

RECORDING REASONS FOR MINISTERS' APPOINTMENT DECISIONS

The issue

My office has recently conducted an audit of the ministerial public appointments process in Scotland. This is the second audit to demonstrate that Ministers are not recording the reasons for their appointment decisions in a way which complies with the Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code). This is of particular concern to me.

The Code makes it clear that the Minister's decision on which candidate(s) is (are) to be appointed, and the reasons for this decision, must be recorded and retained as part of the audit trail for the appointment round.

To address the non-compliance with the Code found during the previous audit, the Cabinet Secretary for Finance and Sustainable Growth issued guidance to Ministers on their responsibilities in relation public appointments. This guidance included the need to record the reasons for their decisions on appointments.

I was satisfied that, if appointing Ministers followed the guidance, they would be complying with the Code. It is apparent from the latest audit of appointments rounds that Ministers are not complying with the guidance and are not, therefore, complying with the Code.

Guidance as to compliance with the Code

The Code requires the reasons for Ministers' decisions to be recorded not only in relation to candidates whom they decide to appoint but also in relation to candidates whom they decide not to appoint. Ministers' reasons for their appointment and non-appointment decisions must be sufficiently detailed to:

- provide a clear justification for their appointment and non appointment decisions
- enable constructive feedback to be provided to candidates whom the Minister decides not to appoint

For the avoidance of doubt, constructive feedback to unsuccessful candidates must explain in what way the Minister felt they were not the most appropriate person for a role. Merely stating that another candidate was the most suitable for a position will not satisfy this requirement of the Code.

Relevant extracts from the Code are attached as an appendix to this paper.

Status of this guidance

The Commissioner has the power, under the Public Appointments and Public Bodies etc. (Scotland) Act 2003, to issue guidance to the Scottish Ministers as to compliance with the [Code of Practice for Ministerial Appointments to Public Bodies in Scotland](#) (the Code).



APPENDIX

The above guidance relates to compliance with the following parts of the Code.

Principles

The relevant principles of the Code are Ministerial Responsibility, Merit, and Openness and Transparency (pages 4 and 5 of the Code):

Ministerial Responsibility

The ultimate responsibility for appointment and recommendation for appointment rests with Scottish Ministers, who will be provided with a choice of candidates from which to make the appointment.

Merit

All public appointments are governed by the overriding principle of selection based on merit. Individuals selected will be those who have demonstrated that they best match the skills, knowledge and personal qualities required for the appointment in question.

Openness and Transparency

The practices employed at every stage in an appointment round must be transparent. Decisions take at each stage will reflect this Code of Practice and be fully documented.

Practices

The following paragraphs of the Code flow from these principles and relate directly to the need for Ministers to record their appointment decisions and reasons for them:

24.1 to 24.6 and 26.2.