



BRIEFING PAPER

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Public Bodies

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Summary

The European Union (Withdrawal) Act 2018 provides Ministers with the power to establish new public authorities to carry out functions currently undertaken by EU-wide bodies. It has been anticipated that this could result in a range of new regulatory bodies. New public bodies are also likely to be established as a result of other Brexit legislation: for example, the Trade Remedies Authority will be established under the *Trade Bill 2017-2019* and at least one new environmental body will be established under legislation to be introduced in Autumn 2018.

Most public bodies that operate within the United Kingdom are established and operated by the Government. Concern over the accountability of public bodies and over arrangements for appointments to them, made by ministers, have arisen regularly. The role of Select Committees in such scrutiny has, at times, become a source of debate between Parliament and Governments.

The classification of public bodies in the United Kingdom in the recent past has been the subject of reform policies set out by central Government, with a focus on reduction of overall numbers and guidance on the justification for the creation of new bodies.

Since 2010 there have been two broad attempts at reform, the reform agenda undertaken by the Conservative-Liberal Democrat Coalition (2010-15) and the Conservative governments (2015-present).

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.¹

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 Arm's Length Bodies

Arm's Length Bodies (ALBs) are a specific category of public body that are administratively classified by the Cabinet Office. ALBs include:²

- **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: Skills Funding Agency, Planning Inspectorate, Valuation Office Agency

- **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.

Examples: Arts Council England, Competition Appeals Tribunal.

- **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.

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

² *ibid*

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

- **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 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, Serious Fraud Office.

The scale of ALBs varies widely. For example, NHS England is an executive NDPB and accounts for 53% 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.

1.3 Classification of public bodies

In its 2014 *report Who's accountable? Relationships between Government and arm's-length bodies*, the Public Administration Select Committee highlighted the confusion around the classification and status of some ALBs:

Opinions differ on the number of different types of public body. The Institute for Government told us there are at least 11. The National Audit Office reported in February 2014 that the Government had so far achieved a major simplification of the system of public bodies, but that even after all planned reforms have been completed, the system will still be complex. And confusing: discussion about public bodies is made all the more confusing by inconsistency in the use of language...³

The Committee provided practical examples of how the classification of public bodies could lead to confusion:

Some bodies are classed as being of more than one type: Ordnance Survey is a non-ministerial department with executive agency status. Some bodies, such as the Big Lottery Fund, report to more than one government department.

The Environment Agency is not an executive agency as its name would suggest, but in fact an NDPB...The de facto and de jure statuses of public bodies sometimes differ...

The CQC inspects health and social care services in England, and Ofsted performs a parallel role inspecting children's services. However the CQC is an NDPB, and Ofsted is a non-ministerial

³ Public Administration Select Committee, [Who's accountable? Relationships between Government and arm's length bodies](#), 10 November 2014, HC110 2014-15, para 7

department. The reasons for this difference are not clear. It is also not clear to what extent each is intended to be under the influence of the minister in order to support government policy, or independent of ministerial influence in order that its regulatory functions are not seen as subject to political influence.⁴

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”.⁵

In April 2016 the Government published the outcome of a classification review, prompted by concerns raised by academics and the 2014 PASC report. The 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”. Among the recommendations made in the report were the following:

- Reduce the number of types of central government ALBs to the three main categories – EA, NDPB and NMD
- 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
- 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 also published guidance for departments on the classification of public bodies.⁶ The guidance is intended to summarise the main characteristics of different types of public bodies and reflect the recommendations of the review.

⁴ *Ibid*, para 9.

⁵ 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.

⁶ Cabinet Office, [Public Bodies Handbook: Part 1 – Classification of Public Bodies: Guidance for Departments](#), April 2016

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...⁷

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 2013, cover the expenditure and performance of arm’s length bodies and scrutiny of major public appointments.⁸

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 2018.⁹ 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.¹⁰

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*,

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

⁸ [Liaison Committee Core Tasks](#), 2013

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

¹⁰ 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.¹¹

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 2016](#). 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;

¹¹ 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 2017 there were 305 public bodies (arms-length bodies). Most of these, 245, were non-departmental public bodies – of which 110 were executive, 123 were advisory, 11 were tribunal and one was another type. In addition, there were 38 Executive Agencies and 22 non-ministerial departments.

In total these public bodies employed 273,000 people (full-time equivalent).

The gross resource expenditure on these public bodies was £203 billion. Two large bodies accounted for much of this cost. NHS England accounted for 53% and the Education Funding Agency for 28%, with the 303 other bodies accounting for the remaining 19%.¹²

Trends

As shown in the chart below, the number of public bodies has been in decline for most of the past forty years.¹³

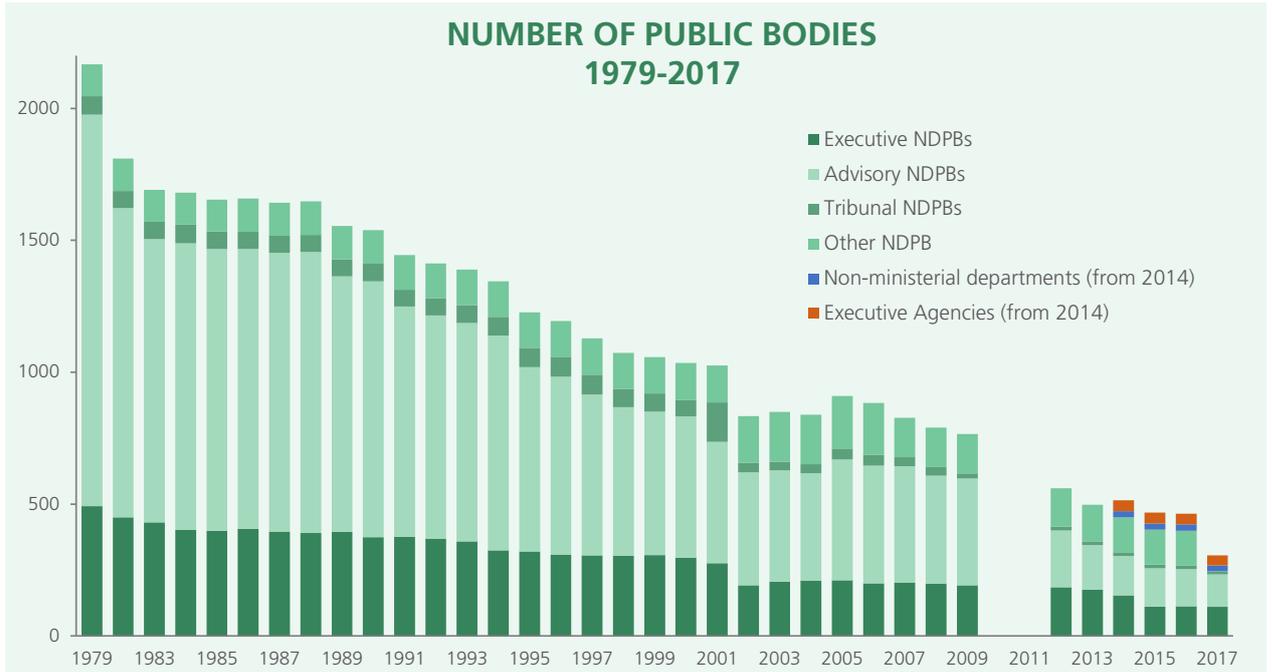
The fall in the number of bodies from 463 in 2016 to 305 in 2017 is partly due to 132 Independent Monitoring Boards (figure for 2016) being reclassified in 2017 and 12 Veterans Advisory and Pensions Committee being listed under one NDPB in 2017.¹⁴

¹² Cabinet Office, [Public bodies 2017](#)

¹³ Data for the chart is from Cabinet Office, [Public bodies report](#), various editions
Notes:

- 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.

¹⁴ Cabinet Office, [Public bodies 2017](#)



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 bodies¹⁵.

The Cabinet Office guidance also sets out three tests for the assessment of a new public body:

The ‘Three Tests’

When developing proposals on setting up an ALB to deliver a function or service, departments should subject their proposal to the Government’s ‘three tests’. A proposal should only be taken forward if the service or function meets **at least** one of the 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?¹⁶.

4.2 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. In the Bill as introduced, the power could have been used to establish new public bodies by statutory instrument. This power was removed by Government amendments at report stage in the Lords, in April 2018.

Box 3: 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.

¹⁵ Cabinet Office, [Classification of Public Bodies: Guidance for Departments](#), April 2016.

¹⁶ Cabinet Office, [Public Bodies Handbook Part 2: The approvals process for the creation of new arms-length bodies](#), Chapter 2, December 2012.

At committee stage in the Lords, Members from all sides of the House expressed concerns about this provision, arguing there was a long-established principle that public bodies should be established only by primary legislation.¹⁷

Moving the amendments at report stage, Lord Callanan, Minister of State at the Department for Exiting the European Union, said that when the Bill was originally drafted, the Government thought it was “only sensible for the sake of contingency” to include powers to establish new public bodies. He said this was to insure against losing any important functions as they were transferred over from the EU, in case no equivalent public authority already existed in the UK. He explained that the Government now considered the establishment of a new public authority would be “necessary only in a very limited number of cases”. Where this arose, the Government would instead bring forward the appropriate provisions under primary legislation.¹⁸

“Deficiencies” might arise in retained EU law once the UK has left the EU because references to EU regulatory bodies would not make any legal sense after exit day. The range of functions currently carried out by EU-wide agencies is extensive and it is inevitable that new bodies will be created to replicate those functions once the UK is outside the EU. For example, in July 2017 Cabinet Office Minister Chris Skidmore said in an interview that he anticipated 20 new public bodies being created.¹⁹ The Commissioner for Public Appointments also commented that: “Over the course of the 2017-22 Parliament, there is likely to be a need for ministers to appoint a sizeable number of chairs and members to non-executive roles to run these bodies”²⁰.

The Cabinet Office report *Public Bodies 2017* states: “We do not anticipate major changes in the number of bodies as a result of leaving the European Union”²¹. In response to a written question by Caroline Lucas MP on how many new public bodies would be needed after Brexit, Minister Chris Skidmore responded:

The UK’s relationship with the EU’s agencies upon exit will be evaluated in light of delivering the twelve objectives outlined by the Prime Minister to achieve a deep and special partnership between the UK and the EU. The UK’s future relationship with the EU’s decentralised bodies after leaving the EU is a matter for the negotiations.²²

4.3 Environmental public bodies

In a November 2017 letter to the Environmental Audit Committee, the Minister for Environment, Food and Rural Affairs, Michael Gove, raised the possibility of a new environmental standards body following the

¹⁷ [HL Deb 7 March 2018, c1216-20](#)

¹⁸ [HL Deb 25 April 2018, c1584-1586](#)

¹⁹ Civil Service World, *Over 20 public bodies will be created by Brexit, says Cabinet Office minister*, July 2017.

²⁰ Civil Service World, *Peter Riddell: Departments should prepare now for impact of Brexit on public appointments*, July 2017.

²¹ Cabinet Office, *Public Bodies 2017*, November 2017.

²² Public Bodies: Written question – 115923, 27 November 2017.

UK's withdrawal from the European Union. This body would presumably take on those functions currently carried out by the European Environment Agency. In the letter, Mr. Gove provides an overview of the issues that will need to be considered, including:

- What functions and powers the new body should have to monitor the Government's performance on environmental issues and hold it to account;
- The need to gather views from stakeholders on different models and options by which government and potentially other bodies could be held to account;
- Whether the devolved administrations will wish to take a similar or different approach.²³

In the debate on the Lords report stage of the *European Union Withdrawal Bill*, the Minister, Lord Callanan, gave an undertaking that the new environmental body would be "delivered through a separate legislative vehicle".²⁴

The requirement on the Secretary of State was included in Section 16 of the *European Union (Withdrawal) Act*:

The Secretary of State must, within the period of six months beginning with the day on which this Act is passed, publish a draft Bill consisting of [...]

(d)provisions for the establishment of a public authority with functions for taking, in circumstances provided for by or under the Bill, proportionate enforcement action (including legal proceedings if necessary) where the authority considers that a Minister of the Crown is not complying with environmental law (as it is defined in the Bill), [...]

On 10 May 2018 Defra launched a consultation on environmental principles and governance after EU exit. This included a commitment that an Environmental Principles and Governance Bill would be introduced in Autumn 2018. In considering the form of a new environmental public body the consultation document included:

137. The new body will need:

- To be, and be seen to be, independent of government – in that Ministers should not be able to set its programme of activity or improperly influence its decision-making.
- To be funded in such a way that it is protected from accusations of being influenced by the funding organisation.
- To be funded in a way that meets the standards set out in 'Managing Public Money' for adequate financial transparency, accountability and, where appropriate, oversight.

138. Subject to the outcome of this consultation, we believe the most appropriate approach may be to create an

²³ [Letter](#) from Rt Hon David Davis MP to Mary Creagh MP (Chair of the Environmental Audit Committee), November 2017

²⁴ *Ibid* 25 April 2018.

independent body that will be accountable to Parliament.
[...]²⁵

The Commons Environmental Audit Committee launched an inquiry on 18 May 2018 into the Government's plans for a new environmental oversight body, replacing the EU bodies. The Committee reported on 24 July 2018 and recommended that the Government should:

- Create in UK law an independent oversight body—The Environmental Enforcement and Audit Office (EEAO)—reporting to Parliament to ensure that the governance, enforcement, oversight and policy functions currently carried out by the European Commission and European Environment Agency are not lost on leaving the European Union;
- Set out that the EEAO's role includes monitoring how public authorities are complying with their duties, making policy proposals to meet the Government's objectives, providing strategic oversight and reporting bi-annually to Parliament on progress against the Government's environmental targets, including scrutiny of the 25 Year Plan's 5 yearly and annual progress reports;
- Set out that it should also have a regulatory function complementary to the Environment Agency, within, or alongside its policy and scrutiny function, to investigate compliance with the law, including complaints brought by the public, and the power to take the Government and other public authorities to court where standards are breached;
- Establish a statutory body of parliamentarians, modelled on the Public Accounts Commission, to set the EEAO's budget, scrutinise its performance and oversee its governance [...]²⁶

4.4 Trade Remedies Authority

The *Trade Bill 2017-19* includes provisions to establish another new public body: the Trade Remedies Authority.

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.

At the moment, trade remedies are dealt with by the EU. The Trade Bill would establish a new UK non-departmental public body, the Trade Remedies Authority, to take over such functions.

In the Commons debate on the third reading of the Bill, the Secretary of State, Liam Fox, stated:

The Bill also provides for the establishment of the Trade Remedies Authority. The World Trade Organisation allows its members to provide a safety net to protect domestic industries against injury caused by unfair trading practices,

²⁵ Defra, [Environmental principles and governance after the UK leave the European Union: Consultation](#), 10 May 2018.

²⁶ Environmental Audit Committee, [The Government's 25 year plan for the environment](#), 24 July 2018, HC 803 2017-19.

such as dumping and subsidies, and unforeseen surges in imports. Trade remedies level the playing field and restore the competitive balance. They are key to ensuring an effective rules-based system for international trade. The European Commission is currently responsible for undertaking trade remedies investigations and imposing measures on behalf of the UK. The Government are establishing the TRA to ensure that the UK can continue to provide a safety net for domestic industries after we have left the EU. I am grateful to Members on both sides of the House for the support that they have given on this issue.

Specifically, the TRA will be responsible for making an assessment in a case for a trade remedies measure, based on the evidence available. It will then make impartial recommendations to Ministers. This includes protection from goods that are heavily subsidised or dumped in the UK market at below domestic price. It also includes injury caused by unforeseen surges in imports. The investigative and decision-making framework that the TRA will be responsible for delivering is set out in the Taxation (Cross-border Trade) Bill.²⁷

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

In May 2018 it was announced that the Trade Remedies Authority would be based in Reading.²⁸ On the same day the competition for the Chair of the new Authority was launched.²⁹ An announcement of the Chair and appointment of Board members will follow in Summer 2018.

²⁷ [HC Deb 17 July 2018](#), c359-60

²⁸ Department for International Trade, Press notice, [Key UK trade agency to be based in Reading](#), 10 May 2018.

²⁹ Cabinet Office, [Centre for Public Appointments](#), 10 May 2018.

5. A short history of public bodies

5.1 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 ALBs³⁰.

Previous research³¹ undertaken by Flinders, Dommatt and Tonkiss identified distinct phases of public body reform and these are summarised below:

- **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 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

³⁰ Institute for Government, [Read Before Burning](#), July 2010.

³¹ Summarised from M. Flinders, K. Dommatt and K. Tonkiss, "Bonfires and Barbecues: Coalition Governance and the Politics of Quango Reform", *Contemporary British History*, Volume 28, No 1, 2014, p56.

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".

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

6. The Coalition Government's public bodies reform programme

6.1 Reducing the number and cost of quangos

In September 2009 David Cameron, Leader of the Conservative Party, gave a speech in which he promised that a Conservative Government would carry out a review of all quangos. The subsequent Coalition agreement contained a promise to “reduce the number and cost of quangos”³². On taking office, the Conservative-Liberal Democrat Coalition Government announced they would conduct a review of all public bodies against three tests:

- does it undertake a precise technical operation?
- is it necessary for impartial decisions to be made about the distribution of taxpayers' money? and
- does it fulfil a need for facts to be transparently determined, independent of political interference?

The outcome of their review was published on 14 October 2010. Of the 901 public bodies included in the review, 192 were earmarked for abolition with another 118 to be merged into 57 bodies.³³ A further 171 are proposed for substantial reform whilst maintaining their current status while 40 were listed as ‘under consideration’ with further announcements expected on their future³⁴.

6.2 The *Public Bodies Act 2011* and Public Bodies Orders

The *Public Bodies Act 2011* was introduced as the main legislative vehicle for making changes to the public bodies landscape to implement the findings of the review. The Act:

allows for bodies to be added to its schedules using primary legislation. For those bodies listed in the schedules at Royal Assent, the entry is valid for a period of five years plus two months from Royal Assent. Entries to the schedules by later primary legislation are valid for a period of five year from the day upon which that entry is commenced³⁵.

It cannot be used to create new agencies, except as a result of a merger, or make changes to non-statutory bodies such as executive agencies.

³² Cabinet Office, [The Coalition: our programme for government](#), May 2010.

³³ 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.

³⁴ *ibid*

³⁵ Cabinet Office, [Post Legislative Scrutiny of the Public Bodies Act 2011](#), *Memorandum to the Public Administration and Constitutional Affairs Committee from the Minister for the Constitution*, Cm 9367, 16 December 2016.

The Bill as introduced drew considerable criticism as it provided for the abolition of bodies by Ministerial Order. Both the Delegated Powers and Regulatory Reform Committee and the Select Committee on the Constitution raised concerns about the perceived lack of parliamentary oversight. As a result, the Bill was amended to include new parliamentary scrutiny arrangements which allowed for the Merits Committee³⁶ to apply enhanced scrutiny procedure, if either House so wished³⁷.

Some commentators have argued that the 2011 Act did not fully deliver on the Government's original policy objectives. The Secondary Legislation Scrutiny Committee made the following observations:

...by the time of Royal Assent, 285 bodies were listed in the five Schedules to the 2011 Act...only 53 bodies were amended by means of a PBO.

We have noted that a third of the proposals for PBOs were dropped within two years of the 2011 Act receiving Royal Assent. Ultimately only 31 (53%) of the 58 orders originally proposed have been laid... (Other bodies listed in the Schedules)...were either dealt with using other, sometimes pre-existing legislation, amended by voluntary means or reviewed and reinstated³⁸.

A briefing published by the Hansard Society in February 2017 noted that "No Public Bodies Orders have been laid since December 2014"³⁹.

6.3 Triennial reviews

At the same time as it announced the initial findings of its review, the Government announced that the remaining bodies would be subject to triennial reviews whereby all NDPBs still in existence would have to undergo a substantive review at least once every three years. Triennial reviews comprised two stages:

- **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 governance⁴⁰.

³⁶ The Merits Committee was renamed as the Secondary Legislation Scrutiny Committee to reflect its wider remit, including the scrutiny of Public Bodies Orders.

³⁷ House of Lords Merits of Statutory Instruments Committee - [Fiftieth Special Report](#), 24 January 2012, HL 250 2010-12.

³⁸ House of Lords Secondary Legislation Scrutiny Committee, [Post-legislative assessment of the Public Bodies Act 2011](#), 14 December 2012, HL 90 2012-13.

³⁹ Hansard Society, [Bonfire of the quangos' legislation fizzles out](#), Blog post, 14 February 2017 [accessed 31 July 2018].

⁴⁰ Cabinet Office, [Triennial review of the Information Commissioner's office](#), *November 2015*, published 8 November 2016.

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”⁴¹. 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 following interviews involving case studies in five departments:

- **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.

[Triennial review reports](#) which have been published, by the Cabinet Office, are available on the Gov.uk website⁴².

More recently, this system of triennial reviews has itself been replaced by “tailored reviews” which now include reviews of executive agencies and non-ministerial departments. The guidance on carrying out tailored reviews was first published in March 2016. This 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 does make it clear that, as a change from the triennial procedure there is:

the requirement that reviews should be undertaken at least once in the lifetime of a Parliament⁴³

⁴¹ 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.

⁴² Cabinet Office, [Triennial review reports](#).

⁴³ Cabinet Office, [Tailored reviews: guidance on reviews of public bodies](#), March 2016, updated November 2016.

6.4 Impact of the Coalition's reform agenda

A February 2014 report from the National Audit Office (NAO) on the progress of the reform programme noted the "reduction in administrative spending by public bodies in 2012-13 compared with 2010-11" and the good progress made by the Cabinet Office and departments "in reducing the number of public bodies, representing a major simplification of the public bodies landscape"⁴⁴.

In its report *Public Bodies 2015* the Cabinet Office outlined the impact of the 2010-15 reforms. It stated that:

- Reduced the number of public bodies by over 290, abolished over 190 and merged over 165 into fewer than 70.
- 98% of planned abolitions and mergers completed.
- Over 95% of non-departmental public bodies have a published annual report⁴⁵.

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 structures⁴⁶.

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"⁴⁷.

In a Ministerial statement made on 17 December 2015, the then Cabinet Office Minister Matthew Hancock summarised the "successes" of the 2010-15 reform programme:

In May 2010, the coalition government committed to review public bodies, with the aim of increasing accountability for actions carried out on behalf of government. The 2010-15 Public Bodies Reform programme delivered the biggest reform of the public bodies in a generation.

Its successes included:

- reducing the number of public bodies by over 290, by abolishing more than 190 and merging over 165 bodies into fewer than 70
- 98% of planned abolitions and mergers completed
- reducing administrative spend by a cumulative £3 billion over the life of the programme to the end of March 2015, comfortably exceeding the original estimate of £2.6 billion

⁴⁴ National Audit Office, [Progress on public bodies reform](#), 7 February 2014, HC 1048 2013-14.

⁴⁵ Cabinet Office, [Public Bodies 2015](#), March 2016.

⁴⁶ Institute for Government, [Out of the Ashes](#), 4 March 2015.

⁴⁷ *ibid.*

- an act of Parliament, the Public Bodies Act 2011, to facilitate the abolition, merger and reform of public bodies
- improved accountability through bringing the functions of over 75 bodies closer to democratically-elected representatives
- increased funding from alternative sources and volunteering by moving some organisations outside the public sector under innovative delivery models

We have delivered our promise. The landscape is now smaller, more accountable and efficient, with reduced administrative costs, ensuring better value for money to the public. This remarkable achievement is thanks in no small part to the committed public servants who have embraced the spirit of reform.⁴⁸

6.5 Companies in Government

In December 2015 the National Audit Office (NAO) published *Companies in Government*, which highlighted the “increase in the number of companies in government at the same time as a reduction in the number of public bodies which raises issues of transparency, accountability, governance and review”⁴⁹.

The NAO identified that in the period from 2010 to 31 March 2014 173 new public bodies were created, of which 66 were companies. The NAO noted that:

There is no set approvals process for forming a company in government. There are clear approvals processes for public bodies and alternative models such as public service mutual. There is no central guidance on when a company is the most appropriate form of new body⁵⁰.

In its publication *Classification of Public Bodies: Guidance for Departments*, the Cabinet Office addressed the issue of companies under Government control:

There has been a general misconception that companies (that are owned by the government) and ALBs are alternatives to one another. This is incorrect as the two are not mutually exclusive, indeed some public bodies are incorporated as companies. These descriptors refer to different attributes of an organisation. ‘Arm’s length body’ or ‘public body’ signifies that government controls the general corporate policy of the organisation, while ‘company’ signifies that it is incorporated under and is subject to the Companies Act 2006⁵¹.

⁴⁸ [HC Deb 17 December 2015 c114 WS](#) [HCWS428]

⁴⁹ National Audit Office, [Companies in Government: Briefing](#), 10 December 2015.

⁵⁰ *ibid.*

⁵¹ Cabinet Office, [Classification of Public Bodies: Guidance for Departments](#), April 2016.

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