

# A

## ANNEX 7.2 SETTING UP NEW ALBs

This annex is to help those setting up new arm's length bodies (ALBs) decide which legal form is likely to be suitable for a new organisation. The guidelines are flexible and may evolve.

**A.7.2.1** As chapter 7 explains, central government departments should maintain oversight of all their arm's length bodies, irrespective of their legal form. There are differences between the rights and responsibilities of agencies, non-ministerial departments and non-departmental government bodies (NDPBs). So it is sensible to choose a legal form that will best support the duties of the new organisation when setting up a new ALB.

**A.7.2.2** In general terms, the main characteristics of the three main kinds of ALB are summarised in box A.7.2A.

### box A.7.2A core descriptions of different kinds of ALB

- **Agencies** (sometimes called executive agencies or next steps agencies): each is either part of a government department, set up administratively, or, exceptionally, a department in its own right. An agency carries out a well defined business activity, usually with specific objectives, sufficiently close to the government's central direction that it is appropriate for a government minister to answer for its business in Parliament directly.

- Examples: *Jobcentre Plus, Driver and Vehicle Licensing Agency (DVLA), the Courts Service.*

- **Non-ministerial departments:** are part of central government but do not require direct day to day ministerial oversight, though a minister retains policy control and will answer for them in Parliament if need be. They are normally established under bespoke legislation which may lay specific responsibility on the permanent head of the department. This form is particularly appropriate for bodies where ministers have responsibility for setting the framework for activities carried out in the public interest, but prefer to delegate day to day responsibility to an expert or professional cadre.

- Examples: *the Government Actuaries Department (GAD), Food Standards Agency, Serious Fraud Office.*

- (Executive) **NDPBs:** carry out duties and functions in which central government has a legitimate public interest, but in fields where ministers do not find it necessary, or sometimes appropriate, to intervene directly. So they operate at some distance from central government, though perhaps funded largely or exclusively by public funds, perhaps through grant from a sponsor department or by using charging powers. Most are established under special purpose legislation (or its equivalent) and few are Crown bodies. Nearly all are governed by boards run largely by ministerially appointed office holders. Some may be charities, or operate with very little grant funding, or establish wholly owned trading subsidiaries. Ministers usually intervene only if they find it desirable to change an NDPB's direction, or in extremis to wind it up.

- Examples: *the National Gallery, Arts Council England, Heritage Lottery Fund, Medical Research Council, Natural England.*

**A.7.2.3** As the descriptions in box A.7.2A show, there are similarities as well as differences between these three kinds of ALB. It is good practice:

- first to evaluate the choice between an agency and an NDPB to see which fits better;
- to consider whether the ALB might evolve, eg an agency could be set up administratively as an embryonic NDPB in preparation for the passage of specific framework legislation;
- to consider the NMD option only if neither agency nor NDPB status seems suitable;
- if the NMD form is chosen, to define its remit very carefully

**A.7.2.4** Decisions on the form of any particular ALB must ultimately be for ministers. They will depend in part on the public perceptions of the function in question, and on the extent to which ministers think it right to take a day to day interest in its affairs. For instance, NDPB status is often found appropriate for activities where it makes sense for well informed people to take decisions on matters of public interest where it is better for ministers not to intervene, or not to make the detailed choices, directly.

**A.7.2.5** When an ALB is planned, it is essential to consult both the Treasury and the Cabinet Office about its powers, status and funding. The comparative checklist of features in box A.7.2B may help determine the choice among the different kinds of ALB.

**A.7.2.6** Finally, it is worth remembering that the three kinds of ALB in box A.7.2A are only the most common ones. Others are possible. They include public corporations and various kinds of cooperative arrangements with the private sector or with third sector bodies, some fairly loose. And there is scope to establish one-off arrangements for special bodies where circumstances demand something different.

**A.7.2.7** Whatever the legal status of an ALB, the Treasury will expect its sponsor department to have a mechanism for asserting an appropriate degree of control over it, especially in financial matters and in relation to issues of ethics in the use of public funds. In general, the greater the extent of public funding, the greater the degree of control called for. And it is always right to document how the relationship with the sponsor department should work in practice (see box 7.2), with scope for periodic review to take account of experience and the changing context.

**box A.7.2B distinguishing characteristics of arms length bodies**

<b>type of ALB feature</b>	<b>agency</b>	<b>non-ministerial department (NMD)</b>	<b>non departmental public body (NDPB)</b>
status	Part of department (or department in its own right). Part of central government Crown body	Department in its own right Part of central government Remit usually in legislation Crown body	Quasi-independent organisation Part of central government Not a Crown body (with rare exceptions) May be a company and/or a charity
established by	Administrative action (usually quick and easy)	Administrative action, often supplemented by primary legislation (if needed, may take time)	Usually bespoke primary legislation (may need to wait for a suitable legislative slot for some time)
ministerial accountability	A minister in the parent department makes key decisions on the agency's affairs	Rarely needed, but when necessary, a minister in the parent department decides	A minister in the sponsor department decides key matters, eg whether to adjust functions, whether to wind it up.
parent department	Has direct control	Remote and rarely interferes	Subject to formally agreed memorandum, may be light touch
funding	Estimates (usually own RfR) and/or fee income	Estimates (usually own RfR) and/or fee income	Grant(s) from department(s), and/or income from fees or levies
employees	Civil servants	Civil servants	Not usually civil servants
accounts etc	Publishes plans and resource accounts as part of parent department's	Publishes own plans and resource accounts	Publishes own plans and resource accounts
Parliamentary accountability	CEO is Additional Accounting Officer	Permanent Secretary is Accounting Officer	CEO is normally the Accounting Officer
business profile	administration, typically implementation of central policy	advice or administration, typically professional, expert or regulatory functions	Advice, administration or regulatory role, especially matters best not decided by ministers