

Updated desk note: Making Direct Ministerial Appointments

Issued 27 June 2024. This note supersedes the note issued in June 2022.

Introduction

1. This internal desk note is intended to support departments when a Minister is considering making a Direct Ministerial Appointment (DMA). The note sets out the expectations and considerations which officials and ministers will need to bear in mind when determining whether a DMA is appropriate to the relevant circumstances, as well as the process steps that should be followed.

What is a Public Appointment?

2. A 'public appointment' is a ministerial, or delegated, appointment of an individual to a role as a public office holder. These can cover a range of roles - it could be a chair or non-executive board member for a board of a public body, a member of an advisory committee or an individual statutory office holder.

3. Some public appointments are known as 'regulated appointments.' These are ministerial appointments to the public bodies listed in the Public Appointments Order in Council. These appointments are regulated by the Commissioner for Public Appointments, who is responsible for providing independent assurance that such appointments are made in accordance with the Principles for Public Appointments and the processes set out in the Governance Code on Public Appointments.

What is a Direct Ministerial Appointment?

4. Direct Ministerial Appointments are **not** regulated appointments, and do not therefore fall under the remit of the Commissioner for Public Appointments. Accordingly, the appointment process prescribed in the Governance Code does **not** apply to Direct Ministerial Appointments, allowing for some flexibility to be applied to the appointment process. The usual public law principles applicable to all ministerial decision-making will still apply. Broadly - as reflected in the 'factors to be considered' below - Direct Ministerial Appointments must be rational, procedurally fair and non-discriminatory. There must be compliance with the Public Sector Equality Duty.

5. Direct Ministerial Appointments are also different from those unregulated appointments that fall outside of the Commissioner for Public Appointments' remit (such as appointments to the boards of Executive Agencies), but which still follow the

general Principles of Public Appointments set out in the Governance Code, or a similar comparable process.

Who has the authority to make Direct Ministerial Appointments?

6. It is for individual ministers to determine whether to make a Direct Ministerial Appointment within their policy remit. The appointing minister will be responsible and accountable to Parliament for the appointment. However, as with many policy and appointment decisions, the relevant Secretary of State and Number 10 must be consulted before a direct appointment is established and on proposed appointees before any announcement is made or commitment is entered into.

When might a Direct Ministerial Appointment be appropriate?

7. DMAs may be appropriate for short-term, advisory roles - for example to lead a government review or to advise on, or champion, a specific subject. Such appointments have been made under successive administrations, and those holding these roles play a vital role in providing expert, independent advice to the Government of the day on a range of matters.

8. Ministers may wish to make direct appointments where the role is short term (usually less than 18 months, but extendable by up to a maximum of another 18 months*), and where it fulfills one or more of the following purposes:

- a. an advisory function directly to Ministers to bring in specialist expertise (beyond, and complementing, advice provided by civil servants); and/or
- b. to publicly highlight a specific issue (such as a 'champion') or to publicly represent HMG in some way; and/or
- c. to carry out a task independently of - but established, resourced and supported by - a department, such as a review into a policy area or a lessons learned exercise.

*Cases where it is deemed necessary and appropriate for a direct appointment to be made for a longer period than that set out at above, will be exceptionally rare and require specific justification.

What are appropriate advice and clearance processes for agreeing the use of a Direct Ministerial Appointment?

9. When a Minister wishes to consider making a DMA, officials should provide the Minister with written advice, cleared by the Senior Civil Servant sponsor, which considers a number of factors upon which the Minister will need to make a formal decision:

- a. the rationale for why a DMA is the most appropriate appointment route to take, including the pros and cons for alternative appointment options (e.g. an open competition, or procure a contracted service);
- b. the Public Sector Equality Duty (PSED) - the need to have 'due regard' to the aims identified in section 149 Equality Act 2010;
- c. whether the scope, nature and duration of the role, including expectations on time commitment and potential remuneration, are appropriate for a DMA (set against the criteria mentioned above and below);
- d. whether it is possible adequately to manage any risks arising from the proposed appointment as a DMA (i.e. including - but not limited to - any conflicts of interests);
- e. whether any additional support, either from the civil service or external, may be required to ensure the role is resourced appropriately to carry out the Minister's priorities, and what reporting and review mechanisms should be put in place; and
- f. where appropriate, any views and advice of legal advisers and/or finance colleagues, including appropriate clearances.

10. The Senior Civil Servant sponsor, or in high profile cases the Permanent Secretary, must be content that there is no actual conflict of interest as a result of the appointee's outside interests and that any reasonably perceived conflicts have been mitigated appropriately. An appointment should not proceed if this requirement has not been satisfied.

What role criteria should be considered before making a Direct Ministerial Appointment?

11. The following factors should be considered before selecting an appointee:
 - a. What the Minister wants the role to achieve, which should be set out in a draft terms of reference/remit for the role; and
 - b. the high level criteria for the skills and experience (in light of the TORs/remit) that would be required for an individual to successfully undertake the role.

What are the process steps for making a Direct Ministerial Appointment once the criteria for the role have been decided?

12. Once the Minister is clear what skills and experience they are looking for, officials should consider and provide advice to the Minister on:
 - a. what the best options for the selection process might be. These could include, for example, an open competition, inviting "expressions of interest", use of an executive search firm, or the compilation of an internal shortlist. Influencing factors are likely to include any time constraints in getting someone into the role and the size of the potential pool of candidates with the

- right skills and experience. Although a formal scoring or assessment process is not usually necessary, if scoring is used, it must be applied consistently to all potential candidates. A procedurally fair process must be followed; and
- b. evidence of compliance with the public sector equality duty (PSED). Where the appointment is not advertised through an open competition, it is good practice for ministers and departmental officials to seek to identify a number of potential candidates that fit the agreed criteria for the role, from a broad range of backgrounds, from which the Minister can make a final decision.

What are the process steps for appointing a Direct Ministerial Appointee once an appropriate candidate for the role has been identified?

- 13. Once the minister has identified their preferred candidate, then:
 - a. the appointing minister, having received official advice, should be comfortable that the individual selected for the role meets the criteria for the role and is otherwise suitable for the post. In reaching a decision, the Minister, or a senior official acting on their behalf, may wish to discuss the requirements of the appointment with the preferred candidate, bearing in mind the TORs and criteria for the role;
 - b. appropriate due diligence checks should be carried out by the department and consideration, by the relevant Permanent Secretary if necessary, should be given to any potential conflicts of interest with the role and whether/how these can be managed; and
 - c. share the draft TORs with the individual so that they can confirm that they are able to fulfill the duties required and/or suggest to the Minister any reasonable amendments to the draft TORs relevant to the overall objectives and appointee's specific duties.

What are the process steps for onboarding a Direct Ministerial Appointee?

- 14. Once the Minister, having taken account of the advice received in the above steps and the outcomes of any discussions with the preferred candidate, confirms they wish to make an appointment, the following steps should be taken:
 - a. the appointee should be asked to complete a formal declaration of interests statement, to allow the department to identify and resolve any potential conflicts, or perceived conflicts, of interest. This may need to be considered by the Permanent Secretary and, if necessary, further advice provided to ministers. Appointees should be asked to update their declaration of interest on an annual basis (or where the appointee notifies officials of a new interest which might impact their role);
 - b. if this has not already taken place, the TORs or remit for the role should be

- discussed and agreed with the appointee, to allow a final version to be included with the appointment letter and published upon announcement of the appointment;
- c. the appointee should be issued with an appointment/engagement letter, which sets out formally the duties they are appointed to undertake (in the form of the TORs) and their terms of engagement that, at a minimum, contain:
 - i. reference to the applicability of the Code of Conduct for Board Members;
 - ii. reference to the Seven Principles of Public Life;
 - iii. information about management of any conflicts with their declaration of outside interests and a reminder of the ongoing duty to declare and manage new interests;
 - iv. notice and termination provisions;
 - v. provisions so that public records, FOI and security of government information requirements can be met; and
 - vi. relevant duties of confidentiality.

What is the employment status of a Direct Ministerial Appointee?

15. Direct Ministerial Appointees are public office holders. There is no contract of service and no intention to create an employment relationship. The expectation is that such roles are unpaid (although reasonable expenses can be paid in line with the department's expenses policy). However, in limited circumstances, if the Permanent Secretary/Accounting Officer is content, then reasonable remuneration (in line with current policy on pay levels) may be payable.

16. Appointees are not civil servants; executive authority may not be delegated to those appointed to these roles, but their advice to civil servants and ministers may inform executive decision making. They should be assigned a sponsor who is a Senior Civil Servant and will hold formal budget responsibility.

What public announcements should be made of the appointment of a Direct Ministerial Appointee?

17. For transparency purposes, all Direct Ministerial Appointments should be announced publicly, along with their terms of reference, generally at the time at which the appointment is made.

18. Individual exemptions to publication of the details of DMAs (which may relate to only partial non-disclosure, such as the personal data of an incumbent, rather than withholding publication of all relevant details) should be approved by the responsible Permanent Secretary and agreed with the Cabinet Office Propriety & Ethics Team in advance. Such exemptions may apply to very sensitive roles where, for example, there is a need to ensure anonymity or in matters involving national security and international relations.

19. Copies of the TORs/remit for the appointment, declaration of interests, appointment letter and terms of engagement should also be retained by the department for the duration of the role. In some cases, it may be appropriate to publish some of this additional material.

What are the expectations placed on and the conduct expected of a Direct Ministerial Appointee?

20. The duties to be undertaken by the appointee and the expected outcomes or deliverables of those duties, including where applicable any direction or expectation on how those duties should be undertaken, should be set out clearly in the TORs, which have been agreed with the appointee and published. The general conduct expected of an appointee should be set out clearly in the appointment letter and terms of engagement.

21. All appointees must follow the Seven Principles of Public Life and are required to adhere to the Code of Conduct for Board Members of Public Bodies¹. They owe a duty of confidentiality in relation to their duties (as set out in their terms of engagement).

What support should be given to a Direct Ministerial Appointee?

22. An SCS sponsor must be clearly identified and hold the day-to-day relationship with the appointee, including managing any budgets and staff, helping the appointee understand their responsibilities and access relevant specialist advice, such as legal and communications advice.

23. Where appropriate, the appointee may be supported by a civil service secretariat and/or agreed external expertise where this is not available or appropriate within the department.

24. Appointees should be provided with departmental IT (where necessary), and/or appropriate access to departmental systems, and supported to ensure that whilst fulfilling their duties, official business is secure, in line with public records and wider information handling obligations. Appointees may not access material that ministers would not be able to access, and may not make information related to their role public, outside of the government's own approach to publication.

Cabinet Office
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¹ There are some elements of the Code of Conduct for Board Members of Public Bodies that may not be relevant to DMAs. In such instances, these should be made clear in the issued terms of engagement.