



The Office of the Commissioner for
Public Appointments in Scotland

Revised Code of Practice for Ministerial Appointments to Public Bodies in Scotland

Consultation Questionnaire
June 2010



We are seeking views on the proposed revised Code of Practice for Ministerial Appointments to Public Bodies in Scotland. The revised code is designed to develop the regulatory framework established by the Commissioner for Public Appointments in Scotland. The questions contained in this response form arise from some of the differences between the current code and the proposals for the revised code. We would welcome your opinions on the changes proposed.

How to access copies of the code

Copies of both the code currently in use in Scotland and the proposed code may be accessed:

- on the Commissioner's website - www.publicappointments.org
- by telephone - 0131 718 6058
- by email - info@publicappointments.org
- by writing to

Karen Carlton
Commissioner for Public Appointments in Scotland
9-10 St Andrew Square
Edinburgh
EH2 2AF

The text of the code can be made available in alternative formats; requests for alternative formats should be made to the Commissioner's office as above.

How to respond

Please indicate your opinions about the proposed code and any other comments you wish to make on this questionnaire. If you wish to complete and submit the questionnaire electronically you can do so by downloading a copy of a Word version at:

www.publicappointments.org/regulating-appointments/a-new-code-of-practice

Timeframe for consultation

We are inviting written responses to this consultation by **15 October 2010**.

Thank you for your interest.

Please answer the questions below and add any other comments you wish to make at the end of this questionnaire. You may choose to answer all questions or only those that are of specific interest to you.

The Principles of the Code of Practice

The current code is underpinned by a set of principles, drawn from the Members' Model Code of Conduct adopted under the Ethical Standards in Public Life etc. (Scotland) Act 2000 and adapted for the public appointments process. The current principles are:

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.

Equality

Accessibility to appointments is a fundamental requirement and the appointments process will promote and demonstrate equality of opportunity and treatment to all applicants.

Probity and Respect

Everyone engaged in the public appointments process will act with integrity and will demonstrate respect for all others involved in the process.

Independent Scrutiny

Independent scrutiny is vital to the public appointments process. An OCPAS Assessor will be involved at each stage of the selection process and must confirm that this Code has been followed before an appointment can be made.

Openness and Transparency

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

Proportionality

The practices employed during each appointment round will be appropriate for the specific post and the nature and function of the public body concerned

The proposed code has only two principles, applicant-focused and outcome-focused. The existing principles are incorporated in the descriptions of what the new principles require.

The new principles are designed to underline the importance of addressing the needs of applicants and of Scotland's public bodies within the ministerial public appointments process.

Please see the Principles section of the proposed revised Code

Question one

Do you agree that the proposed principles reflect the requirements of the public appointments process? Please give reasons.

Response:

A risk-based and proportionate approach to regulation

The current code requires a representative of the Commissioner, known as an OCPAS Assessor, to scrutinise each of the key stages of every appointment round. Currently OCPAS Assessors do not scrutinise the process used to make reappointments. Under the proposed code the Commissioner will scrutinise any appointment activity in the way he or she believes to be most appropriate. This will normally be by assigning a representative to monitor compliance with this code at all, or selected, stages of an appointment or reappointment.

The Commissioner's intention in making this change is to make the extent of oversight, and the processes chosen for oversight, appropriate for the positions to be filled. This is intended to address concerns that the regulatory framework for public appointments is unnecessarily burdensome in some areas and insufficiently rigorous in others.

The Commissioner's decision on the appropriate levels of scrutiny will take into account the risks attached to inappropriate appointments, reappointments or other appointment activity.

Please see section B paragraph B4 of the proposed Code

Question two

Do you agree that this form of proportionate and risk-based scrutiny is appropriate for the public appointment process? Please give reasons.

Response:

Alternative application methods

The current code anticipates that every applicant completes an application form, the content of which determines whether or not the applicant is selected for interview. The Commissioner has observed that this process appears to favour applicants who are good at completing forms and that it serves as a barrier to people from currently underrepresented groups. This view has been reinforced by stakeholders, including the chairs of public bodies. To address this, the proposed code allows a selection panel to choose any fair, open and transparent method of selection for interview that it considers appropriate given the position(s) to be filled and the people to be attracted.

Please see Section F paragraphs F1 to F3 of the proposed code

Question three

Do you agree that encouraging selection panels to consider application methods other than the traditional application form will make the public appointment process more accessible and attractive? Please give reasons.

Response:

Competent and knowledgeable

The current code requires selection panel members to be familiar with its content but does not specify that panel members must be competent to assess applicants using the assessment methods chosen. Nor does it require panel members to be knowledgeable about equality and diversity issues and how such matters may affect the outcome of appointment rounds. During pre-consultation on the revised code, stakeholders, including the chairs of public bodies, raised concerns about the competence of participants. The Commissioner believes that requiring panel members to be knowledgeable and competent in these areas should have a tangible impact on the experience of people who apply for roles and, ultimately, on the make up of boards. The Commissioner has therefore proposed that these become code requirements.

Please see Section F paragraph F4 of the proposed code

Question four

Do you agree that requiring panel members to be

- competent to assess applicants using the assessment methods chosen
- knowledgeable about equality and diversity issues and
- aware of how equality and diversity matters may affect the outcome of appointment rounds

should be included in the proposed code? Please give reasons.

Response:

Ministers' reasons

The proposed code specifies that ministers will keep a written record of the reasons for their appointment decisions. The Commissioner plans to introduce a requirement to address concerns that this part of the process has not been sufficiently open. The Commissioner believes that this new requirement accords fully with the Ministerial Code and more generally with the principles of open government. It does not constrain the Scottish Ministers' power to continue to make their choice from the applicants presented as suitable for appointment.

Please see Section H paragraph H4 of the proposed Code

Question five

Do you agree that the Scottish Ministers should be required to give reasons for their appointment decisions? Please say why.

Response:

Fit and proper person

The current code states that the Scottish Government will decide at the planning stage of an appointment whether or not to take up references and whether a disclosure check is necessary. The proposed code requires Ministers to ensure that the person to be appointed is a fit and proper person for the role for which they have applied.

Please see Section I paragraph I1 of the proposed Code

Question six

Do you agree that Scottish Ministers be required to confirm that the person to be appointed is a fit and proper person for the role for which they have applied? Please give reasons.

Response:

Format of the code

The current code takes the reader through the appointment process specifying what is required at each stage. The proposed code is not set out chronologically. Instead it sets out the responsibilities of the people who assess and appoint applicants and who scrutinise the way this is done, then moves on to describe what is required to provide an open, fair and merit-based public appointment process. It is a shorter document that focuses on the key requirements of the process. It will be supported by detailed guidance.

Question seven

Do you agree that the new format of the code is helpful in clarifying the requirements without focusing on the detail of the appointments process? Please give reasons.

Response:

Code diagram

The proposed code contains a diagram on page 2 designed to summarise the purpose and key stages of the ministerial public appointment process.

Question eight

Do you agree that such a diagram is helpful in clarifying what the process requires and in specifying the key activities? Please give reasons.

Response:

Any other comments

Question nine

Do you have any other comments that you wish to make? Please set these out below.

Response:

How your response will be used

All responses will be analysed and considered along with any other available evidence to inform the work of the Commissioner in finalising the code.

Confidentiality

Copies of all responses received will be placed on the OCPAS website and/or made available to the general public in the OCPAS office. The views expressed may be quoted or referred to in any future review of responses. All responses which do not indicate a requirement for confidentiality will be checked for any defamatory material before being made publicly available. If you do not wish your response to be made public, please ensure that you indicate clearly that all or part of your response is to be treated as confidential. We will endeavour to maintain such confidentiality subject to the provisions of the Freedom of Information (Scotland) Act 2002. We will still count confidential responses in any statistical analysis and your views will be taken into account in the same way as for non-confidential responses.

Process following consultation

Following consultation the Commissioner's Office will write to all who have participated in the consultation to indicate the outcome of the consultation exercise and its impact on the formation of the Code.

Your information

Please complete the details below and attach with your response.

1. Are you responding as (please tick appropriate box):

an individual?
(go to 2a/b, 3)

on behalf of a group or organisation?
(go to 2c/d, 3)

Individuals

2a. Do you agree to your response being made public (on the OCPAS website and in the OCPAS office)?

Yes Go to 2b below

No

If you wish part of your response to remain confidential please indicate which part or parts:

Q1 Q4 Q7
Q2 Q5 Q8
Q3 Q6 Q9

2b. Where no confidentiality is requested, we will make your response available to the public on the following basis (please tick one box):

Make my response and name available

Make my response available, but not my name

On behalf of groups or organisations

2c. Do you agree to your response being made public (on the OCPAS website and in the OCPAS office)?

Yes Go to 2d below

No

If you wish part of your response to remain confidential please indicate which part or parts:

Q1 Q4 Q7
Q2 Q5 Q8
Q3 Q6 Q9

2d. Where no confidentiality is requested, we will make your response available to the public on the following basis (please tick one box):

Make my response and organisation's name available

Make my response available, but not my organisation's name

Further Contact

3a. We may wish to contact you again in the future to clarify comments you make in your response. Are you content for us to do so?

Yes

No

3b. We may wish to contact you again in the future for consultation or research purposes. Are you content for us to do so?

Yes

No

Name

Address

Email address

Tel no

Please return this questionnaire to:

Consultation Response
OCPAS
MWB Business Exchange
9-10 St Andrew Square
Edinburgh
EH2 2AF

OR

ian.bruce@publicappointments.org

If you have any comments about how this consultation exercise has been conducted, please send them to the same address.