

STATES OF JERSEY



APPOINTMENTS MADE BY THE STATES: REVISED PROCEDURES

**Lodged au Greffe on 1st December 2009
by the Privileges and Procedures Committee**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree that a revised procedure should be introduced in relation to certain appointments currently made by the States as referred to in paragraph (b) below and that, under the revised procedures, instead of the appointment being made through the lodging 'au Greffe' and debate of a proposition –

the Minister, body or member responsible for the selection of the nominee for the position or positions concerned would be required, before the appointment was confirmed, to present a report to the States in relation to the proposed nomination including the name and brief biographical details of the nominee, a brief description of the nature of the duties of the position and details of the selection process followed to select the person nominated and the appointment could not then be confirmed until at least 2 weeks after the date of presentation of the report to the Assembly;

- (b) to agree that –
- (i) the positions listed in Appendix 1, in relation to which amendments to legislation are required, should be made subject to the new procedure and to request those responsible for the appointments, in consultation with the Privileges and Procedures Committee, to take the necessary steps to bring forward for approval the necessary legislation to give effect to the proposal;
- (ii) the positions listed in Appendix 2, in relation to which amendments to the constitutions of external bodies are required, should be made subject to the new procedure and to request the Ministers responsible for the appointments to initiate the necessary steps for appropriate amendments to be made to those constitutions;
- (iii) the positions listed in Appendix 3, where the requirement for the appointment to be made by the States arises solely from a States decision, should be made subject to the new procedure and to agree that the respective decisions of the States listed in Appendix 3 should be amended accordingly to apply the new procedure.

PRIVILEGES AND PROCEDURES COMMITTEE

REPORT

This Proposition represents the culmination of many months of work between the Privileges and Procedures Committee and Ministerial Departments in relation to appointments made by the States.

There are currently a very large number of appointments that need to be made by the States and concerns have frequently been raised by members about the process. These ongoing concerns have been accentuated since the establishment of the Jersey Appointments Commission which now has an involvement in many of these appointments. Even for the appointments where there is no direct involvement from the Commission the process will normally follow the Codes established by the Commission which require a very rigorous selection process. The relevant Jersey Appointments Commission Code relating to Appointments to Autonomous and Quasi-Autonomous Public Bodies and Tribunals is attached at Appendix 4 for information.

If nominations for appointment to various positions are made following the rigorous process set out by the Appointments Commission the role of the States in approving the appointment is somewhat unclear. In practice members may consider they have little realistic alternative but to approve the nomination which is unsatisfactory as it can appear to turn a States decision into a mere rubber stamping process. This may be particularly the case in relation to the appointment of officers to paid positions where it might, in practice, be extremely difficult for the States to reject the nomination of a person who had been through a full assessment and interview process in the expectation of being appointed. If members have any concerns about the nominations proposed it is also clear that a States debate, often in public, is not the most appropriate way to address those concerns. In a debate on whether or not to go into camera on 16th January 2008 in relation to a particular appointment Deputy Le Hérisssier stated "I am very ambivalent about this. I thought we, as an organisation, Sir, have always been embarrassed by these debates. We have never thought a 53 person recruitment and appointments panel was the way to handle personnel issues just as it does not handle government reform and I am very embarrassed, Sir. People have been put through what appears to have been a very professional appointments process, and while I do not doubt for a moment that Deputy Southern may have some very valid points to raise about an individual, it really raises some very serious points about our belief in the validity of the process that has allegedly taken place. I really feel for these people. They have been put through this. Hopefully it was professional, it was thorough and all of a sudden information has apparently come forward which may well undermine this process." In PPC's view these comments summarise very accurately the nature of concerns that members often express when dealing with appointments.

Having considered the matter carefully and consulted with Ministers PPC believes there is a better way to handle many appointments that are currently made through the debate of a proposition. In this proposition PPC is proposing that a new system should be instituted whereby the Minister, body or person responsible for making the appointment concerned would, rather than lodging a proposition for debate, present a report to the States setting out details of the proposed nomination. As can be seen it is proposed that the report would contain specific details about the nominee together with a summary of the duties of the position concerned and details of the process that had been followed to make the selection. This report would have to be presented to the States for at least two weeks before the appointment could be confirmed. This is, of course, the same period as the current lodging period for any proposition relating to an

appointment so the minimum period of notice given to members would be unchanged. The system would mirror the current process under Standing Order 168 relating to property transactions which has been in place since the beginning of 2006. In the majority of cases it is likely that members will be content with the nominations put forward and the appointments will be able to proceed without any problem. Nevertheless the two week period will allow members time to raise any concerns with the Minister or body concerned and, as happens with property transactions, allow members to even lodge a proposition if necessary seeking a debate on the nominations. In practice the two week period will also allow members to raise any concerns with the person making the nomination in a private way in the first instance which will avoid some of the difficulties and embarrassment that have arisen during debates on appointments in the Assembly.

PPC thought it was worthwhile to analyse debates in recent years on the appointments that are listed in this proposition to assess how controversial the appointments have been. In the period between January 2006 and July 2009 there were 47 debates in relation to the appointments listed in this proposition. On every single occasion the nominees as proposed were appointed without any amendment and on 37 occasions the proposition was adopted on a standing vote. On the 10 occasions when an “appel” was held there were only 2 votes when more than 3 members voted against. These statistics would tend to indicate that these nominations are not normally considered to be controversial and the new process proposed would, in any case, enable members to raise any concerns that they had.

Although the proposed new system is, in theory, a relatively simple change to procedures it is unfortunately relatively difficult to implement. Many of the requirements relating to States appointments are found in legislation and all of the appointments set out in Appendix 1 fall into this category. It will be necessary for legislation to be amended to institute the new procedure although initial discussions with the Law Draftsman have indicated that it may be possible to consolidate many of the changes into one single piece of legislation rather than amending each individual law separately. Other requirements for States appointments come in the Constitutions of various bodies and these are set out in Appendix 2. In these cases it will be necessary for steps to be made by the Trust concerned to amend the internal constitution to institute the new appointment process. A final category of appointments by the States as set out in Appendix 3 arise simply from an existing States decision and, in these cases, the change can be made quite simply through this proposition which will, if adopted, amend the earlier decision and institute the new procedure immediately.

Appointments that will continue to be made by the States

Having considered the range of appointments made by the States PPC believes that there are certain positions where it would be inappropriate to use the new procedure and the Committee believes that, in these cases, States approval through a proposition should continue.

The Committee believes that the post of Comptroller and Auditor General and that of Greffier of the States are two key posts for States members where it is only right that the Assembly as a whole should ratify the proposed appointments. Both post holders report directly to the Assembly and it is appropriate that members should collectively have the opportunity to express their approval of the nominations proposed.

The States Members Remuneration Review Body membership is appointed by the Assembly and PPC believes that this should continue. The Body is, of course, responsible for matters relating to members' remuneration and it would not seem appropriate for these appointments to be made without States involvement. Similarly the non States members on the Public Accounts Committee and the non States Commissioners on the Jersey Overseas Aid Commission have considerable powers and responsibility under the legislation governing these two bodies and PPC believes it is appropriate that the Assembly as whole should make these appointments.

There are ongoing discussions about the constitution of the Jersey Consumer Council and PPC does not therefore believe it is appropriate to propose any changes at the present time particularly as the States currently appoint one of their own number as Chairman and it therefore appears appropriate that this power should remain with the Assembly as a whole as is the case with the Law Revision Board where two States members must be appointed. Similarly there are on-going proposals about the future of the Waterfront Enterprise Board Ltd. and the method of appointment of Directors of the Company or any future extension of the Company is a matter that is likely to be considered by the States separately.

There is only relatively minor appointment where a change is procedurally difficult and PPC does not believe it would worthwhile to consider. The Greville Bathe Fund is administered by four Jurats of the Royal Court appointed by the States. This is in accordance with the wishes of Mr. Greville Bathe as set out in his last Will and Testament and although it may be possible to override these wishes through legislation that appears to PPC to be inappropriate.

Financial and manpower implications

There are some resource implications involved in the law drafting required to make the changes and these will have to be accommodated within the normal law drafting programme. PPC recognises that this matter may not be able to be given a high priority in the programme and it may be sometime before the changes can be implemented. There will be some minor saving of the Assembly's time if appointments are no longer debated although PPC wishes to stress that this proposition is not brought forward for that reason and, by comparison to other propositions, propositions on appointments are normally dealt with extremely quickly.

APPENDIX 1

Appointments where amendments to legislation are required

Agent of the Impôts

Minister for Home Affairs
Customs and Excise (Jersey) Law 1999 – Article 4(2)

Agricultural Loans and Guarantees Advisory Board

Minister for Economic Development
Agriculture (Loans) (Jersey) Regulations 1974 – Regulation 3

Commissioners of Appeal for Income Tax

Minister for Treasury and Resources
Income Tax (Jersey) Law 1961 – Article 10

Data Protection Commissioner

Minister for Treasury and Resources
Data Protection (Jersey) Law 2005 – Article 6(2) and Schedule 5

Data Protection Tribunal

Minister for Treasury and Resources
Data Protection (Jersey) Law 2005 – Article 6(5) and Schedule 5

Health and Safety Appeal Tribunal

Minister for Social Security
Health and Safety at Work (Appeal Tribunal) (Jersey) Regulations 1989 –
Regulations 2 and 3

Health Services Disciplinary Tribunal

Minister for Social Security
Health Insurance (Jersey) Law 1967 – Schedule 5

Income Support Medical Appeal Tribunal

Minister for Social Security
Income Support (General Provisions) (Jersey) Order 2008 – Article 15

Jersey Appointments Commission

Chief Minister
Employment of States of Jersey Employees (Jersey) Law 2005 – Article 18(1) and (2)

Jersey Competition Regulatory Authority

Minister for Economic Development
Competition Regulatory Authority (Jersey) Law 2001 – Article 3(1) and 4(4)

Jersey Employment Tribunal

Minister for Social Security
Employment Tribunal (Jersey) Regulations 2005 – Regulation 5

Jersey Financial Services Commission

Minister for Economic Development
Financial Services Commission (Jersey) Law 1998 – Article 3(2)

Jersey Police Complaints Authority

Minister for Home Affairs

Police (Complaints and Discipline) (Jersey) Law 1999 – Schedule paragraph 1(2) and 3(3)

Law Society Disciplinary Panel – lay members

Chief Minister

The Law Society of Jersey Law 2005 – Article 18(2)

Official Analyst

Minister for Treasury and Resources

Food Safety (Jersey) Law 1966 – Article 2(2) and (3)

Public Employees Contributory Retirement Scheme - Committee of Management

Minister for Treasury and Resources (Chairman)

Chief Minister (members)

Public Employees (Contributory Retirement Scheme) (General) (Jersey)

Regulations 1989 – Regulation 3

Public Lotteries Board

Minister for Economic Development

Gambling (Channel Islands Lottery) (Jersey) Regulations 1975 – Regulation 3(2)

Rate Appeal Board

Minister for Treasury and Resources

Rates (Jersey) Law 2005 – Article 44(2) and (3)

Rent Control Tribunal

Minister for Housing

Dwelling Houses (Rent Control) (Jersey) Law 1946 – Article 3(1)

Social Security Tribunal

Minister for Social Security

Social Security (Determination of Claims and Questions) (Jersey) Order 1974 – Article 8

States of Jersey Complaints Panel – Chairman, Deputy Chairmen and members

Privileges and Procedures Committee

Administrative Decisions (Review) (Jersey) Law 1982 – Article 5

States of Jersey Police Force, Chief Officer

Minister for Home Affairs

Police Force (Jersey) 1974 – Article 9

Westaway Trust – Council

Minister for Health and Social Services

Westaway Trust (Jersey) Law 1930 – Article 12

APPENDIX 2

Appointments where amendments to the Constitutions of external bodies are required

Jersey Arts Trust – Chairman

Minister for Education, Sport and Culture

Trust constitution – Clause 4.1

Jersey Child Care Trust - Chairman

Minister for Education, Sport and Culture

Trust constitution – Clause 5.1

Jersey Community Relations Trust – Chair and one States trustee

Chief Minister

Trust constitution – Clause 5.1

Jersey Heritage Trust - Chairman

Minister for Education, Sport and Culture

Trust constitution – Clause 5.3.1

Appointments where amendments to an existing States decision are required

Control of Public Entertainment Panel

Minister for Education, Sport and Culture
States decision of 13th October 1987

Fiscal Policy Panel

Minister for Treasury and Resources
States decision of 5th December 2006

Jersey Council for Safety and Health at Work – Chairman

Minister for Social Security
States decision of 30th July 1991

Jersey Dental Scheme Board of Management – Chairman

Minister for Social Security
States decision of 18th June 1991

Jersey Law Commission

Chief Minister
States decision of 30th July 1996¹

Manual Workers Joint Council – Employers' side membership

Chief Minister
States decision of 9th November 1961

Statistics User Group

Chief Minister
States decision of 17th November 1999

¹ Decision did not specify proposed method of appointment but appointments have always been made by the States.

APPENDIX 4

STATES OF JERSEY

JERSEY APPOINTMENTS COMMISSION

CODE OF PRACTICE

FOR

APPOINTMENTS TO AUTONOMOUS & QUASI-AUTONOMOUS

PUBLIC BODIES & TRIBUNALS

July 2006
PO Box 430 Jersey JE4 0WS
Tel: 440023 Fax: 01534 440005

Chapter 1: INTRODUCTION

The role of the Commission

- 1.1 Under the terms of the Employment of States of Jersey Employees (Jersey) Law 2005, the Jersey Appointments Commission was directed by the States to oversee the recruitment of Senior Officials to the public service and to independent Public Bodies.
- 1.2 This Code of Practice defines the basis upon which **senior** appointments to these bodies should be made. These would normally include the Chair and members of the body and its executive director.
- 1.3 The Commission will report annually to the States of Jersey on compliance with acceptable recruitment practices and recommend any remedies where any actions should be taken as a result of specific incidents where the Commission's Code has not been applied in an appropriate manner.
- 1.4 **The Commission requires that the principles set out in this Code are applied. However, it recognises that in special circumstances it might not always be in the public interest for the processes prescribed in this Code of Practice to be followed precisely. The Commission should be consulted on any significant compliance that might arise and can be contacted as below:-**

Address: Jersey Appointments Commission
PO Box 430
Jersey JE40WS

Email: appointmentscommission@gov.je

Tel: 01534 440023

Fax: 01534 440005

Chapter 2 PRINCIPLES OF RECRUITMENT & SELECTION

Merit

- 2.1 Appointment on merit must be the overriding principle governing the appointments process. However, it is recognised that, on occasions, it might be appropriate for the criteria for selection to take account of the need to appoint boards which also include a balance of skills and background. Nevertheless, it is important to guard against discrimination.
- 2.2 To ensure that existing members of public bodies standing for re-appointment can be properly considered, when appropriate in open competition, the public body should have a mechanism for assessing performance.

2.3 It is also recognised that the constitution of some bodies require that they include representatives of other organisations within their numbers or officers from relevant States departments. In these instances, it is recognised that the public body is obliged to accept those who have been recommended by the other organisation without the application of the recruitment and selection processes that are set out below. However, it is suggested that the public body seeks to encourage these organisations to identify their representative through some form of objective process in order to ensure that a suitable person for the responsibilities attaching to the role that the representative will play on the public body is chosen.

Equal Opportunities

2.4 The principles of equal opportunity and diversity are not only socially just, but will benefit any body to which they are applied. Individuals from all sections of society may have much to offer a public body by virtue of their diverse experience and background. Thus –

- The principles of equal opportunity and diversity must be inherent within the appointment's process. Care must be taken, at every stage, not to discriminate on the grounds of gender, race, age, disability, religion, marital status, sexual orientation or community background.
- Wherever possible, action should be taken to attract suitable candidates from all sections of society.

Openness and transparency

2.5 To gain public confidence, the application of the appointments process must be transparent. All stages of the process should be documented and the information be readily available for audit. Information should be retained by the organisation responsible for the recruitment and selection processes for one year from the end of the year in which the competition took place. However:-

- personal information about applicants and panel members must remain confidential, unless the individual concerned gives permission for its release;
- data protection legislation must be considered in relation to all recorded information.

Proportionality

2.6 A degree of proportionality is built into the appointments process through the approach that the Commission takes (see the "Procedure" section below). This Code sets out the minimum measures that are required to be applied. However, within this framework there is flexibility to adopt the approach that is considered to be most suitable and effective. A number of factors will influence the approach, which includes –

- the nature of particularly high profile or potentially contentious appointments.
- availability (and non-availability) of sufficient suitable candidates.
- special circumstances relevant to the appointment (e.g., the need to appoint quickly or in unusual circumstances).

2.7 Proportionality must not, however, be used as an argument for circumventing proper procedures. All deviations from this Code's procedures must be recorded and advised to the Appointments Commission in advance in the case of any significant departure. The Commission might be minded to grant specific exemptions where it judges that they are justified by exceptional circumstances.

Probity

2.8 Procedures should be applied to ensure that the candidates for appointment are committed to the values of public service. The problem most likely to arise is that of actual or perceived conflict of interest. Thus, as early as possible in the recruitment process, all candidates must be asked to disclose information or personal connections which, if they were to be appointed, could be misconstrued. If it appears that a possible conflict might exist or arise in future, this must be fully explored with the candidate to establish whether it is sufficiently significant to prevent the individual from carrying out the duties of the post. The discussions and decision must be documented in order that the decision can be fully justified, in public if necessary.

2.9 In relation to conflicts of interest, there are four issues that may be particularly relevant –

- financial interests or share ownership of the applicant and/or spouse/partner;
- candidates who are actively sought from within a field of expertise in which the public body works. Such a connection does not preclude an appointment, but it might well be perceived by the public as a conflict of interest and will need to be handled sensitively;
- membership of societies. In some instances, such membership may be cited as creating an obvious conflict, but it must not be an automatic bar to appointment. It must be established whether there is a genuine conflict and whether it would hamper the individual in carrying out the requirements of the post;
- candidates must be assessed on merit and not treated more or less advantageously because of the activities, associations or employment of a partner, family member or friend, nor must that relationship influence their actions if appointed. Again, such relationships should not automatically preclude appointment, but care should be taken in a situation that might create an actual or perceived conflict of interest.

Scrutiny

2.10 The Commission will, on a regular basis, arrange for audits to be carried out in respect of senior positions.

Accountability

2.11 Accountability for **senior** appointments must rest at the highest level of governance within the organisation concerned. To ensure that the accountable person fulfils this role properly, he or she must ensure –

- the appointment criteria and the process to be followed are agreed at the outset to avoid disruption at a later stage;
- that, once the process is underway, these criteria are not changed (if they are, the process must start again); and
- that the candidate put forward for approval meets the criteria and the standards required in respect of the principle of probity.

Chapter 3: THE APPOINTMENTS PROCESS

The Two Tier System

3.1 Under this system, all public bodies which fall within the direct remit of the Commission are allocated to an upper or a lower tier according to the level of government funding and whether it exercises statutory powers or has a significant public profile. This distinction defines the extent to which the Appointments Commission requires to be involved in the recruitment process. There is discretion, however, to raise a body from the lower to the upper tier if it is considered appropriate because of its public profile.

Upper Tier

3.2 A body falls into this category if it meets at least one of the following criteria –

- it exercises statutory powers on behalf of the States of Jersey, or
- it receives government funding through its sponsoring Department of £100,000 per annum or more, or
- it has a significant public profile because of the nature of its responsibilities.

Lower Tier

3.3 The body fails to fall into one of the above categories.

Involvement of the Commission

- 3.4 Where a body falls within the **upper tier**, all appointments to the positions of chair and member of the board and chief executive (or equivalent) of that body will normally require the direct involvement of a member of the Commission. Action should, therefore, be taken at an early stage to arrange for the nomination of a Commissioner to oversee the recruitment and selection processes.
- 3.5 The Commissioner who is appointed to undertake these duties must be involved in the following –
- the agreement of the timescales associated with the competition,
 - the production of the Role and Person specifications,
 - the advertisement and support material such as the recruitment pack,
 - the choice of any search consultants,
 - the shortlisting of the applicants,
 - the assessment and selection processes, including interviews.
- 3.6 Where a body falls within the **lower tier**, there is no requirement for a Commissioner to be involved in the recruitment and selection processes. However, it is incumbent on those responsible for recruitment and selection to adhere to the principles and practices set out in this Code. The Commission will institute regular audits to confirm that good practice is being applied.

Chapter 4: RECRUITMENT & SELECTION PRACTICES

Introduction

- 4.1 For ease of reference, the process is described in this section under three stage headings –
- Stage 1 Planning
 - Stage 2 Preparation
 - Stage 3 Selection
- 4.2 The requirements which reflect the relevant Code principles are set down at each stage. The requirements apply to all appointments. Where there is a difference in the requirements for upper and lower tier bodies, these are shown under separate headings.
- 4.3 Throughout the process, the Commission expects those involved to frame their procedures in a considerate and timely manner. The principle of proportionality should also be applied wherever possible.

Stage 1 Planning

Initial involvement of person accountable for recruitment and selection

- 4.4 Those who are accountable for the recruitment and selection processes (see paragraph 2.11 above) must be consulted very early in the planning stage. In particular, it is important that they agree the selection criteria and the way in which the process is to be conducted.

Nature and timescale for the administrative process

- 4.5 Within the framework set out in this Code of Practice, there is flexibility to design a selection process most appropriate to requirements. However, at the planning stage, action must be taken to:-
- decide the nature of the process and draw up a firm timetable; and
 - determine whether the direct involvement of the Appointments Commission is required.

Consultation

- 4.6 As part of the planning of the appointments process, it is recommended that, where the Chair of a body is not directly involved, his/her views on issues such as selection criteria and the balance of the body should be sought.
- 4.7 In addition, wider consultation might be deemed appropriate in order to engage those who are affected by the public body in question to raise any issues relating to selection that they consider should be taken into account in the recruitment processes. This can prove a particularly valuable approach and is therefore recommended by the Appointments Commission.

Role and person specification

- 4.8 Role and Person Specifications must be produced for each and every appointment as member, chair and chief executive (or equivalent) of a public body. These must be reviewed each time a post becomes vacant and not automatically assumed to have remained unchanged since the last time an appointment was made. In setting the selection criteria, it should be determined that –
- they do not discriminate unfairly against any group or groups in society;
 - Role Specifications are comprehensive and include: details of any remuneration, allowable expenses, conditions of service and a realistic indication of the time commitment required. Any specific issues which are relevant to the post must be highlighted;
 - the Person Specification addresses the qualities, experience, background, competencies and, where applicable, the professional qualifications sought;

- where positive action is taken to attract applications from a particular group, extreme care is exercised to avoid anything which might constitute positive discrimination.

Re-appointments

- 4.9 Once the number of forthcoming vacancies has been identified, it will need to be established how many members, whose terms of office are due to expire, are eligible for a further term of appointment and meet the requirements of the position. In this connection, good governance suggests a regular turnover of members within the Body would be appropriate.
- 4.10 Guidelines on the criteria that should normally be applied in connection with the total period of a member's term of office are set out below.
- 4.11 Where a representative of another organisation or a States Department must serve as a member of the Body (paragraph 2.3), it is recognised that such representatives might continue in office. However, wherever practicable, the relevant organisation or States Department should be encouraged to replace these representatives on a regular basis.
- 4.12 Decisions to re-appoint must be taken in a timely manner and, in all cases, before the current term expires.

Total period in post

- 4.13 The number of terms an individual may serve and the conditions for re-appointment vary between upper and lower tier bodies. However, in either case, it is recommended that the term of office of a member should not exceed 10 years. In some circumstances, however, it might be appropriate to exceed that limit. On these occasions, this should be confirmed with the Appointments Commission.
- 4.14 Where a member is appointed as Chair through open competition or elected from amongst the membership under statute or the constitution of the Body, it counts as a new appointment and so the period of office starts again.

Performance assessment

- 4.15 As noted in 2.2 above, the overall performance of members of public bodies should be periodically assessed and recorded. Such information should be considered when addressing re-appointments in order that no one can be re-appointed unless they have performed satisfactorily during their current term.

Retiring members

- 4.16 Those members who will not be invited, for whatever reason, to serve for a further term must be notified once the formal decision has been taken and recorded and before any action is taken publicly to replace them.

Terms and criteria for re-appointments

4.17 The requirements vary between upper and lower tier bodies and are as follows –

Re-appointment to upper tier bodies

(a) First re-appointments;

First re-appointments (i.e., for a second term in office in the same role) may be made subject to satisfactory assessment of performance.

(b) Second re-appointments;

Second re-appointments (i.e., for a third term in office in the same role) will be rare and can normally only be made if the individual has been considered alongside other applicants in open competition and has proved to be the most suitable candidate.

However, where the term of office of the member is comparatively short, i.e., not more than two years, the need to apply a competitive process can be delayed until the member has served six years.

4.18 Further, where one of the following criteria applies to the current postholder –

- She or he has particular skills or experience essential to efficient functioning of the Body; or
- She or he will provide continuity during a period of change (perhaps when a number of appointments are coming to an end simultaneously or bodies are merging); or
- Experience has clearly shown difficulty in attracting candidates with the requisite knowledge and experience;

the Commission would consider approving an extension of the person's membership of the Body without the requirement to carry out a competitive process. An approach should be made to the Commission to approve such a way forward before any action is taken.

Re-appointment to lower tier bodies

4.19 Appointees may normally serve any number of terms subject to the 10-year rule, providing that their performance has been assessed as satisfactory. However, the Commission might consider appointments beyond ten years where one of the criteria set out in the previous paragraph concerning second re-appointments in respect of upper tier posts applies. Again, it is incumbent upon the recruiting authority to obtain prior approval for such an approach from the Commission.

Extensions

4.20 Where a full term re-appointment is not appropriate (e.g., pending a merger or review) it might be appropriate to consider extending the current term. Such extensions will be exceptional and must not be seen as a means of circumventing the appointments procedure. Extensions –

- must be agreed with the Appointments Commission in advance
- must not normally exceed 18 months
- should not normally be followed by a re-appointment without open competition, although the Commission may consider this in exceptional circumstances.

Monitoring re-appointments

4.21 All processes and decisions relating to re-appointments are subject to the same information requirements as initial appointments, and to review by auditors.

Promotions to Chair

4.22 Unless there is statutory or other legally binding provision for members to elect a chair from their own number, or a candidate has been selected and appointed as chair designate, promotion to chair is subject to the full appointments process. However –

- Where there are urgent and compelling reasons for promoting a member (e.g., the death or sudden resignation of a chair) the Commission may agree to an exemption, on condition that all existing members of the body have the opportunity to express their interest and that all candidates who are assessed as being suitable are considered for the post.

Experts

4.23 The Commission accepts that, very occasionally, there are posts that require such a rare combination of skills and experience that it is impractical to try to fill them through the normal procedure. These should be dealt with on an individual basis by approaching the Appointments Commission to confirm that an “expert” designation is appropriate.

Emergency appointments

4.24 On occasion, there might be an emergency where a public appointment needs to be made very quickly and in politically sensitive circumstances. In such cases the Minister concerned or the Chief Officer of the relevant department/Chair of the relevant body should contact the Chair of the Commission to discuss the available options.

Stage 2 Preparation

Introduction

4.25 The requirements of this stage are governed primarily by the need to ensure a demonstrably fair and open process, appropriate to the nature and degree of responsibility associated with the post being filled. It is recognised that diversity is an essential element on public bodies and that reaching out to a wide range of potential appointees from different backgrounds is the best way to achieve it.

Publicising appointments

4.26 To demonstrate openness of the system, people must be made aware that an appointment is available through some form of publicity, except in those circumstances recognised in paragraph 2.3 above. Advertising is one way, but may not necessarily be the most effective or proportionate mechanism. However, it is a requirement that all posts are publicised in an effective but proportionate way, e.g., websites, advertisements, issuing notices of forthcoming appointments to interested groups.

External consultants

4.27 If it is decided to use search consultants, the requirements of this Code of Practice still apply and it is the relevant department/public body which is responsible for ensuring that the consultants have followed them to the full. In particular, this includes the requirement for all applicants to complete an application form or submit a CV prior to the specified closing date.

Information packs.

4.28 Information packs must be sent out to all applicants and, as a minimum, should contain –

- an application form or information on how an application should be submitted;
- Role and Person specifications;
- a realistic indication of the time commitment;
- details of remuneration and expenses relating to the appointment;
- full details of the public body;
- information on the recruitment process and how long it will take.

Application forms

4.29 Public bodies may wish to design their own application forms but these must ask for all information that will allow a considered decision to be made in connection with short-listing.

Closing date for applications

- 4.30 Application forms or the accompanying details in the information pack should specify the closing date for the competition. This should also feature in advertisements and any other form of publicity seeking applications. Once the closing date has been specified it must be maintained. If there are exceptional reasons for extending a deadline, these must be discussed with the Appointments Commission in advance and must be documented.

Stage 3 Selection

Introduction

- 4.31 This stage deals with the identification and selection of appointees. The requirements are governed primarily by the need to maintain the principles of appointment on merit and equal opportunities, and to assist diversity within bodies.

Selection Panels

- 4.32 In the case of **upper tier bodies**, a selection panel should be constituted which must be responsible for all decisions in respect of long- and short-listing and the final selection decisions. The panel membership shall normally be as follows –

- the Minister or chief officer of the relevant department or the Chair of the Body or an appropriate senior delegate;
- a member of the Appointments Commission;
- a representative of the public body or other interested group.

- 4.33 In the case of **lower tier bodies**, a selection panel should normally be constituted to be responsible for all decisions in respect of long- and short-listing and the final selection decisions. The panel membership will normally be as follows –

- the Chair of the Body or an appropriate senior delegate;
- a representative of the relevant States department or other interested group.

- 4.34 Where a selection panel is convened for a particular competition, it should comprise the same members throughout. In extenuating circumstances members may vary but the Commission member must normally be unchanged.

Selecting a shortlist

- 4.35 All those involved in the selection process should be familiar with the Code's principles and be confident that the long- and shortlists are being compiled on the basis of merit. No candidate can be long- or short-listed unless they have been satisfactorily assessed against publicised criteria. All decisions, including those to reject, must be fully documented.

Discussions with applicants

- 4.36 In the case of all **upper tier bodies**, the selection panel must hold a formal discussion with shortlisted candidates.
- 4.37 In the case of **lower tier bodies**, the selection panel may hold a formal discussion with shortlisted candidates. Alternatively, a senior officer of the relevant department/public body might carry out a structured discussion with all the shortlisted candidates. Each discussion should be fully documented and the outcomes of those discussions should then be referred to the selection panel for a final decision on appointment. (The senior officer must not act as a member of the selection panel, as identified in paragraph 4.33 above.)

Other considerations

- 4.38 During the discussion stage, it is a requirement to ensure that –
- candidates are fully aware of the standards of probity required of public appointees; and
 - questions of conflict of interest have been explained to and explored with the applicant.

Final decision

- 4.39 The decision of the selection panel will be recorded and, where appropriate, referred to the Chair of the Body, if s/he hasn't been involved in the selection processes, and the relevant Minister for implementation of the appointment. If, following this consultation, there is a wish to set aside the decision of a selection panel then this must be referred to the Commission before any announcement is made. If an agreement cannot be reached which secures the Commission's principles, the Commission will require a fresh competition to be undertaken. The terms and conditions that are agreed with the successful candidate should be in line with those that had first been advertised and so significant changes from these would not be expected.

References

- 4.40 It is for the relevant departments/public bodies to decide if they require references and how and when they take them up. In reaching this decision, they should employ best practice and a consistent approach.

Publicising appointments

- 4.41 In keeping with the principle of openness and transparency, all appointments to public bodies must be publicised in an appropriate manner.

Chapter 5: AUDIT

- 5.1 The Commission will arrange for appointments to be audited independently to confirm that its principles and Code have been satisfactorily applied.

- 5.2 In addition to these routine audits, the Commission may decide to ask independent auditors to carry out ad hoc audits. These may cover issues arising from a previous audit or relate to an individual complaint or series of complaints.

Chapter 6: COMPLAINTS

- 6.1 The Commission will not deal with any complaint relating to an appointment made more than one year previously, i.e., from the date specified in the letter of appointment.
- 6.2 Subject to this time limit, the Commission will investigate complaints relating to the appointments procedure that concern –
- an individual's experience as an applicant;
 - the way a department/public body has handled an appointment's process; or
 - a challenge to the appointment of the successful candidate only if it appears that the appointment's process has been breached.
- 6.3 As a general rule, all complaints must be dealt with first by the relevant department/public body. Thus, providing it is appropriate, any complaint made directly to the Appointments Commission will be re-directed to the relevant department/public body. If a complainant is dissatisfied with the department's/public body's response, s/he may then ask the Commission to consider initiating an investigation.
- 6.4 The Commission will institute an investigation into the complaint either directly or through the employment of independent officers. The findings of the Commission will be communicated both to the complainant and to the relevant department/public body and will cover –
- the key conclusions and the reasons behind them; and
 - any action the Commission intends to take or recommends the department/public body should take in the light of the investigation.