Government response to the Public Administration Select Committee Report, "Smaller Government: Shrinking the Quango State"

Presented to Parliament by the Minister for the Cabinet Office

By Command of Her Majesty

March 2011

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Ministerial Foreword

1. Select Committees play an important role in the scrutiny of government policy and draft legislation. The Committee's report presents an opportunity for the Government to state once more the background to, and intentions behind, the Public Bodies Reform programme, and to correct some misunderstandings and inaccuracies.

2. The Public Bodies review is intended to ensure that, over time, all functions that need to be carried out by the state are the responsibility of a democratically accountable person or body unless there is a clear case for independence. A secondary but important purpose is to remove duplication and waste, save taxpayers' money, and to streamline the public bodies landscape that has remained unreformed for far too long. Governments in the past have been very quick to establish new bodies, often for reasons of political convenience, but rarely remove them later. The result has been a landscape that is chaotic and confusing, as the Committee rightly points out. It also costs the taxpayer far too much money.

3. The Committee states that our reforms will not increase **accountability**. We fundamentally disagree. For too long unelected officials have been taking decisions which affect the public and spending billions of public money. We believe there should be a clear presumption that functions carried out by the state should be accountable through democratically elected structures, unless there is a compelling reason for them being carried out by an independent body. The Committee suggests that this can be done through a government agency. We agree. So we are converting a number of public bodies into executive agencies precisely to make them democratically accountable through a Minister. The Child Maintenance and Enforcement Commission is one example.

4. The Committee criticises the government for failing to use the reform programme to encourage **the Big Society** by transferring functions from public bodies to voluntary, charitable and social enterprises. However in a number of cases this is precisely what we are doing. Through the Public Bodies Bill we will enable the creation of a new Waterways Charity. We will abolish the Regional Development Agencies, replacing them with local enterprise partnerships which bring together businesses and local authorities. We will also strengthen and increase the role of the Citizens Advice Bureau in the reform of public bodies in the consumer protection field.

5. The Committee is critical of the **speed** at which our package of reforms has been agreed, asserting that the review has been "rushed". Yet in another place it seems to suggest that action has been insufficiently speedy, asserting that too many bodies still have an uncertain future. The Committee fails to acknowledge the absolute imperative to take swift and decisive action. All three major political parties made manifesto commitments to cut the number of public bodies. There is a wide consensus that radical reform is long overdue. And it is clear that public bodies reform must play a significant part in cutting out waste, over-spending and inefficiency and reducing our fiscal deficit. The Committee also failed to acknowledge that the Government made clear that this is a work in progress, with a number of reviews incomplete at the time of the October announcement, and with a regime of triennial reviews for remaining public bodies being put in place.

6. The Committee criticised the Government for being unable to identify exact cost **savings**. We were always clear that, although secondary to the concerns about accountability, cost savings would flow from this programme of rationalisation and reform. We were concerned that figures provided and relied upon should be robust, and accordingly that further analysis of the implications of this reform programme and the Spending Review, should be undertaken before any information was made publicly available. It would have been irresponsible to act otherwise. I can now, however, announce that departments are estimating that cumulative administrative savings of at least **£2.6bn** will flow from public bodies over the Spending Review period. When reductions in programme and capital spend are taken into account, departments are estimating that total spending being channelled through public bodies will be reduced by at least **£11bn** per year by 2014-15. If the savings for each year of the Spending Review are taken into account then a cumulative amount of **£30bn** will no longer be spent through public bodies.

7. The landscape of public bodies is complex and confusing, as the Committee points out. It is outdated and in need of modernisation. We are radically reforming this chaotic system. The report has called on the Government to re-examine the governance arrangements for each public body. We plan to do exactly that as part of the new robust system of triennial reviews and our determination to take decisive action on the back of those reviews. Reforms will include the creation of a series of new Executive Agencies, accountable to ministers, yet with a clear role and purpose as the delivery arms of central Government. The Committee's support for this model is welcomed.

8. We took the decision to announce the outcome of that assessment as soon as was possible and introduced a Bill at an early stage to provide the legislative framework for a radical programme of reform. Our intentions are clear. We can now meet the challenge of implementing reform on this unprecedented scale.

9. I recognise the scale of change and the importance of consultation. Our amendments to the Public Bodies Bill put this commitment on a statutory footing.

10. I look forward to further detailed input from Committees of both Houses and welcome the indications of the Public Administration Select Committee that it will report in full on the Public Bodies Bill. I look forward to further opportunities to restate our intentions.

11. As the Committee acknowledges, previous Administrations have set out their own plans for the reform of public bodies. The reality has rarely matched the rhetoric. It is therefore not especially surprising that questions have been raised about the potential for the success of the Coalition Government's programme. Previous plans have often been frustrated in practice. Reducing the number and cost of public bodies is a Coalition priority. It is important that we make progress and I make no excuse for the speed at which we have sought to realise our own commitment. There is momentum and cross-party support for a radical programme of reform. We have already brought forward proposals on an unprecedented scale. This will be a Government that makes good on its promises.

The Rt Hon Francis Maude MP

Minister for the Cabinet Office

Part 1 - The Government's review of public bodies - May to October 2010

The purpose of reform

12. Public Bodies reform is a key component of the Coalition Agreement.

13. We must increase the degree to which ministers as well as local decision makers are accountable for the decisions they are elected to take. But there are other drivers for change.

14. We must reduce the number and overall costs of quangos, cutting out duplication of effort and abolishing bodies whose functions or remit has expired, for example Commons Commissioners and/or those already effectively wound up but awaiting legal dissolution, such as Food from Britain. The review process is a means for 'tidying up' and rationalising the landscape of public bodies.

15. It has also provided an opportunity for modernising the delivery landscape, for re-establishing the role of the public body in government and creating a new framework for review and assessment as well as contributing to wider agendas of public service reform, Big Society and Localism.

16. PASC criticises this approach, claiming that:
    - **the Government's definition of accountability is too narrow;**
    - **bringing functions back into sponsor departments is likely to undermine other channels of accountability, resulting in less effective accountability and challenge on a day–to-day basis. (Paragraph 96)**

17. The Government wholeheartedly disagrees. Democratic accountability across public services is at the heart of this Coalition Government's agenda. Just because a named official is the public face of an organisation does not mean that he/she is accountable. The Committee's argument that taking these bodies back into government will reduce accountability, is therefore not one with which we could possibly agree. The Committee's suggestion that public bodies could be made into agencies to achieve our objectives is one we support and there are key examples in our reforms as to how we are progressing this, for example, In the case of the Child Maintenance and Enforcement Commission.

18. Decisions must be taken by the ministers elected to do so wherever possible and not passed on to the unaccountable boards of public bodies. There is no substitute for democratic accountability in the delivery of public policy. This is the principle on which we build a system of greater accountability, and

accountability is both the primary aim of this reform programme and the basis for developing the tests against which more than 900 public bodies have been assessed.

19. The Committee also has concerns that:
    - **the Government needs to take a more fundamental look at which services it wishes to continue to provide as well as whether those services should be delivered by arms length bodies to make substantial savings. (Paragraph 85)**

20. The Government agrees with the Committee and this was a fundamental principle of the review. The Government has always been clear that reform on such a scale would mean that some functions would have to cease as well as some bodies be abolished in their entirety.

21. This was the basis of the first stage test of the review process, whether these functions should be delivered at all in the light of both wider policy reforms in Health, Education, Environmental planning etc and with a broad consideration of the principles of efficiency and value for money.

22. The Government decided, for example, that the Commission for Rural Communities should be abolished and that it should be the responsibility of ministers to ensure that the needs of rural communities are reflected across all policies and programmes.

23. The Committee considers that:
    - **the Government has not realised in full the potential public bodies reforms have for strengthening civil society and its institutions and particularly for encouraging the formation of employee mutuals. (Paragraphs 107 and 111)**

24. The Government agrees with the Committee that strengthening civil society and institutions should be an inherent part of this process, and that is why our reforms include proposals to transfer the lead for the development of local economies to local enterprise partnerships, which bring together local authorities and businesses and are based on real economic geography.

25. In addition, we are introducing new ‘Rights to Provide’ for public sector workers to form employee-led organisations and take over the services they deliver.

26. Many organisations have already expressed interest in the mutual model as an option for public bodies reform. We have already announced that British Waterways will become a charitable trust, ensuring that waterways’ users and the communities that live alongside them have a much greater say in how they

are managed, whilst protecting the public benefits they bring for future generations.

A consistent, de-centralised review process

27. The Committee has raised concerns at the Government's approaching to reviewing public bodies, stating that:
    - **the three tests are hopelessly unclear and inconsistent with the Public Bodies Bill. There should be a single set of tests that covers: whether a function needs to be performed (existential), whether it is appropriate for it to be performed independently by a public body (impartiality); and how it can be delivered most cost-effectively (value for money). (Paragraph 19 and 23)**

28. The Government disagrees. Each of these elements is fundamental to our own review, yet this approach is too simplistic.

29. Putting the Government's aspirations into practice required a review framework that was sufficiently certain to ensure consistency, deliver the Coalition commitment and meet public expectation, yet sufficiently flexible to allow individual Secretaries of State to make decisions in the context of wider reforms to key aspects of public policy. There was a balance to be struck, and the Government considers it struck this balance well. The package of reforms must be considered in the totality of these wider departmental policy objectives.

30. Having made an initial assessment as to whether a function should continue to be delivered at all, Secretaries of State used the "three tests"[1] to determine whether functions that passed the first stage should remain at arms' length from government. If one those tests was not passed, but the function's importance still recognised, decisions were taken to transfer the function into the department to the responsibility of the Minister, to another department where that function would better sit, to local government, to the voluntary sector, to be privatised, mutualised or merged with functions of other bodies.

31. The Government does not agree with the Committee's interpretation that all three tests are essentially one single assessment of the need for impartiality. These are three distinct criteria: whether the body performs a technical function; or needs to act independently to establish facts are distinct assessments from whether the body operates in a way that requires political impartiality. A body that is retained on the grounds of performing a technical function, for example, is likely to contain expertise which could be held within

[1] The "three tests" asked in respect of a particular public body: Does it perform a technical function? Do its activities require political impartiality? Does it need to act independently to establish facts?

government (so there is no imperative for impartiality) but which is more effective or more cost-effective in a separate body.

32. The Committee also suggests inconsistency between the three tests and Clause 8 of the Public Bodies Bill, which sets out the "Matters to be considered" that a Minister should have regard to when making orders under clauses 1 to 6 of the Public Bodies Bill: efficiency, effectiveness and economy and appropriate accountability to ministers in the delivery of public functions.

33. The Committee has indicated their support for one set of tests to avoid confusion, replacing the "three tests" with these considerations. The Government does not agree as this would undermine the purpose of the provisions in the Public Bodies Bill.

34. The Bill is a vehicle for the implementation of the decisions made through the review, not a mechanism for making those decisions once again, and it is right that ministers in implementing these proposals should have regard to wider principles including efficiency, economy and effectiveness.

35. The three tests determine whether or not public functions should continue to be delivered at arms length from government, but Clause 8 of the Bill ensures that ministers consider these overarching factors when for example, transferring functions, or determining whether additional reforms could be taken forward for the better delivery of functions. This latter category forms many of the bodies listed in the 14 October announcement as "retain but substantially reform" and key examples include the Commission for Equality and Human Rights, the Internal Drainage Boards, Passenger Focus and Natural England.

36. The Committee has recommended that "Value For Money" be a key consideration for future reforms and is a missing part of this review process. The Government disagrees on the basis that value for money was a key consideration in the first stage test and is fundamental to the decisions made as to how to implement reform. The Spending Review was taking place in parallel with the review of public bodies and so provided departments with a unique opportunity to take a detailed look at what they deliver, and how they deliver it. In many cases the outcomes reported in the 14 October announcement trailed decisions which were made as part of the subsequent Spending Review, for example, that Natural England and the Environment Agency would be retained and substantially reformed.

37. The Committee questions the consistency and coherence of approach taken across government to the review of public bodies, particularly that:

- **the Cabinet Office should have offered guidance to departments on how to conduct these reviews of public bodies; including provision for a meaningful consultation exercise and details on how the tests should be applied. (paragraphs 37-39)**

38. The Government disagrees. In carrying out this extensive review programme, an overall framework was designed by the Cabinet Office, and the final decisions as to how public bodies performed against the first stage assessment and the three tests were taken by individual Secretaries of State.

39. The role of the Centre was one of challenge and coordination. Cabinet Office Ministers offered an initial set of proposals as to how the tests might apply by department. Officials provided support in decision making, bringing departments together where decisions would impact more widely or where there were additional reductions to be made by working across government.

40. There was regular engagement with all departments individually and on a collaborative basis to ensure consistency of approach, shared understanding of process and to drive forward collective solutions to cross-cutting issues in support of ministers across government. That engagement continues in order to consider issues of implementation and future review and reform.

41. Consistency in application of the tests was ensured through a lengthy process of due diligence, discussion and agreement across the Coalition.

42. Though the reform programme was executed and decisions expedited and agreed quickly, this process of assessment, challenge, re-assessment, agreement and co-ordinated clearance meant that departments were supported throughout. The Government simply seized an opportunity for decisive action.

<u>The importance of consultation</u>

43. The Committee also claims that:
    - **the Government did not consult properly on its proposals, particularly with the public bodies affected and questions how useful the consultation requirements built into the Public Bodies Bill can be, given that decisions on the future of many bodies have already been taken. (Paragraph 29 and 27)**

44. Fundamentally, these were decisions as to how greater accountability could be assured across the public sector, taken by ministers.

45. Cabinet Office and departments agreed a process by which Chairs and Chief Executives would be kept informed on an individual basis during the process of review and in advance of publication of the final proposals.

46. The Government has always been committed to ensuring appropriate consultation and external input in relation to its proposals. There is a substantial role for consultation to play, and a strong impact to be made on the delivery of these decisions.

47. The Government's amendments to the Public Bodies Bill put this commitment on a statutory footing. The amendments provide a statutory obligation on ministers to consult those with a clear interest in the Government's proposals before the order-making powers can be used. Ministers will also have to set out a summary of the responses when laying draft orders in order to assist Parliamentary scrutiny. The Government considers that this is the appropriate mechanism for ensuring that those with a clear interest in the proposals have an opportunity to give their views and influence the shape of reforms to public bodies.

48. The Government intends that this process of consultation will have a real effect on the implementation of the review and is happy to meet the Committee's request for assurance on that basis (paragraph 29).

Part 2 - The Public Bodies Bill

The overall strategic approach

49. The Public Bodies Bill provides the legislative framework for the majority of the Public Bodies Reform proposals announced on 14 October. That announcement listed 901 public bodies. The scope of the Bill is smaller as many bodies and functions are not set up in statute and do not require legislation for reform. A small minority of reforms are being taken forward in individual departmental Bills. In these cases reform of a particular body is integral to the wider policy intentions.

50. The Public Bodies Bill does not enact any changes itself, but creates a framework of order-making powers for Secretaries of State to take forward change by affirmative procedure in secondary legislation.

51. Taking forward legislation in this way is a far more efficient use of Parliamentary time, enabling a great deal of change to be taken forward consistently and in a timely, cost-effective manner. This best supports the intentions of this reform programme. It also ensures Parliament can properly scrutinise the rationale and overall approach of this process, leaving Secretaries of State, who are well-placed to do so, to take forward the detail of the agreed changes.

52. The Committee supports the Government's ongoing programme of review and reform, but **recommends that process be included in the Public Bodies Reform Bill. (Paragraph 52)**

53. The Government has considered this approach, but does not believe that it is appropriate this be put in place at this time. It is important that the new review process is proportionate and that departments are able to act quickly and in a way that represents value for money. Putting the reviews on a statutory footing limits flexibility and would risk the reviews becoming more bureaucratic and expensive than necessary. The Government does recognise, however, the need to share further information on its proposals for the ongoing review process and is currently consulting public bodies on this.

Working with the Lords and the Government amendments

54. The Bill was introduced in the House of Lords on 28 October 2010 and completed its Committee stage on 9 March 2011. It has received extensive scrutiny. We welcome the input of their Lordships and Committees of the House.

55. The Committee has commented on the progress of the Bill noting their view that:
    - **the Bill as originally drafted contains insufficient safeguards to prevent the misuse of powers by ministers;**
    - **a general sunset clause would be advisable. (Paragraph 135)**

56. The scale of this reform is unprecedented and the provisions of the Bill have been designed to enable reform to many hundreds of public bodies.

57. However we recognise there is concern as to the scope of powers provided to ministers and are determined to work with Parliamentarians to produce a Bill which satisfies both Houses, whilst also creating a workable methodology for taking forward necessary reforms to public bodies.

58. To this end, the Government introduced and supported a number of amendments at Committee stage; the primary effects of these are to:

    - introduce safeguards to ensure that the necessary independence of some public functions (including judicial functions) is protected;
    - require a statutory consultation on any proposed changes using the Bill, to begin at least 12 weeks before an order could be laid in Parliament. As noted in part 2 of this response on the review process, it is at this stage of implementation of agreed proposals that Government considers consultation will be of great value;
    - give Parliament the option to select an enhanced procedure for secondary legislation, allowing for a longer scrutiny period of more contentious orders, but a shorter, proportionate approach for those proposals where there is consensus of support.

59. We continue to engage with Parliamentarians to ensure that the safeguards which will apply to the orders made under the Bill are appropriate and proportionate.

60. We strongly oppose the introduction of a “super-affirmative” Parliamentary procedure with a veto for either House. The Government considers this disproportionate, and is concerned that it risks delaying or halting efforts to deliver on the Coalition commitment to reduce the number and cost of public bodies.

61. The Government appreciates this Committee’s analysis of the Bill and their contribution to the consideration of “sunset” provisions. The Government has stated its intention, during Committee stage in the House of Lords, to consider this issue and respond at Report Stage.

62. We welcome this Committee's intention to report further on the Bill itself and trust this response will be well-considered prior to publication of that report.

Part 3 – Implementation of reform

63. The Written Ministerial Statement made by the Minister for the Cabinet Office on 14 October 2010 set out a reform programme for public bodies on an unprecedented scale.

64. Of more than 900 public bodies, over half will be reformed to some degree. A fifth will cease to be public bodies and their functions will be brought back into Government, devolved to local government or to an alternative supplier or abolished altogether. 13% of bodies will be merged and a further 20% will be subject to substantial reform.

65. Many of the reforms to public bodies are part of a wider process of public services reforms, for example in relation to reform of the NHS and putting more power in the hands of schools in the education sector.

66. The majority of departments will be delivering major reductions in public spending as set out in the Spending Review and all will be delivering significant efficiencies, including by making better use of shared back office functions and cutting out duplication between departments and their public bodies.

67. The landscape of public bodies is complex and varied. Effective handling of reforms needs to be tailored to the nature of the particular body. There will be common themes which all reforms need to adhere to:

- delivering changes in a timely and cost-effective manner;
- recognising the contribution that the staff and board members of public bodies have made and continue to make through the changes, and keeping them informed and engaged;
- involving stakeholders in shaping new arrangements and where functions continue maintaining service standards; and
- learning lessons from the process which will inform future running of existing public bodies and in the exceptional cases where new ones need to be set up.

68. The Cabinet Office is supporting departments and public bodies in implementation including through development of a “checklist” of issues to be considered (see http://www.cabinetoffice.gov.uk/content/public-bodies-and-appointments).

69. Cabinet Office and HM Treasury will ensure the framework is in place for successful delivery by departments of the overall programme. In particular departments will be required to adhere to a small number of important

requirements to ensure the reform process delivers good value for money. These are set out at Annex B of this response.

70. The Committee has highlighted that:
    - **clear guidance must be is issued to departments to help them manage what will inevitably be a complicated reorganisation process;**
    - **Cabinet Office should incorporate their guidance, developed with the NAO. (Paragraph 61)**

71. The "Transition Guidance" developed by the Committee and the National Audit Office has been very helpful in the development of a checklist by the Cabinet Office in order to support departments and public bodies.

72. We welcome the work of the Association of Chief Executives (ACE) in sharing lessons across organisations and the publications from the Public Chairs Forum (PCF) and Institute for Government. We will continue to work closely with ACE and the PCF. We have also worked with the Devolved Administrations to share lessons learnt from their own recent programme of public bodies reform.

73. The Committee asked that Cabinet Office:
    - **clarify the role Cabinet Office and the Minister for Cabinet Office will have in scrutinising departments' implementation plans. (Paragraph 63)**

74. And have expressed concern that:
    - **an ongoing task is listed as a "completed" in the Cabinet Office's business plan. (Paragraph 65)**

75. Cabinet Office will continue to provide tools and advice the reform programme to help departments. In some cases this is through written documents, such as the checklist. In others, such as in relation to departmental implementation plans this is through working groups and bilateral discussions. Implementation plans need to be proportionate to the scale of change in a department and joined-up with other related reforms. We therefore dispute the Committee's analysis of our delivery against this objective.

76. Departments have the appropriate governance structures to prepare for and report on implementation of these reforms to ministers and Accounting Officers. Major reforms are also covered in departmental Business Plans, for which Secretaries of State are directly responsible to the Prime Minister, with progress reported on the No 10 website each month. We see no case to duplicate this, by adding an additional bureaucratic layer to these existing strong accountability mechanisms.

77. The Committee considers that:

- **the extent to which quangos reform would yield significant savings was probably exaggerated;**
- **the Government appears unsure about the extent to which the reform will result in significant savings. (Paragraph 83)**

78. The Government was always clear that these reforms would generate significant savings. Yet, it is also vital that any figures provided and relied upon are robust and that further analysis of the implications of this reform programme and the Spending Review was undertaken before any information was made publicly available. It would have been irresponsible to act otherwise.

79. We were always confident about the order of magnitude. These reforms will make an important contribution to reducing central government spending, as well as delivering on the main aim of improving accountability. And we can now announce that departments are estimating cumulative administrative savings of at least £2.6bn will flow from public bodies over the period of the Spending Review. When reductions in programme and capital spend are taken into account, departments are estimating that total spending being channelled through public bodies will be reduced by at least £11bn per year by 2014-15. If the savings for each year of the Spending Review are taken into account then a cumulative amount of £30bn will no longer be spent through public bodies.

80. All of the changes will be delivered within the departmental budgets as set out by the Spending Review, which overall provides for a 34% reduction in the administrative budgets of Whitehall and its Arms Length Bodies over the period, saving £5.9bn a year by 2014-15. Cabinet Office and HM Treasury will be working with departments to find shared solutions.

81. This is part of the wider work of the corporate centre of government to ensure that we get the best possible value from common areas of public spending, for example through better procurement and cutting back on consultancy and marketing.

Part 4 - A new role for public bodies in the landscape of government

82. The Government's commitment to reform public bodies does not cease with implementation of this first stage of reform proposals. We are committed to regular review and challenging the remaining bodies. We must ensure that there is an ongoing need for public functions and, where there is, establish whether the public body model remains the most appropriate mode of delivery. If the status quo is called into question on either of these bases, we must take action to reform the public body and, or, the functions it carries out.

83. We are keen to develop more opportunities for the transfer of responsibility to civil society, to local government and to the voluntary sector. We welcome the Committee's support for this approach, particularly in the case of employee mutuals. There are several examples where this option is being explored for public bodies. In the implementation of the existing proposals and the development of future reforms, we will continue to encourage those looking to explore the possibility of employee spin offs and social enterprises.

A new system of triennial reviews

84. The Committee has requested:
    - **clarification as to how the Government will avoid some of the flaws of previous review processes, particularly the lack of external input and challenge. (Paragraph 47)**

85. The Committee has also noted its intention to:
    - **bring forward proposals to strengthen Select Committees' role in scrutinising changes to public bodies (Paragraph 99).**

86. The Government welcomes this opportunity to set out its plans for future review and reform of the remaining public bodies.

87. A new programme of triennial reviews, for non-departmental public bodies (NDPBs) will commence in the 2011/12 financial year. It will also provide a framework that departments can use when reviewing other types of arms length bodies. A high level set of principles for these reviews is published alongside this response and we expect to publish the full guidance shortly.

88. In developing this framework, Cabinet Office has been consulting departments and public bodies and has listened to concerns raised in relation to the former quinquennial review process. We recognise the Committee's concerns as to cost and commitment to real change.

89. Our process will be flexible, reviews will be conducted quickly and efficiently, with clear focus and purpose, will be fair, meaningful and robust and will include an element of external challenge. Engagement with NDPBs, Parliament and key stakeholders will be a vital component of the development of this ongoing review process.

90. The Government is keen to encourage more robust Select Committee scrutiny of public bodies and welcomes the Committee's intention to bring forward proposals to strengthen the Select Committee's role.

91. We have not attempted **to estimate the costs of triennial reviews** (as suggested by the Committee – **paragraph 49**) in advance of agreeing a final process. However we will conduct a full evaluation of the impact, costs and benefits of triennial reviews at the end of the first three-year programme of work (in 2014). We would invite the Committee to input into this evaluation.

Stronger controls on governance and sponsorship

92. The Committee recommends that:
    - **the Cabinet Office should revise its guidance on public bodies as quickly as possible, placing more emphasis on the proper, on-going relationship between departments and the organisations they sponsor and the division of responsibilities. (Paragraph 72)**

93. The Government agrees. We are in the process of updating all our guidance on public bodies. We are consulting on a new set of principles of good corporate governance for executive NDPBs. These principles will set out the key controls, processes and safeguards which deliver good corporate governance. This includes the requirement to consult ministers on business plans. The principles will not be a rigid set of rules and requirements – and there may be occasions where departments and executive NDPBs do not comply with elements of the framework. In such cases, departments and NDPBs will be required to explain why they do not comply, why they have adopted an alternative approach and how this different approach contributes to good corporate governance. The framework will form part of the triennial review process and reports of individual reviews will include an explanation of any areas of non-compliance.

94. The Committee has also recommended that:
    - **the Government revise the guidance to public bodies to make it clear that it is not appropriate for it to hire PR organisations; especially when such organisations are used to lobby Government and that the Minister must establish effective monitoring and enforcement procedures; (Paragraph 120)**

- **the Government consider the Committee's view that public bodies attendance at party conferences should be prohibited. (paragraph 123)**

95. The Government agrees absolutely. Public bodies should never engage in activities that necessitate instructing lobbyists or using public money to fund activities designed to influence civil servants, ministers or Parliament (paragraph 120). We agree that the Government must effectively monitor and enforce this and, though Cabinet Office already issues guidance on this basis[2], we will strengthen and re-issue this guidance shortly.

96. The Government agrees that, in principle, staff and board members of public bodies should not attend Party Conferences in an official capacity or hold stands or distribute promotional material (leaflets, posters etc). In absolutely exceptional circumstances where attendance is deemed justifiable by the public body, they should seek approval from both the sponsoring department and the Cabinet Office.

97. These requirements will be built into a new Code of the Conduct for board members of public bodies and in the principles of good corporate governance to ensure that the rules on lobbying and attendance at Party Conferences are fully understood by departments and public bodies, and properly enforced.

Key principles for review and a new taxonomy

98. The Committee also supports a fundamental review of the activities which public bodies continue to engage in and the need to refocus them on their core functions to drive greater efficiency and reduce cost. (paragraph 114)

99. The Government agrees that over time the remit of some bodies has increased far beyond the core activities for which they were established and that governance from sponsor departments has been too varied and ineffective.

100. Reforming and refocusing public bodies on those core functions will certainly improve efficiency and reduce cost, but will also ensure the activities of central government are not compromised by the inappropriate activities of public bodies including using public funds for the purpose of lobbying Government. These are some of the key principles driving such a radical programme of reform and a great deal of progress will be made in implementation of the first-stage proposals.

101. The Committee considers:

[2] Section 6.1, Chapter 8, "*Public Bodies: A Guide for Departments*", Cabinet Office 2006.

- **the Executive Agency model offers a possible solution to balancing the need for ministers to have direct responsibility for policy and the ability to influence it, while still enabling high quality "day-to-day" accountability by stakeholder groups. (Paragraph 97)**

102. The Government agrees – this is an option that has been well considered in our review. With ongoing review and reassessment of the public bodies' landscape, opportunities to revisit delivery models will continue to present themselves. We agree that the Executive Agency model should be the default delivery option in cases where there is a need to deliver public functions within central government but with a degree of operational independence and autonomy from ministers. Indeed the first stage review process has resulted in the creation of several new Executive Agencies, particularly within the Education sector.

103. The Committee notes the complex and confusing nature of the public bodies' landscape and recommends that:

- **the Government use its triennial review process to re-examine the proper governance arrangements for each public body and place them in a new simplified taxonomy. (Paragraph 128)**

104. The current public bodies' landscape is too complex and confused. It is not clear why certain bodies have been established, spending through those bodies has increased exponentially and there is far too much duplication of activity. There are also many instances where once vital activities for government have now passed their usefulness owing to advances in technology and particularly in the way citizens and public service users engage with government. This is primarily why we have embarked on such a radical programme of reform.

105. We are not, however, persuaded that the solution to this is to invest taxpayers' money the introduction of a whole new taxonomy at this stage. Reform and reduction, not simply re-classification is what is urgently required. The existing classifications reflect a range of legal, financial and corporate governance considerations and it is essential – for example, for national accounting purposes and for accountability purposes - that we are able to distinguish between these different types of public body.

Annex A - Committee's conclusions and recommendations in full

The Government's review of public bodies - May to October 2010

"The Government has not made the case that these reforms will improve accountability. We believe that its narrow definition of accountability has inhibited its ability to develop mechanisms that will actually deliver a more responsible and transparent system. We sympathise with the desire of ministers to have direct responsibility for functions for which they are likely to be held to account. But we also believe that bringing functions back into sponsor departments is likely to undermine other channels of accountability, particularly with relevant stakeholder groups, and risk leaving policies fighting numerous other priorities for ministerial attention. This will mean less effective accountability and challenge on a day–to-day basis." (Paragraph 96)

"If the Government wishes to make significant savings in public body expenditure it needs to take a more fundamental look at which services it wishes to continue to provide. While it is possible to make greater efficiency savings, there will be a limit to the reductions that can be made in public body expenditure unless a political decision is taken for these organisations to do fewer things. We do not believe that the Government has used this review to undertake this sort of analysis – another reason why the Government should have taken longer to conduct this review." (Paragraph 85)

"Reforming public bodies has a much greater potential for strengthening civil society and its institutions ("the Big Society") than has so far been realised. While the Government has identified a few bodies that can be reformed as charities and mutuals we believe more could be considered. Doing this in a structured way involves not examining bodies on a case by case basis, but re examining what service the state needs to deliver. This would not only provide greater space in which charities and mutuals could operate, but also allow for greater savings to be made in expenditure on public bodies." (Paragraph 107)

"We welcome the Government's recent announcement encouraging the formation of employee mutuals. We ask the Government to provide us with an update as to how many public bodies have expressed an interest in taking part in this scheme, and how this programme related to the recent reviews of public bodies." (Paragraph 111)

"The three second stage "tests" may have seemed superficially plausible at the outset, but they are hopelessly unclear. "Impartiality" is the test that is relevant and this appears to be the motivating factor behind the other two tests. In fact, the "technical" test and the "facts" test serve only to confuse." (Paragraph 19)

"The tests used in the review should be the tests contained in the Bill. Confusion about the three second stage tests might explain why the tests the Government used in the review are not those outlined in Clause 8 of the Public Bodies Reform Bill

[Lords]. The inclusion of a "value for money" test in the Bill but not the review is a further inconsistency. There should be a single set of tests that covers: whether a function needs to be performed (existential), whether it is appropriate for it to be performed independently by a public body (impartiality); and how it can be delivered most cost-effectively (value for money). The present incoherence and inconsistencies cannot have helped the conduct of the review or the drafting of the Bill." (Paragraph 23)

"The Cabinet Office should have offered guidance to departments on how to conduct these reviews of public bodies; including provision for a meaningful consultation exercise and details on how the tests should be applied. While this might have taken longer, we see no reason that justifies rushing the review process. This extra time would have allowed the Government to conduct a measured and balanced review, and also have given it the opportunity to consider in more detail which functions it was necessary to retain." (Paragraph 39)

"We are not convinced that the Government has applied its tests consistently. Neither can we find any evidence to suggest that it took any steps to ensure a uniform approach was taken. We recommend that the Cabinet Office publish details on how the tests have been applied to all public bodies that are still under review, so we can ensure that in future these tests are applied consistently."(Paragraph 37)

"The lack of consultation and inconsistent application of the tests, which are themselves confusing, have led us to conclude that there was no coherent and consistent process for reviewing public bodies." (Paragraph 38)

"The Government did not consult properly on these proposals. When undertaking such a fundamental review of the machinery of government it is desirable and sensible to do so. We welcome that fact the Government is now taking steps to rectify this, but question how useful consultation can be, given that decisions on the future of many bodies have already been taken. Having agreed to amend the Bill to allow for more consultation we expect these consultations to have real effect on the outcome of the review; even if this means reversing decisions that have already been made. We expect the Government to give us such an assurance in its response to this Report." (Paragraph 29)

"As a minimum the bodies affected by these reforms should have been consulted to see how they thought the Government's tests applied to them." (Paragraph 27)

The Public Bodies Bill

"We welcome the Government's intention to introduce a regular review of public bodies. We recommend that the process for conducting these reviews, including the criteria that they will be evaluated against, should be included in the Public Bodies Reform Bill." (Paragraph 52)

"It seems clear to us that the Bill as originally drafted contains insufficient safeguards to prevent the misuse of powers by ministers. It is essential that the exercise of powers under this Bill is subject to rigorous Parliamentary scrutiny. We will be carefully following the Bill's progress in the House of Lords. We are currently

minded that the Bill should contain a general sunset clause; it should only serve the current review and fresh primary legislation should be required for future reviews. We will issue a further Report on this Bill itself after it has completed all its Lords stages, and reserve our judgement as to whether additional safeguards will be needed." (Paragraph 135)

Implementation of reform

"It is important that clear guidance is issued to departments to help them manage what will inevitably be a complicated reorganisation process. Failure to do this will result in duplication of effort and unnecessary costs. We recommend that the Cabinet Office incorporate guidance we have developed with the NAO into the guidance it is developing for departments." (Paragraph 61)

"We ask the Government to clarify, in its response to this report, what role the Cabinet Office will have in scrutinising departments' implementation plans, and whether the Minister for the Cabinet Office will personally approve each plan". (Paragraph 63)

"We are concerned that an ongoing task is listed as a "completed" in the Cabinet Office's business plan. We welcome the intention behind the publication of departmental business plans, but they will only be useful tools to help the public hold the Government to account if the information contained in them is accurate. We request the Cabinet Office update its business plan to reflect the reality of the situation." (Paragraph 65)

"At the outset, both accountability and value for money were considerations, but the extent to which quangos reform would yield significant savings was probably exaggerated. This created a false expectation that the review would deliver greater savings than it has been able to realise. Consequently, the Government appears unsure about the extent to which the reform will result in significant savings for the taxpayer." (Paragraph 83)

A new role for public bodies in the landscape of government

"We welcome the Minister's comments which indicate that future reviews will include considerations about efficiency and value for money. This seems a sensible way to proceed. However, we would ask him to clarify how it will avoid some of the flaws of previous review processes, particularly the lack of external input and challenge." (Paragraph 47)

"We intend to bring forward proposals to strengthen Select Committees' role in scrutinising changes to public bodies in our future report on the detail of the Public Bodies Reform Bill." (Paragraph 99)

"We are pleased that the Minister was confident that he would be able to devise a more cost-effective review system than previous efforts. We invite him to provide us with his most recent estimate of the cost of the future review process." (Paragraph 49)

"The Cabinet Office should revise its guidance on public bodies as quickly as possible, placing more emphasis on the proper, on-going relationship between departments and the organisations they sponsor. It should make clear what kind of decisions are purely the responsibility of the bodies, when the department should be consulted and whether any decisions - such as the overall business plan - should be subject to ministerial approval." (Paragraph 72)

"Public bodies should never be engaged in activities that necessitate instructing lobbyists. We recommend that the Government revise the guidance to public bodies to make it clear that it is not appropriate for it to hire PR organisations; especially when such organisations are used to lobby Government. The current guidance already prohibits such activities but has failed to prevent abuse. The Minister must establish effective monitoring and enforcement procedures." (Paragraph 120)

"We welcome the Minister's commitment to examine all future requests for public bodies to attend party conferences. However, we can see no reason why this activity should not be banned outright, as it could be construed as indirect taxpayer funding of political parties." (Paragraph 123)

"Deciding which bodies can be moved into the private and voluntary sector should form only part of the Government's review. It should also reconsider what activities public bodies should continue to engage in. Some public bodies have allowed their remit to increase over the years and there is a need to refocus them on their core functions. Identifying the essential activities of these bodies will both make them more efficient and reduce cost. This principle must be embedded in future reviews." (Paragraph 114)

"We believe that the Executive Agency model offers a possible solution. It allows ministers direct responsibility for policy, combined with the ability to influence it, while still enabling high quality "day-to-day" accountability by stakeholder groups. We recommend that the Government consider converting those organisations which it intends to retain and move into Government departments into Executive Agencies. If this is not feasible, we recommend the Government explain why this is not a workable solution." (Paragraph 97)

"This review has highlighted the complex and confusing nature of the public bodies' landscape. Simplifying this set-up is not a matter of administrative tidiness but a necessary step to ensure the accountability and effectiveness of these organisations. The current system is chaotic, making it difficult to understand why different types of bodies exist and what these variations mean in practice. We recommend that the Government use its triennial review process to re-examine the proper governance arrangements for each public body and place them in a new simplified taxonomy." (Paragraph 128)

Annex B - Requirements on departments and public bodies in implementing reforms

This list brings together in one place a number of existing policies and controls introduced to ensure that the Government conducts its business with a view to securing good value for money when spending public funds.

1. **Departments must seek the best value for money (vfm) in terms of exiting contracts and managing assets in the round across the department and public bodies.**
   All bodies which are being abolished or merged to provide departmental Accounting Officers with a register of assets. Departments and public bodies must take stock of their ICT contracts in the round and consider renegotiation to secure better vfm. There should be strong downward pressure on costs to avoid end year peaks of expenditure which do not reflect good vfm.

2. **Departments and public bodies must operate within Cabinet Office efficiency actions and processes as set out by the Minister for the Cabinet Office and Chief Secretary**
   The most recent version of the controls on ICT, marketing & advertising, commodity procurement, consultancy, the public sector estate, recruitment, major projects and strategic supplier management became operational in February 2011, and will be in place until the end of the Spending Round in March 2015 unless otherwise stated. All NDPBs and a number of other public bodies are covered by these processes.

3. **Departments must comply with their obligations to the staff of public bodies**
   Departments must ensure that they abide by legal and policy requirements relating to the staff of public bodies, including TUPE/COSOP. In addition, for the Civil Service and relevant NDPBs, the Protocols for Handling Surplus Staff Situations will be relevant. Departments must ensure that changes take account of any protected accrued pension rights of staff and that pension liabilities are fully accounted for and minimised in the best interests of the taxpayer.

4. **Remuneration for Chairs, Board Members and senior staff must be in line with a prudent approach to public expenditure.**
   There should not be any presumption of making any additional payments to staff in bodies under reform. CEO objectives should be reviewed and revised to ensure that activities critical to delivering the reforms are clearly stated and taken into account in assessing bonus payments. Where the department sees a compelling business need for end-of-contract performance payments a clear business case must be presented to Cabinet Office as well as to the

Treasury spending team. Terms and conditions for Chairs and Board members should be brought into line with new guidelines and cleared with Cabinet Office when new appointments, renewals or other review points arise.

5. **Departments must not approve plans which result in staff being made redundant from a public body and then being reemployed on effectively the same work either as a member of staff or on a consultancy basis**
   It is likely to be an unacceptable use of public funds to agree to members of staff departing with a package, only to return to effectively the same post on a consultancy basis. Where it is considered that there are good reasons – for instance, it could make sense to ask someone to return on a fee-paid basis to answer questions from the auditors on the previous year's accounts – then arrangements must be cleared in advance with the Accounting Officer (and through the usual process for spending control exemptions if it falls with their scope).

6. **The public body has put robust and effective systems in place to ensure that the public body is not, and is not perceived to be, engaging in political lobbying.** Public bodies should never engage in activities that necessitate instructing lobbyists or using public money to fund activities designed to influence civil servants, ministers or Parliament.

7. **Departments should avoid unnecessary expenditure on branding and reissuing promotional material when merging bodies or transferring functions.**
   Departments should keep such expenditure to an absolute minimum. This should be part of the business case that departments have to clear with Cabinet Office and HM Treasury on the creation of a new body, whether or not this arises from a merger or other reform. Approval for this significant spend in this are will be exceptional.

8. **Knowledge management and transfer of records**
   Develop a knowledge and information transfer plan to ensure that key knowledge and information assets are appropriately safeguarded and to mitigate risks arising from their loss. Organisations need to ensure they continue to meet their obligations under information and records management legislation. See http://www.nationalarchives.gov.uk/information-management/projects-and-work/reform-of-public-bodies.htm for more guidance.

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