

Guidelines on Appointments to State Boards

Department of Public Expenditure and Reform, November 2014

Introduction and Context

1. Background

1.1 In 2011 the Government introduced new arrangements for appointments to State Boards. Under these arrangements expressions of interest were to be sought where a vacancy arose on the Board of a State body with vacancies advertised on the relevant Department's website or by the independent Public Appointments Service (PAS).

1.2 In order to support the new approach, a website portal, *stateboards.ie*, was created by PAS to offer a single dedicated point of contact for Government Departments to assist in the selection procedures for members of State Boards.

1.3 This portal allowed for:-

- The advertising of opportunities to express an interest in State Board vacancies and the terms and conditions pertaining to same;
- The registration by prospective Board members of their general interest in a position on a State Board;
- The sending of alerts to those registered on *stateboards.ie* of State Board vacancies as and when they arise.

2. Confirmation process for Chairpersons

2.1 A further element of the new system established in 2011 was that persons being proposed by Ministers for appointment as Chairpersons of State Bodies/Agencies were required to make themselves available to the appropriate Oireachtas Committee to discuss the approach which they will take to their role as chairperson and their views about the future contribution of the body or Board in question.

3. Reform of the System of Appointments to State Boards

3.1 While these arrangements have contributed to greater openness in the appointments process for State Boards and increased transparency in the selection of appointees for State Boards, on 30 September 2014 the Government announced further substantial reforms to the appointment system, building on the model established in 2011, under which all appointments should:-

- a) be advertised openly on the State Boards portal *www.stateboards.ie* operated by the Public Appointments Service (PAS);
- b) meet specific and detailed criteria determined by the relevant Minister as necessary for the effective performance of the relevant role(s); and
- c) be processed by way of a transparent assessment system designed and implemented by the independent Public Appointments Service (PAS) to support the relevant Minister in making appointments to State Boards under his/her remit.

3.2 The Government believes, that putting in place a system for appointments to State Boards that is open, accessible, rigorous and transparent will yield additional applications from accomplished,

experienced and qualified individuals who wish to make a commitment to public service that might not have previously been identified as available for appointment to State Boards.

3.3 The assignment by Government to PAS of key responsibilities in relation to the operation of the new system of appointments is underpinned by factors such as PAS's statutory independence and by the core values that guide PAS's activities, for example, impartiality, fairness and ethical conduct as well as PAS's longstanding experience and deep expertise in carrying out assessment processes.

Ministerial Guidelines

The Government also agreed that the Minister for Public Expenditure and Reform should prepare guidelines for appointments to State Boards setting out requirements which would apply to all State Board appointments.

4. Key Objectives

4.1 The overarching and complementary objectives underlying the reform of appointments system for State Boards are:-

- To increase **access** and widen the pool from which potential appointees to State Boards are drawn
- To strengthen State Boards by enhancing the calibre and **quality** of appointments.
- To secure a high degree of **transparency** in the selection of candidates for appointment by the relevant Minister.

4.2 The delivery of these objectives can clearly make a major contribution over time to improving the performance of State Boards.

5. Access

5.1 Broad and open access to potential participation on State Boards is a fundamental principle of the new approach agreed by Government. This is essential to the intended broadening of State Board membership, which is a key objective of the Government Decision.

5.2 This will help ensure that the public sector benefits from the talent, abilities and commitment of as wide a pool of suitable candidates as possible, to be assessed through an independent process operated by PAS as eligible for membership of State Boards.

5.3 Achieving this significant expansion in the applicant pool is a prerequisite for PAS to successfully identify for Ministers a list of potential appointees with the capacity to contribute significantly to the effectiveness and performance of State Boards.

5.4 While there are particular requirements applying in relation to the desirable composition of each individual State Board in terms of the knowledge, skills and experience of its members, best practice and expert advice confirms that effective board members are those that, for example:-

- bring independent and objective scrutiny to the oversight of the organisation;
- are prepared to be challenging when necessary while being supportive to the delivery of organisational strategy and objectives;
- are equipped to offer considered advice on the basis of sound judgement and experience;
- must be prepared to make a time commitment to their work commensurate with their role.

5.5 Candidates for State Boards should be drawn from the widest possible pool of applicants with these attributes. Consequently, it will be important to ensure that the process of identifying and

assessing candidates continues to recognise that the characteristics of effective board members can be demonstrated and obtained from a breadth and depth of experience in all walks of life.

5.6 In implementing the new arrangements, PAS will promote and encourage the submission of expressions of interest for State Board roles through appropriate communication and information initiatives targeted at potential applicants.

6. Quality

6.1 Across a broad and diverse range of different activities State Boards play a critical role in governing, overseeing and in ensuring accountability for public bodies that deliver important services on behalf of the State. The quality and calibre of the Board is central to the effective performance of this role. The essential requirement for continuing reform and improvement in the manner in which public services are provided - in an environment of scarce resources - highlights the urgent need to attract experienced, skilled and expert individuals to serve at Board level.

6.2 The new arrangements agreed by Government are designed to ensure that the list from which a Minister makes appointments continues to contain all of the suitable individuals meeting the criteria. This should lead to an appreciable improvement in the capability, capacity and performance of State Boards.

6.3 The criteria agreed in respect of particular vacancies on State Boards would be expected to identify the specific experience, knowledge and skills that would strengthen the capacity of the Board. These requirements need to be complemented in potential appointees by the personal attributes that are characteristic of effective board members.

6.4 The careful and detailed specification of the criteria necessary for a specific Board role will ensure that Members are appointed by Ministers from a list of candidates that have been formally assessed to possess all the elements required for the successful performance of the roles.

7. Transparency

7.1 While the *stateboards.ie* application process provided the opportunity for individuals to express interest in participating on a State Board, the full potential of an open system can best be realised by a more structured and transparent process leading to the assessment of candidates as suitable for possible appointment.

7.2 The core elements of the new model agreed by Government comprise are reflected in these Guidelines as follows:-

- the publication on *stateboards.ie* of a clear and detailed specification of the particular requirements for vacant roles on State Boards;
- the maintenance of the open application process currently in place for submission of expressions of interest in such roles;
- the operation by PAS of an independent, expert, rigorous and transparent system of assessment.

7.3 In line with good practice corporate governance, a key goal of the new arrangements is as set out in these Guidelines to significantly strengthen the role of Chairs of State Board in the appointments process including in relation to the identification of requirements and the assessment of candidates.

8. Application of these Guidelines

8.1 Under the Government Decision the new appointment system applies to all State Boards both commercial¹ and non-commercial and encompassing:-

- Boards established by specific statute and under the aegis of a particular Department to which the Minister makes appointments;
- Statutory Boards not under the aegis of a Department, but to which the Minister makes appointments ;
- Boards of wholly state-owned companies to which the Minister makes appointments; and
- Interim State Boards where the statutory basis for the State Board has not yet been established; in such cases appointees to the interim Board made using the new process may be directly appointed to the statutory Board.

8.2 The new appointments system does not apply to the Boards of the cross-border bodies established under the Good Friday Agreement, as the responsible Minister in each jurisdiction does not appoint the respective board members but instead nominates them for approval by the North-South Ministerial Council (NSMC).

8.3 The new appointment system does not apply to the Ireland-United States Commission for Education Exchange, given its bi-national character.

8.4 Special arrangements will continue to apply, as at present, to certain appointments to the Boards of financial institutions.

8.5 The development of a database of State Boards as set out in paragraph 20 below will clearly identify the State Boards to which the new appointments system applies.

8.6 In light of experience in implementing the new system, the new arrangements could, where appropriate, subject to PAS capacity and at the discretion of the relevant Minister, also be applied in due course to non-statutory entities such as advisory groups, expert committees and task forces having the characteristics of a formal State Board including membership appointed by a Minister, formal conditions of appointment and fixed terms.

9. Exceptions

9.1 There are a number of specific exceptions from the arrangements. It will be open for Ministers to appoint Board members, other than strictly in accordance with the process but only in circumstances where:-

9.1.1 A specific mechanism for the filling of a vacancy on a State Board is laid down in legislation requiring, for example:-

- the appointment of a member to a State Board on an *ex officio* basis;
- a nomination by a third party organisation;
- the appointment of worker directors;
- appointments to the Boards of *NewERA* companies² which in light of *NewERA*'s statutory function as a shareholder executive under the relevant legislation require ministerial appointments to be made following consultation with *NewERA*.

¹ Subject to specific arrangements that apply to *NewERA* companies as set out at para. 15 below.

² ESB, Ervia, EirGrid, Irish Water, Bord na Móna, and Coillte

- 9.1.2 A list for appointment to the same Board was submitted to the Minister within the previous year, and in the view of the Minister the Board vacancy arising can be satisfactorily filled from the same list.
 - 9.1.3 The PAS list submitted to the relevant Minister does not contain a sufficient number of candidates, providing that the personnel separately identified by the Minister are assessed by PAS as meeting the criteria laid down for the State Board role (see para. 13.3 below)
 - 9.1.4 The Minister has independently identified a person who is evidently and objectively highly-qualified and capable of effectively discharging the role of Chair of a State Board and who has not otherwise applied through the *stateboards.ie* process (see para. 12.10 below).
 - 9.1.5 In the case of proposed re-appointments to State Boards where the Minister is satisfied having consulted with the Chair that the Board member has already demonstrated through their performance as a member of the State Board their effectiveness and contribution which warrants their re-appointment.
 - 9.1.6 Where the legislation specifies that the position should be filled by a serving or former member of the judiciary.
 - 9.1.7 Where the Minister is appointing an official of his Department to the position.
 - 9.1.8 Where an agreement or arrangement is in place under which Ministers seek nominations for appointment to State Boards from key stakeholder organisations (such as trade unions, employer organisations, farming representatives or voluntary bodies).
- 9.2 Where nominations by other Ministers or third-party stakeholder organisations do not have a specific legislative basis but reflect established custom and practice - the continuation of which is agreed by the relevant Minister to support the relevant State Board in the performance of its functions - the nominations submitted must be assessed by PAS as meeting criteria laid down for the appropriate State Board role and published at the time the appointment is made by the relevant Minister.
- 9.3 If there are some particular features of a specific State Board or of a particular role on a State Board which in the view of the relevant Minister necessitate its exclusion from the new appointments system for State Board, Government approval should be sought for the derogation. If granted the reasons for the exclusion should be published.

The appointment process

Sections 10, 11, and 12 below set out a framework for the proposed operation by PAS of the appointments process, including the development of the specification for a State Board role, its publication requesting expressions of interest and the assessment of applications received.

This framework will be developed and refined by PAS in light of experience operating the appointments system in practice and changes advised through publication of the information on *stateboards.ie*

Any modifications will take place in a manner fully consistent with the Government's Decision and the principles underlying it and changes will be subject to approval by the Minister for Public Expenditure and Reform.

10. Development of a specification for board role

10.1 Where a new appointment will be necessary Departments should formally initiate the appointments process at least six months before the term of the current member expires by engaging with PAS to develop a detailed and comprehensive draft specification of the proposed Board role.

10.2 The specification provided to PAS must set out key requirements for the board role(s) including:-

- necessary skills, knowledge and expertise;
- breadth of experience and required sectoral / stakeholder expertise;
- other desirable qualifications;
- range of skills of existing Board members(s)
- diversity and other matters for considerations (e.g. geographical balance, international membership)
- personal attributes

10.3 The specification must also set out the number of vacancies which the Minister proposes – subject to the availability of suitable individuals – to fill from the process.

10.4 This specification will follow a detailed template for all State Board roles to be developed by PAS which sets out a clear format for the detail and quality of information provided in respect of each Board role.

10.5 The draft specification provided by the Department to PAS must also reflect the outcome of consultation with the current Chair of the Board. In this context, the Chair should advise the Department of the needs of the board for new skills, competencies or experience in order to ensure that it can effectively perform its role drawing from, for example, the Chair’s annual review of the Board’s effectiveness

10.6 The final specification for the Board positions must be agreed by the relevant Department with PAS on the basis of PAS’s assessment of any changes necessary to ensure that the specification is adequate to encourage the submission of expressions of interest and to be clearly identify a list of candidates for consideration by the Minister for the Board role.

11. Publication of roles

11.1 Once the final specification is agreed by the relevant Department with PAS it will be published on *stateboards.ie* seeking expressions of interest for the role.

11.2 In order to seek to maximise the size of the potential pool of applicants, PAS may

- draw on expressions of interest received for other State Board vacancies where applicants have indicated an interest in being considered for roles on other State Boards;
- engage with appropriate bodies, organisations, groups etc. to increase awareness of the Board role and encourage the submission of expressions of interest; and
- where necessary and appropriate in seeking to ensure there are sufficient applicants to meet the criteria laid down for particular roles, make efforts to identify suitably qualified individuals that may be interested in participating in the process.

11.3 A minimum of two weeks shall be given by PAS for the receipt of expressions of interest following the announcement of the Board opportunity.

11.4 PAS should be cognisant of the Government Decision that at least of 40% of the candidates for each Board role are of each gender (see paragraph 16 below).

12. Assessment process

12.1 PAS will deem a list of candidates as suitable for appointment as a member of State Boards following an assessment process against agreed criteria for the Board position.

12.2 The design of the assessment process in respect of any individual board vacancy shall be a matter for PAS fully consistent with:-

- the principles and objectives of the Government Decision; and
- the values of independence, impartiality, fairness and integrity underlying the exercise of PAS's statutory roles and responsibilities.

12.3 PAS will publish as part of the protocol agreed with each Department the details of the assessment process it is proposed will apply to the selection of a list from which the relevant Minister will appoint board member(s)

12.4 The assessment process put in place by PAS may draw on external expert advisory support to assist in assessing the applications received. It may include all the usual and standard elements of assessment processes including formal interviews.

12.5 PAS may develop a framework for the conduct of the assessment process which shall be published on the *stateboards.ie* website.

12.6 PAS may establish an Expert Group composed of persons with senior level expertise and experience in the civil and public service and private sector to provide advice and guidance to the PAS on the operation of the process.

12.7 In order to underpin the performance of the statutory function of Ministers in making appointments to State Boards, PAS, in implementing these Guidelines, should seek to ensure that the lists provided to Ministers contain a sufficient number of suitable candidates to allow the Minister to exercise appropriate choice in his or her decision-making.

12.8 It is, therefore, open to Ministers in setting out for PAS the requirements for filling vacancies on State Boards to advise on a target minimum size of any list, subject to the overriding requirement that any listed candidate meets the relevant criteria laid down for the role.

12.9 The list submitted to the Minister for consideration shall include a report from PAS on the reasons the candidates have been assessed as meeting the criteria agreed for the Board role for publication by the Minister in due course in the case of members appointed to State Boards.

12.10 In circumstances as envisaged under paragraph 9.1.4 above where a Minister has separately identified an eminent, high-calibre and highly-qualified candidate suitable for appointment as a Chair of a State Board the Minister will on appointment publish information confirming the candidate's qualification and suitability for the role.

12.11 PAS will publish on a three monthly basis an update on *stateboards.ie* on the operation of the appointments system containing information on for each State Board role advertised, the number of expressions received and the numbers of candidates assessed as suitable for appointment and advised to the Minister as well as the number of appointments made by the Minister from the list.

12.12 In order to safeguard the reputation and independent standing of PAS in light of its key role under these new arrangements in supporting Ministers in making appointments to State Boards, it will be open to PAS to raise concerns regarding the operation of the revised model, or any attempt to interfere with the process, with the relevant Minister in the first instance and if necessary to seek to resolve any issues with the assistance of the Commission for Public Service Appointments.

13. Appointment of Board Members

13.1 The selection of the candidates to appoint from the list is solely and exclusively a matter for the relevant Minister in light of the objectives of the revised appointments system to ensure that State Boards have an appropriate mix of the experience, knowledge and skills to successfully oversee the performance of the Board's functions.

13.2 Consistent with best corporate governance practice it is advisable that no member of a State Board should serve more than two full terms of appointment or should hold appointments to more than two State Boards.

13.3 Where the PAS list does not contain a sufficient number of candidates for consideration for appointment by the relevant Minister the Minister may advise PAS in writing of further candidates that should be assessed by PAS through the same process as the initial list for inclusion in a revised list.

13.4 Once the relevant Minister has decided on the appointments, PAS will be notified and will inform unsuccessful candidates. The relevant Department shall be responsible for notifying successful candidates.

13.5 It is expected that following the completion of the PAS process and the communication of the outcome of that process to the relevant Minister, that the appointment shall in normal circumstances be made in advance of the vacancy arising unless there are compelling reasons why this is not possible.

13.6 At the time of the appointment of new members of State Boards, information shall be published by the relevant Department, for example in the press release announcing the new member(s), on the specific reasons the person(s) appointed meet the criteria determined by the relevant Minister for the role. This requirement may be waived if required to protect the personal security of some or all of the appointees.

14. Engagement between proposed Chairs and Oireachtas Committees

14.1 The obligation introduced in 2011 on prospective Chairs of State Boards to appear before appropriate Oireachtas Committees continues in force.

15. *NewERA* State Companies

15.1 It is envisaged that appointments to the board of *NewERA* companies will as much as possible be subject to the arrangements set out in these Guidelines with appropriate modifications to conform to the statutory advisory role of *NewERA* to the shareholding Ministers on the corporate governance of the companies concerned. In this regard, PAS and *NewERA* will make proposals on the specific details of the approach for approval by the Minister for Public Expenditure and Reform and subsequent inclusion in the Guidelines.

16. Interaction of these Guidelines with other policies and guidelines

16.1 Compliance with the Government Decision of 23 July 2014 on Gender Balance on State Boards is an essential requirement of these Guidelines. Reflecting the new process, these requirements are as follows:-

- a) Each Department should as part of the implementation of the arrangements set out under these Guidelines for the filling of vacancies on State Boards prepare a plan to reaffirm and achieve the target of at least 40% for representation of each gender on State Boards within its remit during the lifetime of the present Government.

- b) The plan should include a schedule of the Boards which fall to be replaced in totality in each year as well as provision for the filling of any existing or future casual vacancies by reference to the specific skills-set desirable for members of each such Board.
- c) Departments should maintain a particular focus on those Boards on which either women or men are currently significantly under-represented and should actively seek to appoint candidates of the under-represented gender from the PAS short list.
- d) Departments should in the case of Boards which have already achieved the 40% target seek to move towards 45% of each gender as a new target for gender equality and with a view to meeting the Government's overall target of 40% of each gender across all Boards.
- e) Departments will be asked to report to the Department of Justice and Equality on the implementation of these actions within six months. Six-monthly reports will also be submitted to Cabinet.
- f) In order to support the delivery of the Government's target on gender equality on State Boards, the Department of Justice and Equality will proceed with a pilot project for the development of a Talent Bank of women who would be prepared to serve on State Boards as a resource available to Ministers and other nominating bodies. The Talent Bank may be used by PAS in the context of its role in identifying potential candidates to serve on State Boards that currently fall below the 40% target for female representation.

16.2 The *Code of Practice for the Governance of State Bodies* details the key roles and responsibilities of State Boards. It is proposed to update and revise the *Code of Practice* to incorporate the objectives of the Government Decision.

17. Promotion of participation on State Boards

17.1 PAS will develop and put into effect measures to increase the pool of potential candidates for membership of State Boards.

18. State Boards Liaison Officers

18.1 Each Department is required to identify a State Boards Liaison Officer, at Principal Officer level. This official will be responsible for engaging with PAS on behalf of the Minister to discharge the responsibilities set out in these Guidelines.

18.2 The SBLO should inform PAS of the programme of work in terms of appointments at State Board falling under the aegis of the relevant Minister expected to arise during each following six month period. The SBLO will also be the main point of contact for PAS in resolving any issues that arise in the operation of the appointments process.

19. Database of State Boards

19.1 A comprehensive database on each State Board subject to these Guidelines will be published on stateboards.ie by end Q1 2015 containing the following information:-

- the title of the Board
- the legislative basis and the legislative provisions relating to the composition of the Board, appointments and the filling of vacancies on the Board.
- in the case of Boards established under the Company Law Acts, information corresponding to the foregoing or analogous information in relation to entities subject to these arrangements not established under Statute or Company Law
- the current Board membership
- the percentage of each gender on the board
- the terms of appointment of the current members

19.2 To assist in the maintenance of this database and to ensure that it contains up-to-date information all Departments are required to notify all appointments to State Boards (including *ex officio* positions) to the Department of Public Expenditure and Reform at the time of appointment.

20. Review

20.1 A review will be completed and published by the Minister for Public Expenditure and Reform, in cooperation with the Public Appointments Service, within 18 months of the new arrangements coming into force to assess whether the revised appointments model has:-

- increased access to participation on State Boards;
- ensured an open and transparent assessment process; and
- contributed to a strengthening in the calibre and quality of appointments to State Boards.

The review will include an assessment of any workload implications for Departments and agencies.

21. Status of these Guidelines

21.1 On the basis of the Government Decision Compliance with these Guidelines is mandatory for all Departments. The Guidelines will be updated as required. Any queries regarding these guidelines should be directed to stateboards@per.gov.ie in the Government Reform Unit, Department of Public Expenditure and Reform.