be set out:

- what is the current situation, including providing a picture of the overarching context?
- what is the case for change (why does the entity need to be established, and why now), and how does this fit in with/ support wider policies?

- why does the change require a public body to be set up? Does it meet the 'three tests'?
- why does the entity need to be an ALB? What category of ALB is proposed and does the proposed entity meet the criteria for an Executive Agency, NDPB or NMD?
- what will be impact of setting up/not setting up the ALB (current and future)? This should include any benefits and risks.
- what are any constraints and dependencies for this proposal to go ahead. Have any potential devolution issues or those related to exiting the European Union been considered?

### Economic case

Public value should be demonstrated by showing that a full assessment of alternative options was considered:

- a set of Critical Success Factors (e.g. strategic fit, objectives to be met, benefits optimisation, supply-side capacity and capability, risk and achievability, affordability) for the proposal should be identified, against which the options will be measured;
- a long list of options should be identified and assessed. In addition to the preferred option, a 'do nothing' option and other potential alternative delivery options should be considered (see Chapter 4). A strategic options framework should be used to identify the best shortlist; and
- once a shortlist of options has been reached, an appraisal of costs and benefits (Cost Benefit Analysis) of the options should be carried out, to identify a preferred option:

### Commercial Case

The Commercial Case demonstrates that the 'preferred option' will result in a viable procurement and well-structured proposal:

- it should outline the procurement and contracting implications of the preferred model;
- where relevant, it should set out the commercial elements of the organisation (charging mechanisms, cost recovery for service provision, income generation); and
- demonstrate that implications in term of personnel (TUPE and COSoP) have been considered<sup>18</sup>.

<sup>15</sup> Please note that there will be separate requirements for Treasury Approval Process (TAP) for spend related to the proposal, which falls outside of the department's Delegated Authority Limits. Departments should engage with their Treasury spending team for advice on this process.

<sup>16</sup> HM Treasury, *The Green Book: appraisal and evaluation in central government*, April 2013

<sup>17</sup> The National Audit Office' memorandum on reorganising arm's length bodies includes good practice principles to help identify, manage and realise costs and benefits: [www.nao.org.uk/report/national-audit-office-memorandum-for-the-public-administration-select-committee](http://www.nao.org.uk/report/national-audit-office-memorandum-for-the-public-administration-select-committee)

<sup>18</sup> Transfer of Undertakings (Protection of Employment) regulations (TUPE), Cabinet Office Statement of Practice on Staff Transfers (COSoP), December 2013

### **Financial Case**

This should summarise the overall affordability of the 'preferred option' over the life of the investment and identify capital and operating funding requirements:

- the financial analysis of the preferred option should demonstrate that it is affordable;
- show the incremental cost of delivery through the preferred option above that of delivering through the department or an existing body;
- demonstrate that appropriate contingencies have been made for risks and uncertainties;
- what the proposed cost of the proposed entity is over its expected lifespan/over the long term; and
- set out where the funding will come from.

### **Management Case**

The Management Case demonstrates that the 'preferred option' is capable of being delivered successfully, in accordance with recognised best practice:

- there are proper processes and structures in place to manage its implementation;
- the governance structures between the relevant department and the proposed entity have been set out; and
- the governance structures for the body are described clearly and are in line with the proposed Principles of Good Corporate Governance for the relevant type of ALB: Executive Agency, NDPB or NMD<sup>19</sup>.

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<sup>19</sup> See individual guidance.

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# Annex B

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**Efficiency and other  
considerations**

### Efficiency

Efficiency should be embedded in the behaviour of ALBs at the outset, and analysis of how efficient an organisation is should run through all of the ALB's own self-monitoring processes, and the regular performance reviews that should take place between the departmental sponsor team and the ALB.

There are a number of issues departments could usefully consider when looking to increase efficiency. All types of funding (CDEL, RDEL, AME and income from fees and charges) should be considered. Annex B of the Tailored Review Guidance<sup>20</sup> provides a number of issues departments could usefully consider when looking to increase efficiency. The analysis of each of these areas should be based on clear, robust and comparable management information.

### Nomenclature

ALBs should be named in a way which clearly sets out their function/purpose and supports transparency. For example, care should be taken to avoid including the term 'agency' in names, where this is not in fact the administrative classification of the body.

### Devolved Administrations

Any proposals for new entities which have a function which is either cross-border in terms of remit or which otherwise might impact on the Devolved Administrations must incorporate consultation with those Devolved Administrations as part of their planning. If in doubt, departments should discuss this with the Cabinet Office Constitution Team which leads on devolution policy.

### Exiting the European Union

Proposals for new entities being created as a consequence of the United Kingdom exiting the EU will also need to follow this approval process. Policy teams should engage with their departmental Central EU Exit teams when developing such proposals.

### Departmental Public Appointment Teams

Departmental Public Appointment Teams can advise on the process and policy on making appointments to the boards of NDPBs. They can also provide contact details (where necessary) for the Office of the Commissioner for Public Appointments.

### Regulatory Bodies

For bodies with regulatory functions, regulated self-assurance should be considered. Where there is broad alignment between business goals and the objectives of regulation, regulated self-assurance involves the regulator validating business processes and relying on their results for regulatory purposes. The business processes involved may be internal to the business or run by third parties: the key point is that they are robustly validated by the regulator so that they can provide strong assurance of compliance. There is more information in the Regulatory Futures report, produced in January 2017 by a coalition of regulators and collectively endorsed by ministers. Further advice is available from the Better Regulation Executive in the Department for Business, Energy and Industrial Strategy (BEIS). As one example of this, regulators should consider the provision of assured advice, paid for by regulated businesses. This reduces the risks of regulation by giving firms certainty about its likely impact on them; it helps well-motivated businesses to be fully compliant; and it allows regulators to target their other resources more effectively on non-compliant businesses. Further advice on this is available from the Regulatory Delivery Directorate in BEIS.

Funding from fees and charges should be the default solution for regulatory functions. There are many ways of structuring such funding to reflect particular regulatory strategies. Regulators should in particular consider charging non-compliant businesses for the cost to the regulator of bringing them back into compliance, on the lines of the Health and Safety Executive's Fee for Intervention scheme.

<sup>20</sup> Cabinet Office, [Tailored Reviews of Public Bodies guidance](#), March 2016

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