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Our ref: PS/0758

Sir Bernard Jenkin MP  
Public Administration and  
Constitutional Affairs Committee  
House of Commons  
London, SW1A 0AA

17 January 2019

Dear Sir Bernard

I am writing to follow up on the commitments set out in the Government's response to your Committee's thorough report on pre-appointment scrutiny. In our response we committed to refreshing the Government's guidance and to publishing a list of posts subject to pre-appointment scrutiny. I am pleased to inform you that this work has now been completed and the results are being published today.

The report raised a number of important issues that required action from the Cabinet Office to bring clarity and consistency in delivering an effective pre-appointment scrutiny of a number of important Public Appointments. We undertook to codify a set of principles for pre-appointment scrutiny and refresh the list accordingly; and to update the Cabinet Office guidance to clarify the process for engagement with select committees. We have also considered how we can use the guidance to provide further support to departments in delivering best practice across all appointments requiring pre-appointment scrutiny.

The guidance has been strengthened to ensure that expectations of both the timing and quality of engagement by departments with the relevant select committee are made clear. We have set requirements for departments in providing information to the relevant select committee and on publication of the new guidance will be briefing departmental public appointment teams on the updated requirements.

We have also set out the criteria for inclusion of posts on the pre-appointment scrutiny list and have clarified the process for updating the list on an annual basis, including where a new post is created which meets the criteria, either in a new body or through the change of remit of an existing body.

I wrote to the Liaison Committee on 19 November setting out the Government's proposed criteria for Public Appointments posts which should be subject to pre-appointment scrutiny. Following engagement with the Liaison Committee chair we have finalised and published these in the guidance as follows:

- i) posts which play a key role in regulation of actions by Government; or
- ii) posts which play a key role in protecting and safeguarding the public's rights and interests in relation to the actions and decisions of Government; or
- iii) posts in organisations that have a major impact on public life or the lives of the public, where it is vital for the reputation and credibility of that organisation that the post holder acts, and is seen to act, independently of Ministers and the Government.

The Cabinet Office has since completed an initial cross-government exercise to update the list, taking in to account the list of posts requested by select committees included in your committee's report.

We have considered these, and the existing appointments which are subject to pre-appointment scrutiny, in the context of the newly codified principles and bearing in mind the need to ensure the proportionality and efficiency of the system. As recommended, we have set out below our response to the additions requested at Annex B of your committee's report where the Government does not agree that they should be included in the new list. I am also pleased that we are able to agree to the inclusion of a number of posts to the list including the Chair of the Civil Aviation Authority, the National Data Guardian, the Chair of the Regulatory Policy Committee, the Housing Ombudsman and the Chair of the Pensions Regulator.

Select committees requested a number of Executive posts be added to the pre-appointment scrutiny list including the Chief Executives of the Pensions Regulator and Protection Funds and the Chief Investigator of the Health Service Investigatory Branch. These posts are not Public Appointments. The post holders are employees of the organisations and their recruitment is not subject to the Governance Code on Public Appointments. It is the responsibility of the Chair and the Board to recruit an individual with the right skills to the executive role in order to deliver the objectives of the body. In some instances, the Minister may have a power of veto over the appointment, however, this power is not the same as the involvement and accountability that Ministers have for the public appointments of the Non-Executive Members of those organisations under the Governance Code. It would therefore not be appropriate for recruitment decisions for individual employee posts, following an organisation's recruitment processes, to be subject to pre-appointment scrutiny.

A number appointments requested by select committees, such as Network Rail, HS2 Ltd, UK Sport and NHS Digital, are bodies primarily set up to deliver government programmes or projects. They therefore do not fulfill either the criteria that we have set out. It is important that these organisations support departments and Ministers in delivering the Government's objectives.

The third group of posts requested which Government does not agree should be added to the list are the independent advisory bodies and bodies which do not have a role regulating government, such as the Chair of the Low Pay Commission, the Senior Transport Commissioner, and the Pubs Code Adjudicator. The organisations provide quality, evidence based

advice to Government on specific areas of policy which are requested. They do not have a regulatory function over government acts nor are they required to issue decisions or a formal opinion about the actions of Government or Ministers where the degree of independence would impact the performance of the bodies function. Therefore we do not believe that, in particular, the first or second criteria are met.

As the legislation has yet to pass through Parliament for the Environmental oversight body and the Health Service Safety Investigations Body, it would not be appropriate to add the bodies to the list of roles subject to pre-appointment scrutiny at this stage. Following consultation with relevant departments, the Government's initial assessment is that the Chair posts for both bodies would meet the criteria for pre-appointment scrutiny. The Government's position on the Trade Remedies Authority has been set out during the committee stages of the Trade Bill and given its narrow focus on complying with international trade agreement obligations it would not have a major impact on public life to meet the test of the third criteria.

The Government has committed to an annual refresh of the list, and has set out a process to consider changes in the new guidance. I would be glad to discuss any further thoughts or concerns with you and Liaison Committee members have once we have updated and published the list.

I am copying this letter to the Chair of the Liaison Committee and will be depositing a copy of this letter and the updated guidance in the Libraries of both Houses.

A handwritten signature in blue ink, reading "Oliver Dowden". The signature is fluid and cursive, with a long horizontal line extending to the right.

**Oliver Dowden CBE MP**