



## BRIEFING PAPER

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# Public Bodies

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## Summary

As of March 2019, 295 public bodies were in operation across the UK government<sup>1</sup>. Most public bodies within the United Kingdom are established and operated by the government, with varying levels of autonomy and ministerial responsibility according to their classification. Concern over the accountability of public bodies and over arrangements for appointments to them, made by ministers, have arisen previously. The role of Westminster Select Committees in such scrutiny has, at times, become a source of debate between Parliament and Governments.

Brexit means that many functions previously carried out by EU agencies will become the responsibility of existing UK bodies. A number of new public bodies are also being created to manage additional responsibilities after EU exit: for example, an Office for Environmental Protection will be established under the *Environment Bill 2019-21* and a Trade Remedies Authority under the *Trade Bill 2019-20*.

The Conservative-Liberal Democrat Coalition Government (2010-15) undertook reform of public bodies, significantly reducing the number in operation. The Coalition Government also established 'triennial reviews', a regular review process for public bodies, which was replaced in 2016 by 'tailored reviews', to be carried out once every Parliament to assess the continuing need and function of bodies.

Some of the bodies mentioned in this paper have UK-wide responsibilities, some only relate to England. Public bodies reporting to the devolved governments in Scotland, Wales and Northern Ireland are not included in the statistics given nor the procedures quoted.

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<sup>1</sup> [Public Bodies 2019](#), Cabinet Office, July 2020.

# 1. What is a public body?

## 1.1 Public bodies

The Cabinet Office defines a public body as follows:

A 'public body' is a formally established organisation that is (at least in part) publically funded to deliver a public or government service, though not as a ministerial department. The term refers to a wide range of entities that are within the public sector. This does not include public entities that do not require staff to carry out their functions, such as public funds or trusts.<sup>2</sup>

The 'arm's length' nature of public bodies means that their day-to-day decision making is independent of government, although ministers are ultimately responsible to Parliament for their independence, effectiveness and efficiency.

Most public bodies that operate within the UK are established and operated by the Government. Some, such as the Parliamentary and Health Service Ombudsman, are set up by and directly accountable to Parliament.

## 1.2 Classification of public bodies

In April 2016 the Government published the outcome of a classification review, prompted by concerns raised by academics and the 2014 Public Administration Select Committee report [Who's accountable? Relationships between Government and arm's-length bodies](#). PASC had previously reported on the "confusing network of public bodies" in a 1999 report and again in 2011 referred to the "complex and confusing nature of the public bodies landscape".<sup>3</sup>

The 2016 review found that "there was broad agreement that the current classification system was not fit for purpose – it lacked clarity, was unnecessarily complex and was difficult to understand".<sup>4</sup>

Among the recommendations made in the report were the following:

- Reduce the number of types of central government Arm's Length Bodies (ALBs) to the three main categories – Executive Agencies, Non Departmental Public Bodies and Non Ministerial Departments
- Attribute to the three categories characteristics which are comparable, mutually exclusive and comprehensively cover the central government ALB landscape
- Introduce naming conventions which are aligned with the categories

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<sup>2</sup> Cabinet Office, [Public Bodies Handbook: Part 1 – Classification of Public Bodies: Guidance for Departments](#), April 2016.

<sup>3</sup> Public Administration Select Committee, *Quangos*, 9 November 1999, HC 209 HC 209 1998-99; Public Administration Select Committee, *Mapping the Quango State*, 21 March 2001 HC 367 2000-01.

<sup>4</sup> Cabinet Office, [Classification Review of public bodies](#), April 2016, p6

- Endorse as a guiding principle that the category into which a body is classified should be determined by the degree of freedom that body needs from ministerial control to perform its functions.

In April 2016 the Government published guidance for departments on the classification of public bodies.<sup>5</sup> The guidance summarises the main characteristics of different types of public bodies and reflects the recommendations of the review.

The main types of arm's length public bodies (ALBs) are<sup>6</sup>:

- **Executive Agencies:** Executive Agencies are clearly designated (and financially viable) business units within departments which are responsible for undertaking the executive functions of that department, as distinct from giving policy advice... Executive agencies are part of their department, and do not have the same level of legal separation from their home departments that other categories of public bodies often possess.

Examples: Public Health England, Education and Skills Funding Agency, Planning Inspectorate

- **Non Departmental Public Bodies:** NDPBs have a role in the process of national government but are not part of a government department. They operate at arm's length from ministers, though a minister will be responsible to Parliament for each NDPB.

Types of NDPBs include:

- **NDPBs with advisory functions:** These NDPBs consist of external (non-civil service) experts who operate in a personal capacity to form boards or committees to advise ministers on particular policy areas. They are often supported by a small secretariat from the sponsoring department, which also provides funding. They provide independent specialist advice (free from political control) to departments.

Examples: Advisory Council on the Misuse of Drugs, Boundary Commission for England.

- **Executive NDPBs:** These NDPBs carry out a range of administrative, commercial, executive and regulatory or technical functions. They often have a delegated budget, with their own Accounting Officer and staff who are not civil servants.

Examples: Health and Safety Executive, Environment Agency

- **Tribunal NDPBs:** These NDPBs are usually concerned with the rights and obligations of individuals in relation to a branch of government or other public authority.

Examples: Traffic Commissioners, The Valuation Tribunal

- **Non Ministerial Departments:** NMDs operate similarly to normal government Departments in the functions they perform (though usually they are more specialised and not as wide ranging

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<sup>5</sup> Cabinet Office, [Public Bodies Handbook: Part 1 – Classification of Public Bodies: Guidance for Departments](#), April 2016

<sup>6</sup> Public Administration Select Committee, [Who's accountable? Relationships between Government and arm's-length bodies](#), HC 110, November 2014

in the policy areas they cover). They generally cover matters for which direct political oversight is judged unnecessary or inappropriate. They are usually headed by a senior civil servant as Chief Executive, with an independent Chair and non-executive directors for the board.

Examples: HM Revenue & Customs, National Crime Agency, Competition and Markets Authority, Ofqual, Serious Fraud Office.

The scale of ALBs varies widely. For example, NHS England is an executive NDPB and accounts for 56% of the gross expenditure of all ALBs.

### **Box 1: What is a quango?**

The term 'quango' (quasi-autonomous non-governmental organisation) is often used as a catch-all term to describe public bodies. The word 'quango' is not a classification that the Government has traditionally used. For some, it has become a highly emotive term, used as a by-word for wasteful bureaucracy, patronage and a lack of democratic accountability.

## 2. Accountability and scrutiny

### 2.1 Introduction

Concerns about the accountability of public bodies arise with some regularity. Public bodies are established largely to avoid direct ministerial involvement – operating at arm’s length. However, this distance and lack of involvement can also be seen to translate into a lack of direct accountability for the actions, effectiveness and efficiency of arm’s length bodies. In its 1999 report, *Quangos*, the Public Administration Select Committee summarised the issues around accountability as follows:

The main bodies of central and local government are directly accountable to the people through elections and through Parliament. Quangos, despite the amount that they do, and the importance of what they do, are not. Their accountability lies instead to those (who may be Ministers or other organisations) who established them. For this reason, they have been seen as organisations which lack democratic accountability and popular respect...<sup>7</sup>

### 2.2 Scrutiny by select committees

The Departmental Select Committees in the House of Commons take an interest in the work of the public bodies associated with their associated government department. The core tasks of select committees as outlined by the Liaison Committee, most recently in 2019, cover the expenditure and performance of arm’s length bodies and scrutiny of major public appointments.<sup>8</sup>

For certain key public appointments House of Commons select committees may hold evidence sessions with the Minister’s preferred candidate before the appointment is made. This enables the Committee to endorse or to raise concerns about the appointment. There were a total of 102 pre-appointment hearings between July 2007 and May 2018.<sup>9</sup> The relevant Minister can, if they wish, disregard the views of the Committee if it recommends that the candidate is not suitable for the post.<sup>10</sup>

### 2.3 Appointments

The Commissioner for Public Appointments regulates appointments made by ministers to senior positions in public bodies. Those who make public appointments, subject to regulation by the Commissioner, are required to follow the [Governance Code on Public Appointments](#) (December 2016), which contains the *Principles of Public Appointments*,

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<sup>7</sup> Public Administration Select Committee, *Quangos*, 9 November 1999, HC 209-1 1998099

<sup>8</sup> Liaison Committee, [The effectiveness and influence of the select committee system](#), September 2019, HC 1860 2017-19.

<sup>9</sup> Liaison Committee, [Pre-appointment hearings held by Select Committees of the House of Commons](#) [running list].

<sup>10</sup> For more details see the Commons Briefing Paper SN04387 [Pre-appointment Hearings](#)

as published by the Cabinet Office. The Commissioner can investigate complaints about appointments processes within his remit.<sup>11</sup>

### Box 2: Principles of Public Appointments

The Principles of Public Appointments apply to all those involved with public appointments processes.

A. **Ministerial responsibility** - The ultimate responsibility for appointments and thus the selection of those appointed rests with Ministers who are accountable to Parliament for their decisions and actions. Welsh Ministers are accountable to the National Assembly for Wales.

B. **Selflessness** - Ministers when making appointments should act solely in terms of the public interest.

C. **Integrity** - Ministers when making appointments must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

D. **Merit** - All public appointments should be governed by the principle of appointment on merit. This means providing Ministers with a choice of high quality candidates, drawn from a strong, diverse field, whose skills, experiences and qualities have been judged to meet the needs of the public body or statutory office in question.

E. **Openness** - Processes for making public appointments should be open and transparent.

F. **Diversity** - Public appointments should reflect the diversity of the society in which we live and appointments should be made taking account of the need to appoint boards which include a balance of skills and backgrounds.

G. **Assurance** – There should be established assurance processes with appropriate checks and balances. The Commissioner for Public Appointments has an important role in providing independent assurance that public appointments are made in accordance with these Principles and this Governance Code.

H. **Fairness** – Selection processes should be fair, impartial and each candidate must be assessed against the same criteria for the role in question.

The Commissioner regulates appointments to those bodies listed in the [Public Appointments Order in Council 2019](#). The types of appointments covered are:

- Executive non-departmental public bodies;
- Advisory non-departmental public bodies;
- Certain health bodies (not Foundation Trusts);
- Public Corporations;
- Public Broadcasting Authorities;

<sup>11</sup> For more information see Commons Briefing Paper, SN 03368 [Commissioner for Public Appointments](#)

- Certain Utility Regulators;
- Non-Ministerial Departments;
- National Park Authorities in England and Wales; and
- Conservation Boards for Areas of Outstanding Natural Beauty.

### 3. The number and cost of public bodies

Headline figures on the number of public bodies are published by the Cabinet Office in an annual publication, [Public Bodies](#).

As of March 2019 there were 295 UK public bodies (arms-length bodies), decreasing from 301 in 2018. Most of these, 235 were non-departmental public bodies (NDPBs). In addition, there were 39 executive agencies and 20 non-ministerial departments.

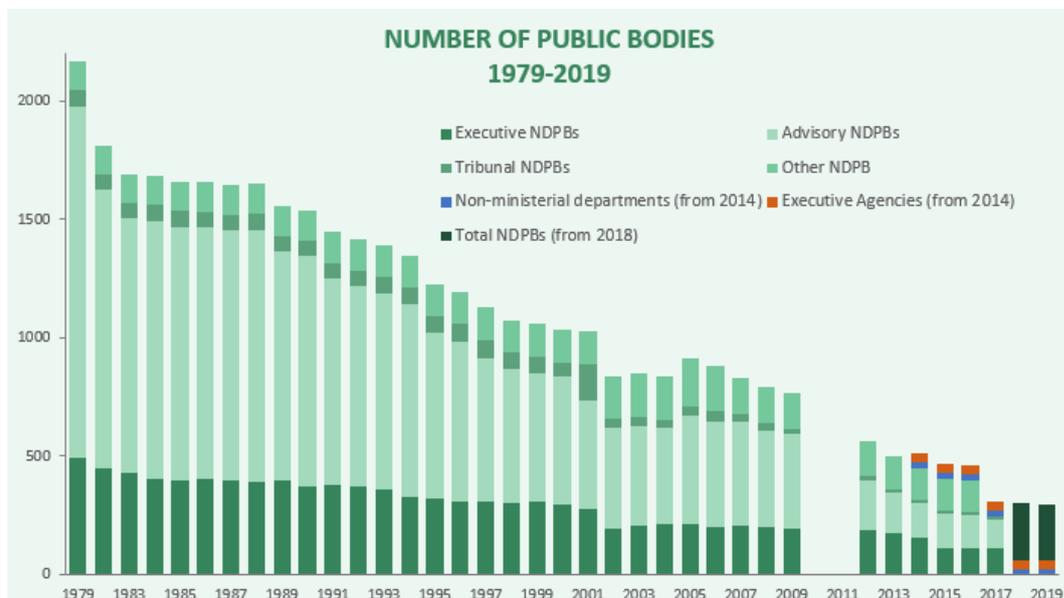
In total these public bodies employed 299,171 people (full-time equivalent).

The gross resource expenditure on these public bodies was £206 billion. Two large bodies accounted for much of this cost. NHS England accounted for £115 billion or 56%, and the Education and Skills Funding Agency for £57 billion or 28%. The other 293 bodies account for the remaining 16%.<sup>12</sup>

#### Trends

As shown in the chart below, the number of public bodies has declined for most of the past forty years.

The fall in the number of bodies from 463 in 2016 to 305 in 2017 is partly due to 132 Independent Monitoring Boards (figure for 2016) being reclassified in 2017 and 12 Veterans Advisory and Pensions Committees being listed under one NDPB in 2017.<sup>13</sup>



Cabinet Office, [Public bodies report](#), various editions

Notes:

<sup>12</sup> Cabinet Office, [Public bodies 2019](#)

<sup>13</sup> Cabinet Office, [Public bodies 2017](#). Independent Monitoring Boards were re-classified as department-specific public bodies. Whilst separate and distinct from regular department operations, they are still administered within a ministerial department and so are not considered to operate at arms-length.

## 11 Commons Library Briefing, 19 January 2021

- Up to 2002, four categories of NDPB were reported on: executive, advisory, and tribunal NDPBs, and Boards of Visitors (these were renamed Independent Monitoring Boards in 2004). From 2002 onwards, additional categories of NDPBs were included in reports (such as public corporations and the central bank). Between 2007 and 2013, four categories were reported on: executive, advisory, tribunal and other NDPBs, although no data was published for 2010 and 2011.
- In this chart, 'other NDPBs' includes all reported NDPBs not included in the other three NDPB categories.
- Data from 2002 onwards do not include NDPBs that are the responsibility of devolved administrations.
- Since 2014, executive agencies and Non Ministerial Departments have also been included as categories.
- Since 2018, all categories of NDPBs (Advisory, Executive, Tribunal and other) have been included together under 'Total NDPBs'.

## 4. Establishing new public bodies

### 4.1 General policy

Responsibility for the overall policy framework relating to public bodies lies within the Cabinet Office. Its guidance document [Classification of Public Bodies: Guidance for Departments](#) states that new public bodies should only be created “if there is a clear and pressing requirement” along with “a clear need for the state to provide the function or service through a public body, and no viable alternative:

...effectively establishing new public bodies as a last resort. This is to prevent any unnecessary increase in the number of public bodies<sup>14</sup>.

The Cabinet Office guidance also states that a proposal for a new body should only be taken forward if the service or function meets at least one of the following three tests:

1. Is this a technical function, which needs external expertise to deliver?
2. Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality?
3. Is this a function that needs to be delivered independently of ministers to establish facts and/or figures with integrity?<sup>15</sup>.

Existing public bodies are also assessed against these tests during the tailored review process (See Chapter 6).

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<sup>14</sup> Cabinet Office, [Classification of Public Bodies: Guidance for Departments](#), April 2016.

<sup>15</sup> Cabinet Office, [Public Bodies Handbook Part 2: The approvals process for the creation of new arms-length bodies](#), Chapter 2, December 2012.

## 5. Brexit and public bodies

The [European Union \(Withdrawal\) Act 2018](#) gives Ministers the power to prevent, remedy or mitigate any “failure of” or “deficiency in” retained EU law arising from the UK’s withdrawal from the EU. This includes transferring powers from EU agencies to new or existing UK bodies.

### Box 3: Provisions relating to public bodies in the *European Union (Withdrawal) Act 2018*

- Section 8(6)(a) of the Act says that the power can be used to transfer functions of EU entities to UK public authorities, (*whether or not established for the purpose*)
- Section 86(b) allows these functions to be *replaced, abolished or otherwise modified*.
- Schedule 7 paragraph 1(2)(d) highlights that the power could be used to create new legislative functions, including powers to amend primary legislation, that can be transferred to UK institutions.

As the UK leaves the European Union, and the transition period came to an on 31 December 2020, responsibility for some areas will be transferred to new and existing UK public bodies. Some of these are summarised in the table below:<sup>16</sup>

Function	Existing EU body	UK body taking over responsibility
Nuclear safety	Euratom	Office for Nuclear Regulation
Chemicals regulation	European Chemicals Agency	Health and Safety Executive with input from the Environment Agency <sup>17</sup>
Aviation regulation	European Union Aviation Safety Agency	Civil Aviation Authority <sup>18</sup>
Medicines regulation	European Medicines Agency	Medicines and Healthcare products Regulatory Agency (MHRA)

The National Audit Office published a report *Exiting the European Union: The cost of EU Exit preparations* in March 2020. It found that since 2016, government departments had allocated a total of £442 million to public bodies to fund Brexit preparations. The Department for Environment, Food and Rural Affairs (Defra) had allocated the highest amount - a total of £209 million for the period 2016-20 to its associated bodies. £111 million of this was

<sup>16</sup> Institute for Government, [The Brexit Effect](#), March 2019, page 18.

<sup>17</sup> For more information see Commons Briefing Paper CBP 8403: [Brexit and Chemicals regulation \(REACH\)](#)

<sup>18</sup> Transport Secretary Grant Shapps confirmed in an [interview with Aviation Week](#) in March 2020 that the UK would be leaving the European Union Aviation Safety Agency at the end of the transition period.

allocated to the Rural Payments Agency, the body responsible for administering the EU's Common Agricultural Policy schemes in England.<sup>19</sup>

## 5.1 New public bodies after Brexit

A number of new public bodies have also been announced by the Government. These bodies will manage new responsibilities and functions to be carried out once the transition period comes to an end.

### Office for Environmental Protection

The Government published its draft *Environment (Principles and Governance) Bill* on 19 December 2018.<sup>20</sup> The draft Bill included a new independent body to replace the role of EU bodies. The *Environment Bill 2019* passed its second reading on 23 October 2019, but subsequently fell when Parliament was dissolved on 6 November 2019 ahead of the general election. The Bill was re-introduced as the *Environment Bill 2019-20*, and passed its second reading on 26 February 2020.

Part 1 of the Bill establishes a new public body, the Office for Environmental Protection (OEP), which will have scrutiny, enforcement and advice functions. Explanatory notes for the Bill state:

Through its scrutiny and advice functions, the OEP will monitor progress in improving the natural environment in accordance with the government's domestic environmental improvement plans and targets. It will be able to provide government with written advice on any proposed changes to environmental law. Through its complaints and enforcement mechanisms, the OEP will take a proportionate approach to managing compliance issues relating to environmental law.<sup>21</sup>

The OEP will have a range of enforcement powers, some UK wide, some in cooperation with devolved Governments in Wales or Scotland and some specifically relating to Northern Ireland. The [Library briefing paper on the Environment Bill](#) has more information.

A recruitment campaign for the inaugural Chair of the body was launched in August 2020.<sup>22</sup> On 9 December 2020 it was announced that Dame Glenys Stacey had been selected as the Government's preferred candidate for the role.<sup>23</sup> Dame Glenys appeared at a pre-appointment scrutiny hearing before the Environment, Food and Rural Affairs Committee and the Environmental Audit Committee on 15 December 2020.<sup>24</sup>

<sup>19</sup> National Audit Office, [The cost of EU Exit preparations](#), HC 102 6 March 2020

<sup>20</sup> Section 16 of the *European Union (Withdrawal) Act 2018* included a requirement for the Secretary of State to publish a draft Bill within six months of the Act's assent consisting of a set of environmental principles and provisions for the establishment of a public body to enforce compliance with environmental law.

<sup>21</sup> [Explanatory notes](#) to the Environment Bill 2019-20

<sup>22</sup> [Chair of the Office for Environmental Protection](#), HM Government Public Appointments

<sup>23</sup> [Dame Glenys Stacey selected as preferred candidate](#) [...], Press Release, Defra, 9 December 2020.

<sup>24</sup> Environment, Food and Rural Affairs Committee; Environmental Audit Committee, Transcript: [Oral evidence: pre-appointment scrutiny](#), HC 1042 2019-21, 18 December 2020.

In response to a joint letter from the Chairs of the two Select Committees, in October 2020, the Secretary of State Rt Hon George Eustice MP provided further information:

...my department is establishing an Interim Environmental Governance Secretariat, which will be hosted in Defra and will operate from 1 January 2021 until the Office for Environmental Protection can begin its statutory functions following the passage and Royal Assent of the Environment Bill. The interim arrangements will support the Chair of the Office for Environmental Protection once they have been engaged following the regulated public appointments process which is already at an advanced stage. [...]

The interim arrangements are intended to operate on a temporary basis and to provide an effective transition to the permanent body. They are not a replacement for the Office for Environmental Protection nor a basis to delay its establishment. The interim Secretariat within Defra will therefore operate for no longer than is necessary. We want to have the Office for Environmental Protection established and operational as soon as possible following Royal Assent of the Environment Bill.<sup>25</sup>

## Trade Remedies Authority

The *Trade Bill 2019-20* includes provisions to establish the Trade Remedies Authority (TRA).

Trade remedies – sometimes referred to as “trade defence measures” – allow a country to take steps against unfair competition from ‘dumped’ or subsidised imports. Dumping occurs where a company exports a product at a lower price than it is sold for on its domestic market.

Trade remedies are dealt with by the EU, for member states. The Trade Bill would establish a new UK non-departmental public body, the Trade Remedies Authority, to take over such functions. Until the body is established on a statutory basis, its functions are being carried out by the Trade Remedies Investigations Directorate (TRID), which is part of the Department for International Trade.

The body would provide advice at the request of the Secretary of State and other organisations in relation to trade disputes. In the Lords debate on the second reading of the Bill, on 8 September 2020, Lord Grimstone of Boscobel, Minister of State at the Department for International Trade stated:

the Bill establishes the independent Trade Remedies Authority to protect our businesses against injury caused by unfair trading practices, such as dumping or subsidy, or unforeseen surges in imports. The TRA will deliver an independent investigation process that businesses can turn to when others are breaking the rules, and will recommend appropriate measures where necessary.<sup>26</sup>

The [Library briefing paper on the Trade Bill](#) has more information.

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<sup>25</sup> [Letter from the Secretary of State for Environment, Food and Rural Affairs to the Chairs of the EFRA and Environmental Audit Committees](#), November 2020.

<sup>26</sup> [HL Deb 08 September 2020, c675](#),

In May 2018 it was announced that the Trade Remedies Authority would be based in Reading.<sup>27</sup> On the same day the competition for the Chair of the new Authority was launched.<sup>28</sup> Simon Walker CBE was appointed Chair-Designate of the TRA in February 2020.<sup>29</sup> Oliver Griffiths was appointed Chief Executive of the TRA on 30 November 2020.<sup>30</sup>

### Independent Monitoring Authority

Section 15 of the *European Union (Withdrawal Agreement) Act 2020* provides for the creation of an Independent Monitoring Authority (IMA) for the Citizens' Rights Agreements. This was required to implement international legal obligations under article 159 of the withdrawal agreement and article 64 of the European Economic Area European Free Trade Area (EEA EFTA) Separation Agreement. The IMA monitors the UK's implementation and application of the citizens' rights sections of these agreements from the end of the transition period.

The IMA is an operationally independent body of the Ministry of Justice and began its work on 1 January 2021. The IMA has responsibilities across the [UK including the devolved governments and local councils](#).<sup>31</sup>

Dr Kathryn Chamberlain, previously the chief executive of the Healthcare Inspectorate Wales, was appointed as interim chief executive on 5 March 2020. The body is based in Swansea and has begun to recruit staff.<sup>32</sup> Sir Ashley Fox, the Government's preferred candidate for Chair appeared before the Commons Justice Select Committee at a pre-appointment hearing on 24 November 2020. The Committee endorsed his appointment in a report published on 3 December 2020.<sup>33</sup>

### Office for the Internal Market

The *United Kingdom Internal Market Act 2020*, which received Royal Assent on 18 December 2020, includes provision to establish an Office for the Internal Market, which will be responsible for monitoring the operation of the UK's internal market. The Constitution of the OIM Panel etc is set out in [Schedule 3](#) of the Act. The Office will sit within the Competition and Markets Authority, an existing non-ministerial department.<sup>34</sup> The OIM will begin operation later in 2021. The process for making appointments to the Board and Panels will begin in 2021, administered by the Secretary of State for Business.

<sup>27</sup> Department for International Trade, Press notice, [Key UK trade agency to be based in Reading](#), 10 May 2018.

<sup>28</sup> Cabinet Office, [Centre for Public Appointments](#), 10 May 2018.

<sup>29</sup> [Announcement](#), HM Government Public Appointments, 6 February 2020

<sup>30</sup> [New appointment to forge UK's independent trade agenda](#), Press Release, Dept for International Trade, 30 November 2020.

<sup>31</sup> [New authority for EU Citizens' Rights after Brexit](#), Press Release, IMA, 31 December 2020.

<sup>32</sup> [What is the IMA?](#), Lords Briefing Paper, 6 July 2020

<sup>33</sup> Justice Committee, [Appointment of the Chair of the Independent Monitoring Authority](#), HC 954 2019-21, 3 December 2020.

<sup>34</sup> [Policy Paper. Purpose and role of the Office for the Internal Market](#), Department for Business, Energy and Industrial Strategy, updated 17 November 2020. The Competition and Markets Authority is a non-Ministerial department sponsored by the Department for Business, Energy and Industrial Strategy (BEIS).

## 6. Public body review process

### 6.1 Tailored reviews

The tailored review process for public bodies launched in 2016, replacing triennial reviews that had been introduced by the coalition government in 2011 (See Section 6.2). The guidance on carrying out tailored reviews was first published in March 2016 and updated in 2019. The tailored approach gives more flexibility to Departments on the scope and timing of reviews, proportionate to the size and type of public body, than was the case with the triennial programme. The guidance states that:

reviews should be undertaken at least once in the lifetime of a Parliament<sup>35</sup>

Tailored reviews are carried out alongside cross-departmental functional reviews coordinated by the Cabinet Office.

The guidance states that reviews should normally take no more than six months to complete. Cabinet Office guidance sets out objectives that a tailored review process should answer:<sup>36</sup>

1. to provide robust challenge to and assurance on the continuing need for individual bodies – both their functions and form.
2. where it is agreed that a body should be retained, it should also review:
  - its capacity for delivering more effectively and efficiently, and include an assessment of the performance of the body or assurance that processes are in place for making such assessments; and
  - the control and governance arrangements in place to ensure that the body and its sponsor are complying with recognised principles of good corporate governance. These principles will vary according to the public body under review.

Reviews are now also required to consider the impact of leaving the European Union as part of the review. They should also consider whether each function carried out by the body:

- is still needed;
- is still being delivered;
- is carried out effectively by the organisation; and
- contributes to the core business of the organisation, the sponsor department and to the government as a whole.<sup>37</sup>

Tailored reviews of public bodies are prioritised into three tiers under the new process, with priority for review determined on a case-by-case basis by the department and the Cabinet Office.

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<sup>35</sup> Cabinet Office, [Tailored reviews: guidance on reviews of public bodies](#), March 2016, updated November 2016.

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*.

Prioritisation takes into account certain criteria such as a body's spend, size and date of its last review. Tier 1 and 2 reviews are designated "priority reviews" and involve a greater involvement and oversight by the Cabinet Office in the process.

Guidance on reviews notes that:

A new programme of reviews of arm's length bodies will be put in place from 2020, learning from the current tailored review programme.<sup>38</sup>

Opening of tailored reviews is normally included on the Gov.uk website [Policy papers and consultations](#) page. In most cases a statement on the opening of a review is also made to Parliament. Reports of tailored reviews are published on the Gov.uk website, but unlike with Triennial Reviews, there is no one page grouping all of these together. The publication of the report of a tailored review is usually announced in a statement to the House, sometimes with ministerial plans to implement any recommendations which have been made.

## 6.2 Functional reviews

Functional reviews examine the functions of several public bodies in similar or related areas of government. Cabinet Office guidance says functional reviews:

will identify opportunities for reform that cannot be revealed by reviewing bodies one by one [and ...] the findings of functional reviews can feed into tailored reviews, reducing the work required for the latter.<sup>39</sup>

The first functional review was carried out into regulatory bodies, reporting in January 2017, and sought to investigate:

This Regulatory Futures Review arose from a view among regulators that significant improvements in operational efficiency could be found by sharing good practice between regulators and developing more collaborative working models, and that this would help achieve ambitious spending review targets.<sup>40</sup>

The second review into bodies providing expert advice reported in August 2017.<sup>41</sup>

## 6.3 Triennial reviews

After it came to power in 2010, the coalition government conducted a review of all public bodies. At the same time as it announced the initial findings of its review<sup>42</sup>, the Government announced a triennial reviews process whereby all NDPBs would have to undergo a substantive review at least once every three years. Triennial reviews comprised two stages:

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<sup>38</sup> *Ibid.*

<sup>39</sup> Cabinet Office, [Public bodies guidance](#), updated December 2018.

<sup>40</sup> Cabinet Office, [Regulatory futures review](#), January 2017.

<sup>41</sup> Cabinet Office, [Functional review of bodies providing expert advice to government](#), August 2017.

<sup>42</sup> In October 2010 the then Minister for the Cabinet Office and Paymaster General Francis Maude announced the [outcome of the Government's review](#) in a statement to the House. See also: [Public bodies reform – proposals for change](#), October 2010.

- **Stage One:** to provide a robust challenge of the continuing need for individual NDPBs –both their functions and their form; and,
- **Stage Two:** where it is agreed that a body remain as an NDPB, to review its capacity for delivering more effectively and efficiently, including identifying potential for efficiency savings and its ability to contribute to economic growth; and to review the control and governance arrangements in place to ensure that the public body and the sponsoring department are complying with recognised principles of good corporate governance<sup>43</sup>.

All the [triennial review reports](#) are available on the Gov.uk website<sup>44</sup>.

Reviewing the process of triennial reviews, research from the Shrinking the State project noted that they formed “part of a well-established tradition of reviewing public bodies episodically. Triennials share many of the same stylistic traits as past episodic review mechanisms and have also replicated some of their challenges”<sup>45</sup>. It also highlighted that the reviews were “widely perceived to be a positive thing as they produce valuable data for departments and public bodies and direct attention to previously unconsidered aspects of public body management”.

Nevertheless, it identified five main areas of concern with the new Triennial Review system:

- **Form of reviews:** too rigid with a one size fits all approach and a lack of departmental interest in some cases
- **Timetable:** a requirement to review bodies every three years was too frequent
- **Resources:** inexperience of reviewers caused difficulties as was the part-time and voluntary nature of reviewers (who were drawn from departments).
- **Procedure:** there was dissatisfaction that stakeholder input into the consultation process was not made public and there was a lack of consistency in the implementation of recommendations
- **Politics:** the Environment Agency/Natural England was cited as an example of political considerations influencing reviews, particularly tensions among the coalition partners. The review of this particular agency expended considerable resources including an external economic analysis, but when it was sent for ministerial sign-off its publication was significantly delayed.

In response to these criticisms, triennial reviews were replaced by the “tailored reviews” in 2016 (see Section 6.1), which include reviews of executive agencies and non-ministerial departments.

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<sup>43</sup> Cabinet Office, [Triennial review of the Information Commissioner’s office](#), November 2015, published 8 November 2016.

<sup>44</sup> Cabinet Office, [Triennial review reports](#).

<sup>45</sup> Dr. Katharine Dommett, *Triennial Reviews and Public Body Reform in the UK* (report produced as part of the ESRC ‘[Shrinking the State Project](#)’), January 2014.

## 7. A short history of public bodies pre 2016

### 7.1 Background

Public bodies have a long history in Great Britain. In its report [Read Before Burning](#), the Institute for Government provided a brief summary of their early history:

ALBs have a long historical pedigree, with early English additions including the Sewers Commission as far back as 1540. As the role of the state expanded through the 19th and 20th centuries, the number of ALBs grew, with the legal status of bodies varying considerably. By 1975, the Bowen Review identified approximately 778 'fringe bodies', though stated that this figure was likely to be a considerable underestimate of the number of ALBs<sup>46</sup>.

Previous research<sup>47</sup> undertaken by Flinders, Dommett and Tonkiss identified distinct phases of public body reform and these are summarised as:

#### The long view

going back to the sixteenth century, the British state emerged "in an extemporised fashion...in which systemic logic, explicit theory and grand planning were eschewed in favour of piecemeal ad hoc adaptation". Crown-appointed boards and commissions "formed the dominant administrative unit". These included the Sewers Commission (est. 1540), Bankruptcy Commission (1570), Board of Excise (1643) and Board of Control (1784). The passing of the 1832 Reform Act meant that MPs felt empowered "by the extension of the franchise to play a greater role in overseeing the bureaucracy, while the demands of the industrial revolution called for a more coherent and professional public service". The emergence of ministerial departments meant that a number of boards were abolished, but the creation of new non-departmental organisations continued. Both the Haldane Commission (1918) and the Anderson Committee on the Machinery of Government (1945) highlighted the growth of public bodies and the resulting confusion and lack of clarity in the administrative landscape.

#### The Conservatives, 1979-97:

Elected on a platform of, among other things, "a dogmatic anti-quango campaign", the Conservatives generally failed to follow through on their pre-election promise. Prime Minister Thatcher required her Ministers to submit reports with a view to reducing the number of quangos, but their subsequent reports tended to emphasise the need to maintain existing public bodies. Despite this, Mrs. Thatcher informed the Commons in December 1979 that 436 quangos had been identified for abolition, but the vast

<sup>46</sup> Institute for Government, [Read Before Burning](#), July 2010.

<sup>47</sup> Summarised from M. Flinders, K. Dommett and K. Tonkiss, "Bonfires and Barbecues: Coalition Governance and the Politics of Quango Reform", *Contemporary British History*, Volume 28, No 1, 2014, p56.

majority were small advisory bodies. Frustrated with the pace of reform, she commissioned Sir Leo Pliatzky to undertake a review of quangos. He identified “over 1,500 advisory and nearly 500 executive bodies with a collective annual budget of over six billion pounds and over 250,000 staff”. The impact of the report was limited, with only 30 executive agencies abolished, but it did lead to the publication of a central register of public bodies from 1980 onwards.

Another interesting legacy of the report was a result of its decision to link the term ‘quango’ with a specific type of arm’s length body – the Non-Departmental Public Body: “The 1980s therefore witnessed complex ‘quango numbers games’ as the government imposed a very narrow definition of what constituted a quango while external observers, academics and opposition parties sought to incorporate a far broader range of organisational forms. Employing this narrow definition allowed the Conservative governments during the 1980s and 1990s to argue that the number of executive NDPBs had been halved”, even though the combined annual expenditure of those bodies had increased from six to twenty-four billion pounds.

### **New Labour, 1997-2010:**

Promising to place the quango state in the “dustbin of history, where it belongs”, Tony Blair’s government published a green paper in November 1997 with the intention to review all NDPBs. However, the green paper took a more nuanced tone in relation to the issue, highlighting the importance of delegating to public bodies and downplaying any expectation of a cull. The Public Administration Select Committee concluded that the approach was ‘unambitious, piecemeal and ad hoc’. The advent of devolution in Scotland and Wales meant that functions were transferred rather than abolished, but despite this, at a UK level, annual expenditure continued to increase.

In addition, at least 300 arm’s-length bodies were created by New Labour but not included in any official registers: “this hyper-institutionalism was not matched by the creation of a transparent framework, statement of principles or comprehensive account of all the public bodies that existed, let alone why they had been established or why a specific organisational form has been adopted in each case”.

## **7.2 Coalition Government, 2010-15**

The Conservative-Liberal Democrat Coalition Government promised to “reduce the number and cost of quangos”<sup>48</sup>. On taking office, the Government announced they would conduct a review of all public bodies.<sup>49</sup> Coalition Government reviews were carried out into 901

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<sup>48</sup> Cabinet Office, [The Coalition: our programme for government](#), May 2010.

<sup>49</sup> Coalition government public bodies reviews were conducted against three tests:

bodies, with 192 earmarked for abolition and another 118 to be merged into 57 bodies<sup>50</sup>

The Coalition Government also introduced the [Public Bodies Act 2011](#), which allowed for changes to be made to public bodies (for example to modify or abolish) by Ministerial Order (Public Bodies Order).

A 2015 report from the Institute for Government noted that as of November 2014 “the number of ALBs (had) been substantially reduced”. Nevertheless, it went on to say that:

It should be noted that the majority of ALBs that have been abolished to date are small advisory NDPBs, many of which have simply been reclassified. The rest of the reduction in numbers was achieved mainly by merging existing bodies and by taking functions previously delivered in arm’s length bodies back into departmental structures.<sup>51</sup>

The Institute also highlighted that new bodies had been established in that timeframe, including the Office of Budget Responsibility and NHS England, “an enormous executive NDPB”.<sup>52</sup>

A briefing published by the Hansard Society in February 2017 noted that “No Public Bodies Orders have been laid since December 2014”<sup>53</sup>.

In October 2019 a further draft Order was laid<sup>54</sup>. The Lords Scrutiny Committee commented:

HMT added that the draft Order is now a priority as the power to use the 2011 Act to abolish the Commissioners will run out on 12 April 2020 and the current terms for most of the Commissioners will end in 2021. The Committee notes the significant three-year delay in bringing forward the draft Order.<sup>55</sup>

A fuller history of public bodies is set out in [Quangos](#), Commons Library Briefing Paper SN5609, 31 January 2011.

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1. does it undertake a precise technical operation? 2. Is it necessary for impartial decisions to be made about the distribution of taxpayers’ money? 3. does it fulfil a need for facts to be transparently determined, independent of political interference?

<sup>50</sup> For background information on the *Public Bodies Bill 2010-12 [HL] [Bill 188 2010-12]* see [The Public Bodies Bill](#), Commons Library Briefing Paper RP 11/50, 13 June 2011.

<sup>51</sup> Institute for Government, [Out of the Ashes](#), 4 March 2015.

<sup>52</sup> *Ibid*

<sup>53</sup> Hansard Society, [Bonfire of the quangos’ legislation fizzles out](#), Blog post, 14 February 2017 [accessed 31 July 2018].

<sup>54</sup> [The Public Bodies \(Abolition of Public Works Loan Commissioners\) Order 2020](#), SI2020/176.

<sup>55</sup> Secondary Legislation Scrutiny Committee, [Third Report](#), 30 October 2019, HL 11 2019, para 10.

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