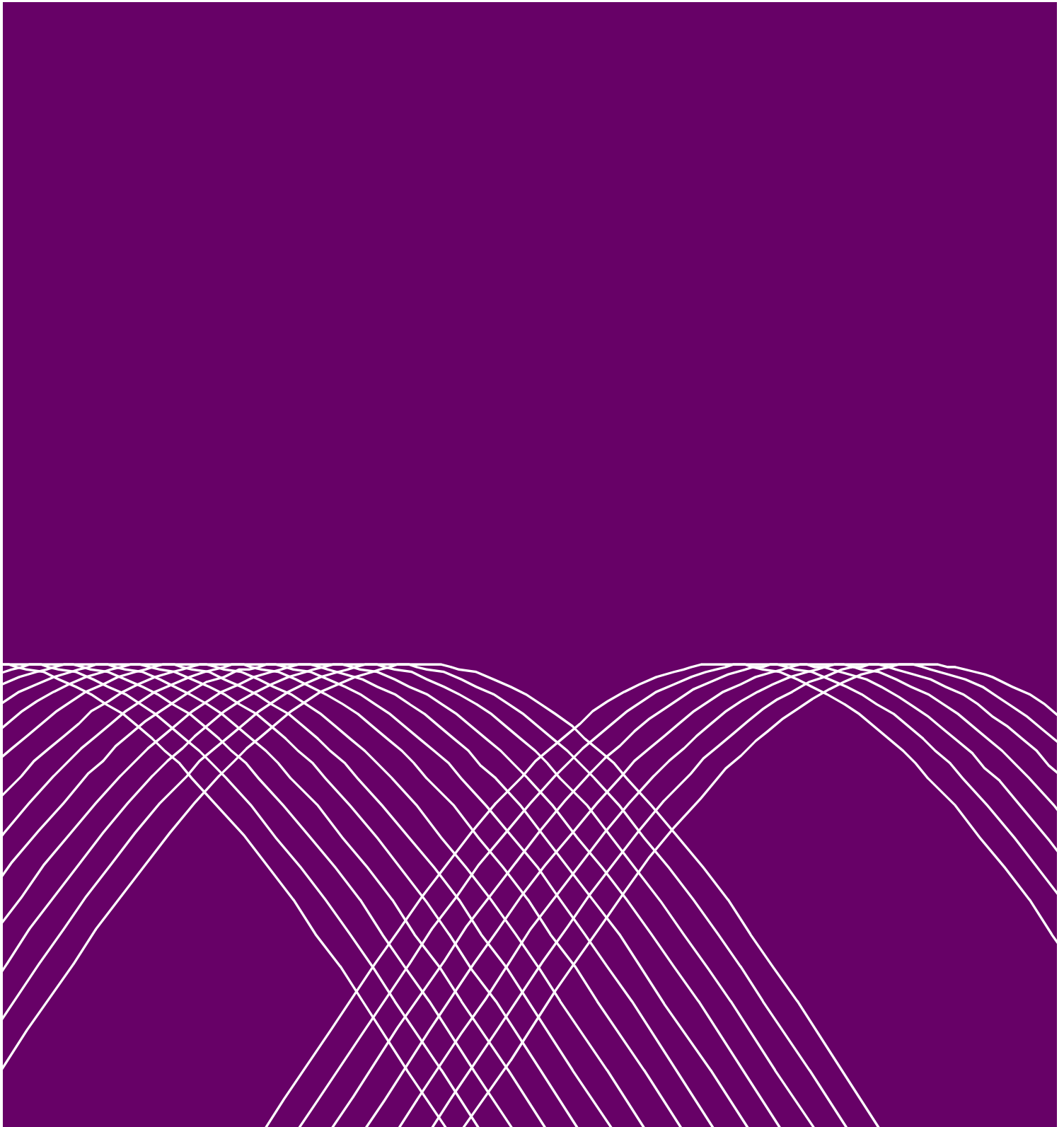




Public Bodies: A Guide for Departments

Chapter 5: Public Body Staff



Public Body Staff

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1. Which Public Bodies employ their own staff?

1.1 Public Bodies which are set up to perform executive, regulatory or commercial functions, i.e. Executive NDPBs/ Public Corporations, are normally given powers to employ their own staff who are not civil servants. These powers are set out in the legislation that establishes the body.

1.2 Only a very small number of Advisory NDPBs employ their own staff. The powers to enable them to do this are again normally included in any legislation setting them up. Advisory and Tribunal NDPBs are generally supported by a secretariat of civil servants who remain part of the sponsor department.

1.3 Exceptionally the following Executive NDPBs employ civil servants: the Advisory, Conciliation and Arbitration Service (ACAS), the Health and Safety Commission (HSC) and the Health and Safety Executive (HSE).

2. Role of the sponsor department

2.1 Starting up

2.1.1 A Public Body's ability to employ and manage staff is an important element of its relative independence from Ministers. Public Bodies should generally be allowed to establish their own HR systems. However, where the body joins the Principal Civil Service Pensions Scheme, formal systems of reporting and control are required between the sponsor department and the body. Whilst the sponsor department must be careful not to detract from a Public Body's independence, it does have a responsibility to assist the organisation in making a sound start in its management policies.

2.1.2 The sponsor department should encourage the body to adopt HR management practices which meet at least the minimum standards expected of public service employers. The Civil Service Management Code could be adopted and adapted if the sponsor department so wishes. The Code can be found at:

http://www.civilservice.gov.uk/management_of_the_civil_service/management_guidance/management_code/index.asp

2.2 Once Public Bodies are established

2.2.1 Sponsor departments should maintain contact on HR management matters and respond to requests for advice (such as in the case of a serious staffing problem). Sponsor departments are responsible for keeping Public Bodies informed of any Government commitments and changes in employment policy that may affect them.

3. Recruitment

3.1 Staffing Options: Departments need to decide early on at the planning stage whether a new Public Body should either:

3.1.1 Recruit its own staff.

3.1.1.1 If the Department decides that the Public Body will appoint its own staff, it might be useful for body to replicate, or follow closely, the recruitment systems in place in the sponsor department.

3.1.2 Be staffed by civil servants on secondment from the sponsor department.

3.1.2.1 This will be appropriate on a short-term, transitional basis only, to speed up staffing and to get appropriate knowledge, experience and expertise; and where there is uncertainty about future workloads. Heavy or permanent use of secondments might detract from the independence of the body. This approach should therefore be exceptional e.g. if the body would otherwise find it difficult to attract staff who are right for the job and whose cost is reasonable.

3.1.2.2 If it is decided to use seconded staff, the Public Body may wish to take legal advice on the terms of the secondee's temporary transfer. It should be documented that the secondee will remain the employee of the sponsor department. In order to help ensure that the secondee does not unwittingly become the employee of the body, the secondee should continue to receive their salary from their sponsor department and remain subject to the sponsor department's appraisal processes.

3.1.2.3 If the secondee does become the employee of the Public Body then the body may become liable for certain of the individual's actions. The sponsor department may also face difficulties when it seeks the return of the individual to the sponsor department.

3.1.3 Be staffed by people who have transferred permanently with the work from existing organisations.

3.1.3.1 If staff are transferred permanently from existing organisations, early consideration needs to be given as to what will happen to their pay, pensions, and other terms and conditions of service. In most cases the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) will apply, and departments should refer to *Staff Transfers in the Public Sector: A Statement of Practice* http://www.civilservice.gov.uk/publications/staff_transfers/publications_and_forms/pdf/stafftransfers.pdf

Arrangements for staff consultation about how the proposed changes will affect them also need to be put in place early on, for example via a newsletter or regular meetings.

3.2 Open Competition

3.2.1 Recruitment to new posts should be by fair and open competition. Hiring staff takes time and must be planned in good time. The Chief Executive and Finance Director are key appointments in securing the satisfactory setting-up of the Public Body. Early appointment to both these posts will be important. Departments will wish to ensure that selection of senior staff is on merit under fair and open competition.

3.3 Baseline Personnel Security Standard

3.3.1 The Baseline Standard is a good practice guide to the pre-employment screening of government staff and contractors, but applies equally to staff of NDPBs with any access to government assets. Departments should ensure that their public bodies are familiar with the Baseline Standard so that appropriate checks are made on prospective employees before they take up post. Details were sent to departments in Circular HRDG(Main)(06)47 – also sent to NDPB HR Directors and Agency Chief Executives – on 26 July 2006. The guidance is available at www.security-matters.gsi.gov.uk or from Cabinet Office Security Policy Division for those who do not have GSI access.

4. **Terms and conditions**

4.1 It is important that the staff understand the terms and conditions under which they are employed. Most statutes provide for the approval of terms and conditions by the departmental Minister. In these cases they cannot be changed without his or her agreement.

4.2 All terms and conditions of employment should be set out clearly in a staff handbook or on an accessible website.

4.3 The Chief Executive and Finance Director are key appointments in securing the satisfactory setting-up of the Public Body. Annex B of this Chapter provides a model Contract of Employment for the Chief Executive and/or other senior posts.

5. **Nationality Rules**

5.1 The Civil Service nationality rules cover those in the employ of the Civil Service and are set out in annex B to section 1.1 of the Civil Service Management Code which can be accessed at:

<http://www.civilservice.gov.uk/managementcode>

5.2 Staff in Public Bodies, with the exception of ACAS, HSE and HSC, are not civil servants and are therefore not covered by the Civil Service nationality

rules. However where, exceptionally, the nature of the work of an NDPB requires the imposition of nationality rules (as a basic indicator of loyalty to the state) the rules may be extended. Such an extension would require listing under the provisions of Section 75(5) of the Race Relations Act 1976. Departments considering such an approach should contact the Cabinet Office, Employment Policy and Practice Division, Room 2.6, Admiralty Arch, The Mall, London SW1A 2WH (Tel: 020 7276 1636 Fax: 020 7276 1642).

6. Confidentiality

6.1 All employees owe a general duty of confidentiality to their employer under civil law. They are therefore required to protect official information held in confidence and arrangements must be in place for disciplinary sanctions for a breach of this duty.

6.2 The Official Secrets Act 1989 makes unlawful disclosure of certain limited categories of information (for example security and intelligence, defence, international relations, and information which may lead to the commission of crime) a criminal offence. The Act applies explicitly to those staff of NDPBs who are Crown servants, and to the staff of a small number of NDPBs listed in the Act.

7. Rules of conduct and staff code

7.1 NDPBs should adopt a staff Code of Conduct in line with the *Model Code for Staff of Executive Non-departmental Public Bodies* – see Annex A.

7.2 Staff should be clear about the standard of conduct required, their duties and obligations and penalties they may incur if they fall short of them. Conduct rules should cover:

7.2.1 private interests and possible conflicts with public duty;

7.2.2 the acceptance of gifts and hospitality;

7.2.3 relevant share holdings;

7.2.4 the disclosure of official information;

7.2.5 political activity; and

7.2.6 effective and clear procedures for staff to raise concerns about improper conduct (if necessary with an official in the sponsor department), as well as making clear the provisions of the Public Interest Disclosure Act 1998 which protects individuals who make certain disclosures of information in the public interest.

7.3 In addition there should be rules for NDPB staff accepting business appointments after resignation or retirement in relation to the functions of the NDPB concerned and any potential for conflict of interest which may give rise to public concern. Rules about the acceptance of outside appointments for Civil Servants (which can be replicated for NDPB staff) are set out in Annexes A and B of section 4.3 of the Civil Service Management Code:

http://www.civilservice.gov.uk/management_of_the_civil_service/management_guidance/management_code/index.asp

7.4 Consideration should be given to rules about restrictions on political activity of NDPB staff, particularly in the run-up to elections and referendums, and to the avoidance of involvement in issues of party political controversy. Guidelines and principles on participation in political activities for Civil Servants (which can be replicated for NDPB staff) can be found in section 4.4 and its associated Annex A of the Code (see above link).

8. Human Resources Systems

8.1 Grading

8.1.1 Public Bodies should put in place arrangements for carrying out systematic reviews of the need for, grading, and loading of posts, after consultation with the sponsor department.

8.2 Training and development

8.2.1 Sponsor departments should ensure that Public Bodies are kept informed of emerging policies from the centre, and bodies must ensure that they implement appropriate training and development strategies.

8.2.2 Public Bodies will need to ensure that staff with financial responsibilities are appropriately trained to enable them to carry out their duties effectively. The training should include corporate planning, budgeting and management accounting. Public Bodies should consult their Sponsor Department if in doubt about what training is required or how it can be obtained.

8.2.3 Training for senior staff (chief executives and others) is available from the National School of Government: <http://www.nationalschool.gov.uk/>

8.2.4. Public Bodies should consider seeking accreditation as *Investors in People*: <http://www.iipuk.co.uk/IIP/Internet/default.htm>.

8.3 Performance Management and Appraisal

8.3.1 All Public Bodies must have a proportionate performance management and appraisal system. The sponsor Department must decide what the body's key performance areas are and how these can be measured on an individual basis.

8.3.2 There are many schemes currently in place to draw from when setting up a performance management system. Again, the sponsoring Department's systems would be a useful starting point. The performance targets for the Chief Executive Officer and equivalent senior posts should be agreed with the Board but should include some degree of stretch. These targets will be used to determine bonuses where bonus arrangements are offered (see paragraph 8.4.4 below).

8.3.3 The Public Body must have disciplinary procedures and systems in place to tackle cases of inefficiency, impropriety or misconduct, and these

should be invoked in all appropriate cases and at the earliest possible date. If the body is considering whether to pay compensation for severance of employment, it must have regard to the guidance contained in HM Treasury *DAO(GEN) 11/05* and to whether any such payments need approval from its sponsor department or, through the sponsor Department, from HM Treasury.

8.4 Pay

8.4.1 HM Treasury issues annual Civil Service Pay Remit Guidance providing information on the approval process for pay remits and the Government pay and workforce policy. This includes information on the determination of NDPB pay remits. It may be found at: http://www.hm-treasury.gsi.gov.uk/psd/wir/cs_payguidance.htm. Follow the link to Civil Service Pay Guidance (accessible only for Government Secure Intranet users.)

8.4.2 Pay systems should be judged against the criteria of value for money, flexibility, financial control, and linking pay to performance.

8.4.3 Where the NDPB joins the PCSPS, pay decisions that may impact on pensions, such as making allowances pensionable, must be approved by the Civil Service Pensions Department at the Cabinet Office.

8.4.4 In general, approval for Chief Executive pay is primarily the responsibility of the sponsor department in consultation with the Treasury. Where legislation exists for formal Treasury approval, changes to Chief Executive pay will require agreement from the Chief Secretary to the Treasury. Further information on the approval process for NDPB pay remits will be provided in the Treasury Civil Service Pay Remit Guidance. All pay remits must be processed in accordance with the Pay Remit Guidance before annual pay negotiations with staff and trade unions can commence. Where bonus arrangements are offered to Chief Executives and equivalent senior posts, these should be on a non-consolidated basis only and be linked to exceeding agreed performance targets. Meeting targets will not trigger an end of year bonus. The full bonus award should therefore only be triggered where **all** performance targets have been exceeded.

8.4.5 The NDPB must prepare a local pay bargaining plan when it first takes responsibility for its own pay bargaining.

8.5. Industrial relations

8.5.1 Current guidance can be obtained from ACAS (<http://www.acas.gov.uk/>).

8.6 Pensions

8.6.1 Departments should consult the Workforce, Pay and Pensions (WPP) Team, HM Treasury about the powers and the arrangements for a proposed body at the earliest possible stage. This applies regardless of whether it is a new NDPB, or one formed as a result of a merger of existing

bodies. Contact details are provided in Chapter 1: Case assessment and Classification of a Public Body.

8.6.2 Any necessary control powers should be included in any founding legislation, or in the terms attaching to a grant-in-aid, or the body's Financial Memorandum. Whatever the extent of prior planning about a NDPB, firm decisions on pensions often cannot be taken until after the NDPB is set up.

8.6.3 The enabling powers should therefore be drawn widely and provide the power to operate pension arrangements or otherwise make provision for the payment of pensions and should enable the body to:

8.6.3.1 pay pensions, allowances and gratuities to or in respect of its staff and compensation in excess of the Employment Rights Act 1996;

8.6.3.2 make payments towards the provision of such benefits; and

8.6.3.3 maintain pension schemes (whether contributory or not).

8.6.4 If the body is one where more detailed departmental oversight is appropriate, for example because the majority of the body's funding is provided from the public purse, the powers should make the arrangements subject to the approval of the sponsoring Minister. Departments must ensure that NDPBs whose pension arrangements they approve conform to public service pensions policy. If in any doubt departments should in the first instance consult the published Treasury guidance on pensions and compensation arrangements in NDPBs which is available at:

http://www.hm-treasury.gov.uk/media/70B/09/ndpb_pensions.pdf

If your departments are still uncertain after reading the guidance, they should consult the Workforce, Pay and Pension Team in the Treasury.

8.6.5 Pension Arrangements

8.6.5.1 It is normal for the public services to offer contracted out occupational pension schemes as part of the remuneration package. The need to maintain a consistency throughout the field where Ministers and their departments are expected to have a supervisory role means that there is relatively little scope to diverge from the normal terms for the major public services.

8.6.5.2 The factors that might determine an appropriate pension model are the analogue used (if any) for other conditions of service, the working affinities of the NDPB (e.g. with central or local government), and management's views on the normal retiring age.

8.6.6 Options

8.6.6.1 Occupational pension schemes for staff of NDPBs can be provided in a number of ways:

- 8.6.6.1.1 admittance to an existing scheme;
- 8.6.6.1.2 a stand alone unfunded scheme;
- 8.6.6.1.3 a stand alone funded scheme; or
- 8.6.6.1.4 a funded scheme run by a licensed pensions provider, eg an insurance company; or
- 8.6.6.1.5 an unfunded pay-as-you-go arrangement 'by analogy' with another public service scheme.

8.6.6.2 In exceptional circumstances no occupational pension is provided. This is only likely to occur where bodies have a specific and short life span as a public service organisation. A pay uplift may be made to compensate for the non-pensionable employment.

8.6.7 Principal Civil Service Pension Scheme (PCSPS)

8.6.7.1 Many Executive NDPBs will have a close and continuing affinity with the Civil Service and it may be possible to simplify the pension arrangements by admitting the staff to the PCSPS. This is not possible in every case. **The Civil Service Pensions Division (CSPD), Cabinet Office must be consulted about any such proposal at the earliest possible stage and before the founding legislation is drafted.** It should be noted that if the Public Body is admitted to the PCSPS, accountability and reporting for their pensions' administration is the responsibility of the Sponsor Department.

8.6.7.2 Admission is achieved by adding the body to Schedule 1 of the Superannuation Act 1972 usually through a provision in the founding legislation.

8.6.7.3 The employer will be responsible for collecting employees' pension contributions and paying these and the employers' pension contributions, known as Accruing Superannuation Liability Charges (ASLCs), to the Civil Superannuation. Pensions will be paid directly to the pensioners by the Cabinet Office nominated paying authority.

8.6.7.4 ASLCs form part of the running costs of the NDPB and expenditure cover will therefore have to be found for these costs. Adding a body to Schedule 1 does not make staff civil servants, but they will need to satisfy the Civil Service health standard.

8.6.7.5 Where there is no founding legislation it may be possible to admit a NDPB under an Order made by the Cabinet Office using the powers contained in section 1(5)-(8) of the Superannuation Act 1972. This is only possible, however, where staff are paid directly from a Vote, the Consolidated Fund or a specified Fund or a grant paid from these sources which covers the cost of staff remuneration.

8.6.8 Local Government Pensions Scheme (LGPS)

8.6.8.1 Where an NDPB has an affinity with local government, it may be possible to relieve it of the need to administer pensions by negotiating admission of the NDPB to the LGPS. The scheme pays the earned benefits, plus any associated pensions increase and the NDPB would collect and pay over employees' contributions and the employer contributions required to the administering authority.

8.6.9 Other Pension Scheme Arrangements

8.6.9.1 Another possibility is to negotiate admission to some other existing controlled scheme run by employers with whom the body has close connections, or who share the same sponsoring department.

8.6.9.2 In cases where it is not possible to join the PCSPS, yet the NDPB has close links to the Civil Service, the NDPB can avoid drawing up a detailed scheme by introducing one which provides for the provisions to be 'by analogy' with those of the PCSPS, as amended from time to time. However, the scheme will be unfunded with benefits paid out of revenue as they arise. This solution is not appropriate for partly grant-aided bodies with an uncertain future, since there is a risk that public expenditure would have to be increased to meet the full cost of residual pension liabilities if the body were wound up.

8.6.9.3 Detailed guidance on pensions and compensation is available from the Treasury's website :

http://www.hm-treasury.gov.uk/media//6DE2C/pension_comp_guide03.pdf

If you need to discuss the options after reading the guidance contact HMT Workforce, Pay and Pensions Team on 020 7270 4525.

8.6.9.4 Where the above options are not deemed appropriate, the NDPB may need to introduce a comprehensive scheme of its own. Large NDPBs will probably wish to run funded schemes administered by trustees. (By law the trustees will need to appoint auditors. The auditors don't however need to be the same as those who audit the NDPB's accounts). Smaller NDPBs may prefer to make arrangements with an insurance company to avoid disproportionate additions to their administrative costs. Others may prefer to pay benefits as they emerge (pay-as-you-go). But the point about avoiding this method for partly grant-aided bodies with an uncertain future is again relevant. Given the actual and contingent liabilities created by pension schemes, non-analogue schemes should be approved by departments and the relevant Treasury Spending Team in advance, especially where a significant additional liability is involved.

8.6.10 As the type of pension arrangement adopted may have implications for the manner in which pension costs are treated and disclosed in the accounts, the NDPB should have regard to the recommendations contained in the

Government Financial Reporting Manual (www.financial-reporting.gov.uk) and consult the Central Accountancy Team in the Treasury in case of any doubt.

8.7 Injury Benefits

8.7.1 It will be necessary to provide injury benefits for staff who suffer injury or contract a disease as a direct consequence of employment by the body and where this leads to an impairment of earning capacity. In the event of death, benefits may be payable to dependants. Where staff are pensioned in an existing scheme, such as the PCSPS, they will enjoy cover provided by the scheme or arrangements in association with it.

8.7.2 In other cases, including 'by analogy' arrangements set up after March 1989, it will be necessary to devise separate injury benefit arrangements which would be consistent with the existing public service policy, currently reflected in the Civil Service Injury Benefit Scheme. The benefits are paid out of revenue as they arise. Insurance-type cover should not be taken out for this contingency.

8.8 Compensation

8.8.1 It is normal for the pension scheme to provide for the immediate payment of pension and lump sum accrued on actual service when those who are aged above the Inland Revenue's age limit are retired compulsorily with at least 5 years' reckonable service. Where it is decided to follow the public service practice of enhancing such benefits by added years and providing special lump sum compensation payments in excess of the requirements of the Employment Rights Act 1996, such benefits should be provided from a separate compensation scheme. This requirement applies to 'by analogy' arrangements set up after March 1989.

8.8.2 Compensation payments for those aged under the Revenue's age limit should be by analogy with the compensation arrangements for the public service to which the body's pension arrangements were linked, either directly or by analogy. If the body has a free standing pension scheme, the compensation arrangements for those not eligible for an immediate payment should be set in line with the public service norm of a maximum of up to 66 weeks pay.

8.8.3 The additional costs of any voluntary early retirement, e.g. on the grounds of redundancy, such as additional (unearned) benefits like added years for pension purposes, special lump sum compensation payments etc. will have to be met by the NDPB. This applies whether or not staff are members of schemes such as the PCSPS or LGPS.

9. **Equality legislation**

9.1 The HR systems must be fully consistent with equality legislation and any codes of practice issued under such legislation, and keep abreast of any new

requirements that might emerge. The systems should reflect good practice in diversity matters, including sound monitoring procedures

9.2 Sponsor departments are responsible for keeping Public Bodies informed of any Government commitments and changes in equality legislation that may affect them.

9.3 The body should draw up an equal opportunities plan which ensures that all employment practices and policies comply with equal opportunities legislation and good practice guidelines;

9.4 Further guidance and codes of practice are available from the Commission for Racial Equality, the Equal Opportunities Commission, and the Disability Rights Commission. The Cabinet Office Diversity Division website (<http://www.diversity-whatworks.gov.uk/>) also offers guidance on good practice and further contacts.

10. Data Protection Act 1998 and Freedom of Information Act 2000

Public Bodies must be aware of their obligations under the Data Protection Act (1998) and the Freedom of Information Act (2000). Please refer to Chapter 8: Policy – Openness and Accountability for further information.

11. Security

11.1 Where a NDPB is to deal with or have access to protectively marked information, appropriate protective security measures must be taken. Advice on security matters should be sought from the Departmental Security Officer who may, in turn, wish to consult Cabinet Office Security Policy Division.

11.2 In some cases, explicit provisions for access to sensitive material should be incorporated in legislation.

12. Health and safety

12.1 It is a legal requirement that all places of work have a Health and Safety policy, which staff should be made aware of and adhere to. For more information on health and safety matters, contact the Health and Safety Executive – www.hse.gov.uk.

13. Policy on transfer of NDPB staff into the Civil Service

13.1 The Civil Service is committed to the principle of improved mobility of staff between government departments, the wider public sector, voluntary bodies and the private sector. On 3rd April 06, the Leadership and Development Strategy Directorate in the Cabinet Office launched two schemes with immediate effect: Scheme A details the new arrangements enabling transfers of NDPB staff into the Civil Service on merit and Scheme B addresses transfers of surplus NDPB staff via CSVacs (vacancy handling database for surplus staff).

13.2 Contact details are as follows:

General enquiries on transfers of NDPB staff into the Civil Service:

Harry Charalambous
67 Tufton Street
London SW1P 3QS
Tel. 0207 276 1614
Email: Harry.charalambous@cabinet-office.x.gsi.gov.uk

Efficiency and Relocation Support Programme (CSVacs):

Ms Claudette Thompson
Room 2.5
Admiralty Arch
The Mall
London SW1A 2WH
Tel: 0207 276 1689
Email: Claudette.thompson@cabinet-office.x.gsi.gov.uk

Applications to register on approved list of NDPBs:

Fred Jaeger
Office of the Civil Service Commissioners
35 Great Smith Street
London SW1P 3BQ
Tel. 0207 276 2613
Email: Fred.jaeger@csc.x.gsi.gov.uk

MODEL CODE FOR STAFF OF EXECUTIVE NON-DEPARTMENTAL PUBLIC BODIES

INTRODUCTION

- This document sets out a Code of Conduct for staff of executive non-departmental public bodies (NDPBs) and similar organisations and is intended as a model which the public bodies concerned should adopt with any modifications that may be necessary to take account of their own characteristics and circumstances.
- It is mandatory for the board of each executive NDPB to adopt a Code of Conduct for their staff.
- NDPBs are asked to ensure that the Code is brought to the attention of staff.
- It should become part of the terms and conditions of service applicable to all staff, breaches of which may be the subject of disciplinary action.
- It will be necessary to ensure that the Code applying to the public body concerned is consistent with the legislation or other provisions under which it is established.
- The Code should be a public document, freely and easily available to both NDPB staff and board members, and on request, to the general public.

DUTIES AND RESPONSIBILITIES

1. Staff of public bodies should familiarise themselves with the contents of the Code and should act in accordance with the principles set out in it.
2. Staff of public bodies have a duty:
 - to discharge public functions reasonably and according to the law; and
 - to recognise ethical standards governing particular professions.

The senior full-time official, who is usually designated as accounting officer, has overall responsibility for propriety in a broad sense, including conduct and discipline.

ACCOUNTABILITY

3. Staff of public bodies should be aware:
 - of their accountability to the board of the public body which they serve;

- of the respective roles of the sponsor department and the public body as set out in a Management Statement, Framework Document or agreed Memorandum of Understanding;
- that the Minister responsible for the body is ultimately accountable to Parliament for its independence, effectiveness and efficiency.

The Board of an NDPB has responsibilities as an employer. These are set out in their own Code of Practice.

4. Staff of public bodies should conduct themselves with integrity, impartiality and honesty. They should not deceive or knowingly mislead the board, the sponsor department, Ministers, Parliament or the public.

CONFLICTS OF INTEREST

5. Staff should abide by the rules adopted by the public body in relation to private interest and possible conflict with public duty; the disclosure of official information; and political activities. They should not misuse their official position or information acquired in their official duties to further their private interests or those of others. Key members of staff, such as the Chief Executive, Finance Director, managers of large contracts, and staff working on contracts, should ensure that any possible conflicts of interest are identified at an early stage and that appropriate action is taken to resolve them.

INTEGRITY

6. Staff of public bodies should not use their official position to receive, agree to accept or attempt to obtain any payment or other consideration for doing, or not doing, anything or showing favour, or disfavour, to any person. They should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement and integrity. Under the Prevention of Corruption Act 1916, employees of public bodies may be required to prove that the receipt of payment of other consideration from someone seeking to obtain a contract is not corrupt.

RELATIONS WITH THE PUBLIC

7. Staff of public bodies who deal with the affairs of the public should do so sympathetically, efficiently, promptly and without bias or maladministration. Staff of public bodies should offer the public the highest standards of conduct and service.

USE OF RESOURCES

8. Staff of public bodies should endeavour to ensure the proper, economical, effective and efficient use of resources.

CONFIDENTIALITY

9. Staff of public bodies owe a general duty of confidentiality to their employer under civil law. They are therefore required to protect official information held in confidence. The Official Secrets Act 1989 applies to any member of the public who has, or has had, official information in their possession. The Act makes unlawful disclosure of certain limited categories of information (for example security and intelligence, defence, international relations, and information which may lead to the commission of crime) a criminal offence. The Act applies explicitly to those staff of NDPBs who are Crown servants, and to the staff of a small number of NDPBs listed in the Act.

DATA PROTECTION

10. Staff should be aware of their obligations under the Data Protection Act (1998) and Freedom of Information Act (2000). Guidance on this legislation can be obtained from the Information Commissioner (www.informationcommissioner.gov.uk).

STAFF CONCERNS ABOUT IMPROPER CONDUCT

11. If staff of a public body believe they are being required to act in a way which:
 - is illegal, improper, or unethical;
 - is in breach of a professional code;
 - may involve possible maladministration, fraud or misuse of public funds; or
 - is otherwise inconsistent with this Code;

they should either raise the matter through the management line or else approach in confidence a nominated official or board member entrusted with the duty of investigating staff concerns about illegal, improper or unethical behaviour. Staff should also draw attention to cases where:

- they believe there is evidence of irregular or improper behaviour elsewhere in the organisation, but where they have not been personally involved;
- there is evidence of criminal or unlawful activity by others;
- they are required to act in a way which, for them, raises a fundamental issue of conscience.

12. Where a member of staff has reported a matter covered in paragraph 11 above and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to a nominated official in the sponsor department who will investigate the matter further.
13. Staff should be aware of the provisions of the Public Interest Disclosure Act 1998, which protects individuals who make certain disclosures of information in the public interest.

AFTER LEAVING EMPLOYMENT

14. Staff of public bodies should continue to observe their duty of confidentiality (see paragraph 9 above) after they have left the employment of the public body and should be aware of and abide by any rules on the acceptance of business appointments after resignation or retirement. Chapter four of the Civil Service Management Code deals with this issue and should be consulted to see parallel arrangements in the Civil Service.

MODEL CONTRACT OF EMPLOYMENT: INDEFINITE PERIOD. TO BE ADAPTED ON THE ADVICE OF THE NDPB'S LEGAL ADVISERS AND ON THE ADVICE OF THE SPONSORING DEPARTMENT

This document sets out your principal terms and conditions of employment. It incorporates the written particulars required by the Employment Rights Act 1996 and, together with the staff handbook as amended from time to time, constitutes your contract of employment with the [*name of body*]

#¹ Names of parties

..... (the Employee)

[*name of body*] (the Employer)

#1. Commencement of employment

Your employment began/will begin on [*date*].

#2. Job title and duties

2.a. You are appointed as a [Chief Executive Officer or equivalent/ other senior post] of the [*name of body*]. Your current job title and duties are detailed in Schedule 1 and may be amended from time to time. Any changes will be discussed with you fully and notified to you in writing.

2.b. [*if applicable*][It is a fundamental condition of your employment as Chief Executive that you carry out the duties of Accounting Officer for [insert name of body], as appointed by the Principal Accounting Officer. You will carry out your duties and responsibilities as Accounting Officer in accordance with the Treasury memorandum, "The Responsibilities of an NDPB Accounting Officer", a copy of which has been provided to you. If in the reasonable opinion of the Accounting Officer for [sponsor department] you are no longer a fit person to carry out the responsibilities of an Accounting Officer, or it is otherwise in the public interest to do so, your designation as Accounting Officer will be withdrawn and your employment will normally terminate. In such a case the procedures that will apply will be the procedures relating to withdrawal of Accounting Officer status from Chief Executives of NDPBs which are determined from time to time by the Cabinet Office and which are available from the Chairman of the Board.] ***[It will be for the sponsoring department to consider in each case whether or not it should be a fundamental condition of the appointment as Chief Executive that the Chief Executive carries out the duties of Accounting Officer or whether it is one of a number of responsibilities that the Chief Executive should have and that the Department should be free to designate someone else as Accounting Officer.]***

3. Staff Handbook

The details of your terms and conditions are set out in the staff handbook, a copy of which you have been given [or a copy of which is available for inspection in the Personnel Division]. Those parts of the handbook which have contractual effect, as amended from time to time, form part of your contract.

¹ Clauses marked # are included to comply with the Employment Rights Act (ERA). This information is supplemented by the schedule.

#4. Salary

- 4.a. Your basic salary is [£x] a year, payable monthly in arrears by credit transfer to your bank or building society.
- 4.b. [The Board] [*if applicable – see Para 8.4.4 of Chapter 5 above*] will determine any increase in your salary in accordance with the procedures set out in [relevant provisions of staff handbook]. Your salary will be reviewed annually. You will be notified in writing of any change to your salary.
- 4.c. Your performance targets will be agreed annually with the Board (where applicable) and be used to determine your level of non-consolidated bonus, which will be linked to exceeding these performance targets. Meeting targets will not trigger an end of year bonus. The full bonus award will only be triggered where **all** performance targets have been exceeded.

5. Disclosure²

You should be aware that the post to which you have been appointed carries with it a requirement that certain information about your salary and pension entitlements will be disclosed in the annual accounts of [NDPB]. Details of the information to be disclosed are given in chapter 11 of 'Executive Non-Departmental Public Bodies: Annual Reports and Accounts Guidance' issued by the Treasury. The disclosure of additional information may be required in the event that the provisions of the Resource Accounting Manual are amended. [Applicable for Chief Executives only - Your annual remuneration will also appear in the Cabinet Office's Public Bodies Directory]. It is a condition attaching to your post that you agree to the disclosure described above.

6. Performance Management and Appraisal

Your employment requires performance consistent with the high standards expected of public servants. Your performance will therefore be subject to regular appraisal and review, with an opportunity to discuss that performance with your line manager. [The performance targets for Chief Executives and equivalent posts: Your performance targets should be agreed in advance with the Board and will be stretching. These will be used to determine your level of bonus if any.]

#7. Hours of work

- 7.a. You are required to work a minimum (over a 5 day week) of [x] hours, including daily meal breaks of one hour.
- 7.b. You will be required to work such additional hours as may from time to time be reasonable and necessary for the efficient performance of your duties.
- 7.c. You are not entitled to the payment of any overtime.
- 7.d. You are entitled to apply for part-time or flexible working arrangements.

#8. Annual leave

- 8.a. Your annual leave allowance is [x] days. The detailed rules relating to annual leave are set out in the attached Schedule 2.

² Disclosure of this information is included in the UK GAAP (Generally Accepted Accounting Practice) provisions to which the Government subscribes. Inclusion of this clause should therefore be regarded as mandatory.

8.b. Your leave year runs from _____ to _____.

#9. Public holidays

Subject to the detailed rules in [relevant provisions of the staff handbook] you are entitled to all public holidays in addition to your annual leave allowance and you will be paid for each day. Further details are set out in the attached Schedule 2.

+³10. Sickness

The rules relating to sickness and injury are to be found in [relevant provisions of the staff handbook]. These provide for absence on full pay [and on half pay,] [depending on the length of absence and subject to a ceiling on total paid absence within a given period.]

11. Pensions

[This clause should be adapted as appropriate to the pension scheme[s] available to the staff of the NDPB.]

11.a. As an employee of [name of body] you are eligible to be a member of the [name of NDPB pensions scheme] which provides a pension based on [provisions of the pension scheme eg years of service and pensionable earnings].

11.b. Information from your Personnel Division will explain about the pension scheme and the pension choices available to you. You may exercise your right not to participate in the scheme at any time. If you do so within three months of your current entry into the [name of body] your wish to 'opt out' will apply from the date of your appointment; otherwise it will apply from the next convenient pay period.

12.* Maternity leave

12.a. You are entitled to *[insert how much paid maternity leave will be granted in addition to the statutory entitlement. (Members of the SCS are entitled to 3 months and 1 week's paid maternity leave on full pay on each relevant occasion provided that, when the maternity leave begins, the member is in paid service, intends to return to work and has at least one year's employment in the body)].* Detailed provisions relating to maternity leave are set out in [relevant provisions of the staff handbook].

12.b. The statutory provisions relating to maternity leave, maternity pay and parental leave may apply. Full details are available from *[the Personnel Division]*.

OR

12.* Paternity leave

You are entitled to *[insert how much paid paternity leave will be granted in addition to the statutory entitlement. (Members of the SCS are entitled to a minimum of 2 days' paid paternity leave on each relevant occasion.)]* In addition, you may have a statutory right to parental leave. Full details are available from the Personnel Division.

[Delete whichever is not applicable]*

#13. Place of work/mobility

³ Clauses marked + cover areas where reference may be made to other documents providing that they are readily available during normal working hours or made reasonably accessible in some other way.

- 13.a. Your current place of employment is *[insert address at which employee is required to work]* but you may be required to work at any place within reasonable daily travelling distance of your home.
- 13.b. *[If appropriate: During the course of your employment you may be required to transfer to another place of work in the UK [or outside the UK] [delete as appropriate]. Unless wholly exceptional circumstances exist which make it impossible, you will be given reasonable notice of any such change. Reasonable expenses will be paid for any relocation or travel costs incurred as a result of the transfer. Details of such expenses are to be found in [relevant provisions of the staff handbook].*

#14. Notice

- 14.a. You will normally be given the following periods of notice in writing terminating your employment:
- (i) if you are retired on age grounds, if you are dismissed on grounds of inefficiency, or if your dismissal is the result of disciplinary proceedings in circumstances where summary dismissal is not justified:

Continuous Service for:

Up to 4 years - 5 weeks

4 years and over - 1 week plus 1 week for every year of continuous service up to a maximum of 13 weeks.
 - (ii) if you are retired on medical grounds, the period of notice in (i) above or, if longer, 9 weeks, unless a shorter period is agreed.
 - (iii) if your employment is terminated compulsorily on any other grounds, unless such grounds justify summary dismissal at common law or summary dismissal is the result of disciplinary proceedings - 6 months.]
[(i) to (iii) are the provisions that apply to members of the Home Civil Service. See section 11 of the Civil Service Management Code.]

On the expiration of such notice, your employment will terminate.

You will receive no notice if you agree to *[flexible or approved early retirement] [if applicable]* or voluntary redundancy.

You will receive no notice where the date of termination is mutually agreed.

- 14.b. If your employment is terminated without the notice which it is stated in (a) would in practice normally be given, having regard to the reason for such termination, compensation will be paid to you in accordance with the relevant provisions of the Civil Service Compensation Scheme. *[Only applicable if the member of staff is a civil servant and entitled to benefits under the Civil Service Compensation Scheme.]*
- 14.c. Unless otherwise agreed, you are required to give a minimum period of 3 months' **written** notice *[except under certain circumstances]* to *[indicate appropriate person by description or otherwise]*, if you wish to terminate your employment.

15. Retirement Age

[The retirement age is a matter for the Board to determine, in consideration of when the member of staff might be able to access pension benefits.]

The normal retirement age is [x] and this will be your retirement age, unless a different retirement age is agreed with the Board.

16. Other Compensation for Compulsory Early Termination of Contract
[The body should check the provisions of the relevant pension scheme to see whether it allows for compensation to be paid for early termination whether it is due to limited efficiency or organisational difficulties such as promotion blockage at the top of the organisation. The following applies to those who are entitled to benefits under the Civil Service Compensation Scheme]

- 16.a. [If your service is compulsorily terminated early on grounds of structure or limited efficiency or if it is terminated early on grounds of redundancy, you will be eligible for benefits under the Civil Service Compensation Scheme in accordance with the rules of the scheme.
- 16.b. If your performance is so unsatisfactory as to warrant the use of inefficiency procedures as set out in [relevant provisions of the staff handbook] and you are dismissed for inefficiency, the Board has discretion, in certain circumstances, to award compensation under the Civil Service Compensation Scheme.
- 16.c. [Medical Retirement: You may be retired on medical grounds and eligible for payment of ill health retirement benefits. Details of the provisions for medical retirement are set out in [relevant provisions of the staff handbook]. [The present criteria for medical retirement are that the breakdown in your health is such that it prevents you from carrying out your duties and that the ill-health is likely to be permanent.] *[delete if not applicable].*

17. Conduct

- 17.a. As a public servant, it is essential that you are, and are seen to be, honest and impartial in the exercise of your duties. You must not allow your judgement or integrity to be compromised in fact or by reasonable implication. The detailed requirements governing the avoidance of conflicts of interest, the receipt of gifts and hospitality and the standards of conduct expected of you are set out in [relevant provisions of the staff handbook]. *[In drafting the staff handbook the Board may wish to refer to the Model Code for Staff of Executive NDPBs available at www.cabinet-office.gov.uk]*
- 17.b. If you believe you are being required to act in a way which:
- is illegal, improper, or unethical;
 - is in breach of constitutional convention or a professional code;
 - may involve possible maladministration;

you should report the matter in accordance with the procedures set out in [relevant provisions of the staff handbook]. You should also report to the appropriate authorities evidence of criminal or unlawful activity by others. You may also report if you are required to act in a way which, for you, raises a fundamental issue of conscience.

- 17.c. You are required to seek permission to take part in local political activities and you must comply with any conditions laid down by the [name of body]. Further details are set out in [relevant provisions of the staff handbook].

+18. Disciplinary and grievance procedures

- 18.a. Disciplinary matters are dealt with in accordance with the [name of body] disciplinary procedures, which are set out in [relevant provisions of the staff handbook].
- 18.b. If you have any grievances relating to your employment, or if you wish to appeal against any decisions or actions which affect you adversely, you must bring this to the attention of

[set out appropriate person, by description or otherwise, state the manner in which any such application should be made and refer to relevant provisions of the staff handbook].

19. Confidentiality/use of official information

- 19.a. As the [*Chief Executive/or equivalent /other senior post*] you will have access to information in respect of the management and affairs of [*name of body*] which is or may be confidential. The rules governing confidentiality and the use of official information are set out in [*relevant provisions of the staff handbook.*]
- 19.b. [*If applicable to the body*] [You are also subject to the Official Secrets Act 1989. An explanatory leaflet summarising the provisions of the Act as they affect you has been provided to you.]

20. Acceptance of outside appointments

[If applicable to the post] In certain circumstances you are required to obtain the agreement of the [Board] before accepting any offer of employment outside the [*name of the body*] or which would start within 2 years of leaving its employment. The rules on the acceptance of outside appointments, and the circumstances in which they apply, are set out in [*relevant provisions of the staff handbook.*]]

#21. Overseas employment

Currently it is not foreseen that you will be required to work outside the United Kingdom for more than one month on any one occasion.

OR

[Details to be inserted if relevant, to comply with ERA, section 1, which applies to work outside the UK for more than one month.]

22. Expenses

You shall be reimbursed for all reasonable travel, accommodation and other expenses in accordance with the rules set out in the staff handbook (as amended from time to time), which are wholly, exclusively and necessarily incurred in relation to the performance of your duties and responsibilities under this agreement.

23. Processing of personal data

- 23.a. By signing this contract you give your consent to [NDPB] to process personal data concerning yourself in order to fulfil its obligations under this Agreement and any other reasons relating to your employment, in accordance with the provisions of the Data Protection Act 1998 (as amended from time to time). This will principally (but may not exclusively) relate to personnel, administrative, pension and payroll matters. Your attention is drawn to the fact that [NDPB] will keep information about sickness and accidents for purposes such as maintaining records for the purposes of statutory sick pay and managing sickness absence.

24. The further particulars of terms of employment not contained in the body of this contract which must be given to you in compliance with Part 1 of the Employment Rights Act 1996 are given in the attached Schedule 2.

Signed _____
On behalf of [*name of body*]

(Date) _____

Signed _____
(Employee)

(Date) _____

SCHEDULE 1

JOB TITLE AND DUTIES

[This schedule to be completed by the body]

SCHEDULE 2

EMPLOYMENT RIGHTS ACT 1996 - PART 1

The following information is given to supplement the information given in the body of the contract in order to comply with the requirements of Part 1 of the Act.

1. Continuous employment

Your period of continuous employment began on

2. Annual leave

[Detailed rules to be inserted by NDPBs in accordance with the provisions which apply to their senior staff].

3. Public holidays

[*Optional clause.*] [You may be required to work on a public holiday. If so, you are entitled to time off in lieu.]

4. Collective Agreements

[There are no service-wide collective agreements in force which affect your terms and conditions.]

5. Pensions

A contracting out certificate pursuant to the provisions of the Pension Schemes Act 1993 is [not] [*delete as applicable*] in force in respect of your employment.

NOTES ON CLAUSES

1. Commencement of employment

In most cases, a contract for an indefinite period, such as this, will be most appropriate. However, the Board may wish to consider offering a fixed-term contract in cases of genuine short-term need, for example, to cover a period of maternity leave.

3. Staff Handbook

As a legal requirement, this document must be freely available during normal working hours to all those for whom it forms part of their contract. It will be essential for the effectiveness of the contracts that the staff handbook is in proper order before contracts are signed. The final sentence reflects the fact that the handbook, the contractual parts of which form part of the contract, is the handbook as amended from time to time. It does not give a right to vary unilaterally the contractual terms in the handbook.

#7. Hours of Work

ERA requires details of any terms and conditions relating to hours of work including normal working hours. The contract also needs to make clear that additional hours are also likely to be necessary on occasion. The Board needs to be aware, however, of the provisions of the Working Time Regulations 1998 (as amended). This, together with certain other clauses, will need to be adapted where flexible working, part-time working or job-sharing applies.

#8. Annual Leave

ERA requires particulars to be given of any terms and conditions relating to holidays, including public holidays, and holiday pay. The particulars must be sufficient to enable entitlement to holiday pay, including any entitlement to holiday pay on the termination of employment, to be precisely calculated. Since such terms may be lengthy and complex, it is appropriate to set them out in a schedule.

11. Pensions

Membership of an occupational pension scheme is not compulsory and a member of staff may at any time opt out and be covered instead by a personal pension scheme or the State Second Pension (S2P). Where a member of staff has opted out, a provision will need to be included recording the fact.

#13. Place of Work/mobility

[Only relevant if mobility clause used] A mobility clause ensures that the employee can be legally required to work in different locations. However, it should be noted that the Courts have implied limitations into express mobility clauses. In particular, they have held that the employer should give reasonable notice of any change in the employee's place of work and should consider financial assistance where appropriate.

16. Other Compensation for Compulsory Early Termination of Contract

These clauses set out existing terms relating to termination of contract, in line with the [efficiency scrutiny recommendation] that contracts should clarify the terms which apply. General guidance on structure as a ground for compulsory early retirement which is not well understood, has been issued separately.

The relevant provisions of the Civil Service Compensation Scheme apply to staff covered by the Principal Civil Service Pensions Scheme, the partnership pension account, and those eligible for membership of either arrangement who elect to opt out.