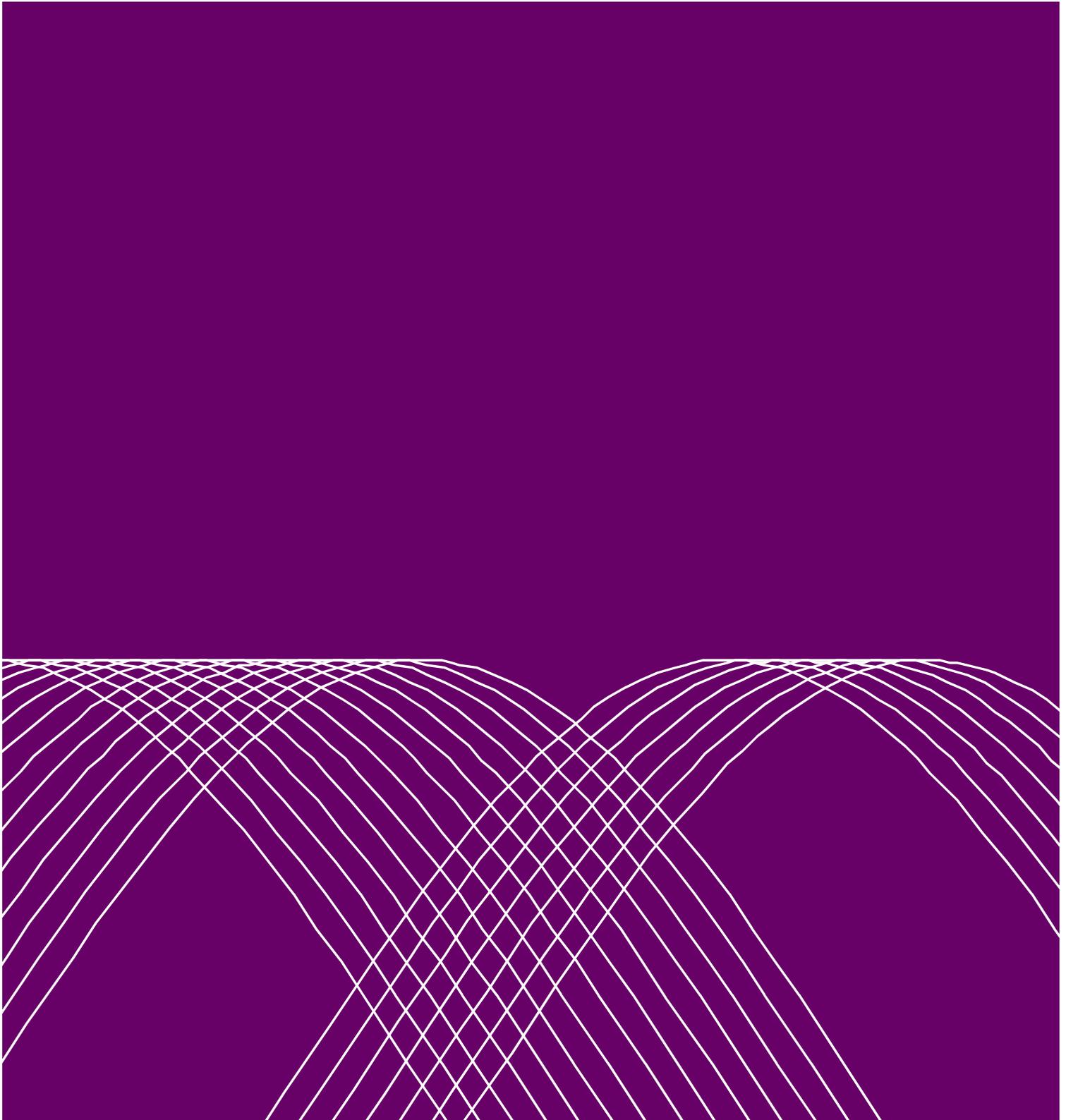




Public Bodies: A Guide for Departments

Chapter 10: Dissolving a Public Body



DISSOLVING A PUBLIC BODY

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1. Introduction

1.1 A public body continues to exist so long as the founding instrument remains in force. However, when a decision has been taken to dissolve an executive NDPB, ministers may decide to wind down its affairs in anticipation of its dissolution in law.

1.2 It is customary to inform parliament of such proposed action, and this should always be done where the body has been set up by or under an Act of Parliament.

1.3 Care should be taken to ensure that such winding up does not conflict with any legal duties of the NDPB.

2. Statutory Bodies

2.1 Abolishing a body established by or under statute will generally require legislation.

2.2 Legislation setting up new NDPBs should normally contain powers to permit winding up at a later date, if a fixed lifetime is not established at the outset. In most cases this will take the form of a power to make appropriate secondary legislation, subject to negative resolution.

3. Surrendering Royal Charters

3.1 A Charter can be revoked by an Act of Parliament or by the Sovereign. Technically, a Charter can also become forfeit through action in the Courts alleging impropriety, but this has not been used in modern times. In practice, a chartered body is normally dissolved through voluntary action culminating in a Petition for Surrender. This is done by the body petitioning The Queen in Council to accept the surrender of its Charter. The Petition is accompanied by an appropriate Deed of Surrender together with the original Charter bearing the Great Seal (and any Supplemental Charters). All these documents should be sent to the Privy Council Office. Acceptance of the surrender is signified by an Order in Council, which usually recites the terms of the Deed of Surrender. The chartered body ceases to exist from the date on which such an Order in Council is made.

3.2 The procedure, and the form of the Petition and Deed of Surrender may vary according to the body's constitution, and the Privy Council Office should be consulted in every case. See Paragraph 2.6 Royal Charter of Chapter 3 for contact details.

3.3 It follows from this that a chartered body cannot be dissolved by executive action. If the body concerned receives a grant-in-aid and the Secretary of State is responsible for all the appointments to the Board, then, if the Secretary of State wishes to stop funding that body and terminate the appointments or not renew them, the body would effectively cease to exist. If served with notice of the Secretary of State's intentions, the last act of the body should be to Petition for the surrender of the Charter. Arrangements would then

be made for the disposal of any assets and liabilities before the process would be completed.

4. Terminating a Royal Commission

4.1 Royal Commissions normally cease to have any existence once they have completed their tasks; but in some instances a Commission may be superseded by a new Commission. In such cases the superseded Commission needs to be formally wound up by the issue of a further Royal Warrant. The Crown Office in the Department for Constitutional Affairs (Grant Bavister on 020 7219 2632) should be contacted for guidance concerning Royal Warrants.

4.2 Where a Royal Commission is not superseded by another body but where no appointments are made to fill vacancies which arise in the course of extended researches, the Commission may be considered defunct if no report is made after a lapse of months.

5. Removing references to a body in legislation

5.1 There may be references to the NDPB in legislation, such as the Parliamentary Commissioner Act 1967, the Freedom of Information Act 2000 and others. Steps will need to be taken to ensure that these unnecessary references are removed from the statute book. Legal advisers will be able to identify relevant references and advise on the means available to make the necessary amendments.

5.2 Where an NDPB whose members are disqualified from membership of the House of Commons is to be dissolved by statute, the legislation should provide for the removal of the relevant entry from Schedule 1 of the House of Commons Disqualification Act 1975. Where an NDPB is to be dissolved by other means, the Public Appointments Unit in the Cabinet Office should be informed by the sponsor department, so that the entry can be removed from the Schedule in due course by Order in Council.

6. Compensation for redundancy

NDPB staff made redundant will normally be entitled to benefits due under their contracts. The statutory powers should be adequate to pay compensation but the sponsor department should check this; if powers are not adequate, provision should be included in the winding-up legislation.

7. Pensions

Information on 'Pensions aspects of merging and winding up NDPBs' can be found in *Non Departmental Public Bodies Pension and Compensation Guidance Notes* issued by Treasury's Workforce, Pay and Pensions Team which can be seen at

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

8. Residual pension liabilities

8.1 When a NDPB is abolished, the sponsor department should establish that adequate powers exist to meet residual pension liabilities for board members and staff. Inadequacies should be remedied in any legislation to abolish the body. The source of finance to meet the residual liabilities should also be carefully determined, particularly when the NDPB was only partly grant-aided. For wholly grant-aided bodies the financial source may well be the Vote from which the grant was paid, but each case needs to be considered with the relevant Treasury Spending Team. In some cases, a major part of the residual liabilities may be covered in alienated funds which will fall to be dealt with in accordance with the provisions in the Trust Deeds; and some other schemes may be insured. But extra costs are still likely to arise, e.g. for future pensions increases which formed part of contractual commitments.

8.2 In all cases, it will be necessary to clarify who will have the responsibility for financing the pension benefits in the future and who will have the responsibility for administering the payment of those pension benefits. Some of these problems will be avoided where there is a successor body to take over the residual liabilities or where it is possible for the staff to transfer their accrued pension rights to another scheme. But the question of powers will still be important, and when reliance is placed upon adequate existing powers it is important that these are not repealed too soon.

9. Records

9.1 The sponsor department's Departmental Records Officer should be asked to advise about what should happen to the records of an NDPB that is to be abolished. If the body is being superseded by another – and there is to be legislation – it may be appropriate to provide for the transfer of records. When a NDPB is abolished without its functions being transferred elsewhere, arrangements should be made for those of its records worthy of permanent preservation. Records of bodies subject to the Public Records Acts should be appraised and transferred to the Public Record Office (PRO) in the normal way. Those of other bodies can, with the agreement of the Keeper of Public Records, be accepted by the PRO as a deposit or gift.

9.2 Further information about keeping and disposing of public records can be found at: <http://www.nationalarchives.gov.uk>.

10. Accounting and audit arrangements

It is important to set out in the legislation the accounting and audit arrangements in the year in which the NDPB is dissolved. This should cover the need for accounts for the period from 1 April to date of dissolution, the arrangements for preparation, approval and signing the accounts, as well as including provision for the costs of, and payment to, the external auditors. The final audited accounts will need to be laid before Parliament.

11. Disposal of assets of charities

As a matter of general policy, when a non-Exchequer body disposes of assets (either tangible or intangible) which were wholly or partly funded by grants or grants-in-aid, the proceeds or an appropriate portion of them should be paid to the Exchequer. Where an NDPB has charitable status this outcome is only likely to be secured if valid and legally enforceable conditions have been imposed at the time when the grant is paid. The steps which sponsor departments should take before paying bodies with charitable status grants or grants-in-aid which might be used to acquire, improve or to create assets are set out in *Government Accounting 24.5*.

12. Mergers and transfers of functions

12.1 HM Treasury Guidance on annual reports and accounts for NDPBs contains a section on mergers and transfers of functions.

11.2 In some cases where an NDPB is being abolished or its functions transferred to other bodies it may be appropriate to keep it in being for a short period as a residuary body – for example to prepare final accounts and complete the disposal of assets. Provision for this will normally need to be included in the winding-up legislation.