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**Summary**

This submission proposes that an urgent future rebalancing of UK governance arrangements is required in order to review how arm's-length bodies (ALBs) can (if at all) provide genuine public accountability in tandem with their ability to perform in line with set objectives. The growth of administrative power raises serious doubts about whether we can continue to work within our regular constitutional understandings of a separation of powers, including the supreme role given to parliament – as accountable to the public – in our governing arrangements. The development of ALBs has the habit of creating conflicting power arrangements in the UK context since major political decisions should be taken by politicians as accountable representatives, not by judges or by public bodies which can be far removed from ministerial decision-making.

Over the last 30 years, we have witnessed a dramatic change in the specific use of executive agencies and while some greater expediency had been achieved, the civil service traditions of risk-aversion, and a wariness of engaging with industry have been widely exported across government and into the ALBs. Nothing could be clearer from the presentation of a decarbonisation policy through to the issuing of Covid-regulations that the meaningful sense of public and parliamentary accountability has been drastically eroded as the electorate are rarely considered as anything but 'end users' of a pre-formed, undebatable policy or service.

If many other advisory councils and bodies are enabled to operate as advisory NDPBs, sponsored by the responsible Department, we should consider why the enhanced role of the Scientific Advisory Group for Emergencies (SAGE) could not also occupy a similar position, made more directly accountable to the public and parliament. Comparisons can be made between SAGE and the Advisory Council on the Misuse of Drugs, so that under that arrangement of an NDPB with advisory competence, the Department usually sets the strategic framework, and advice is given as impartial and apolitical. As stated in my earlier evidence (ILG0013, June 2021), if we are to inquire into the coordination between

departments and ALBs, then advisory groups to the government should not be granted ‘a representational monopoly’ within those networks.

Moreover, why could such bodies not invite a vastly expanded panel of voluntary lay members – from retired GPs through to former parish chairpersons to finance managers – to serve on their boards in order to respond to particular policies or guidance in the documentation presented? They would offer a sense of scrutiny more closely aligned to the public interest and an outside, independent, more public-focused perspective to enhance governance.

The pandemic raised questions as to how ALBs need to be freed from their narrow remits and designed to combine the different strands of health and economic analysis into a feasible strategy. Economists should work together with epidemiologists and health experts to make decisions on social restrictions, and this work should be made public. However deep within ALB arrangements, there is a strong tendency towards ‘groupthink’, namely, the adoption of a singular view or policy not wholly based on objective interpretation of the economic, social and health realities. The work of the Cabinet Office is to ensure that a set of Covid-19 cabinet committees is provided with an institutional framework that integrates health, social, economic and other advice in coordinating the response to the pandemic.

The lack of transparency of the membership of bodies – from SAGE to the Joint Biosecurity Centre (JBC) – and of the science advice being provided by them to government ministers suggests that each select committee should assign a sub-select committee to scrutinise and hold to account more systematically the membership lists, activities and purposes of each public body. Looking to the future of executive agencies, including the roles of UK Health Security Agency (UKHSA), the JBC and the NHS Test and Trace service, this submission seeks to involve parliament to a greater extent so that the lead officials could be questioned or scrutinised by MPs within a select sub-committee to get better answers to the major questions (both in an emergency crisis and non-emergency settings).

The hampered decision-making in Covid restrictions has meant policy has often been created with significant ALB involvement but without any rigorous cost-benefit analysis, impact assessment or any wider commitment to genuine public consultation, and often outside the bounds of democratic accountability. In terms of PHE, parts of which will now be integrated into another agency in the form of the UKHSA, the latter may in time suffer similar fates because crude experiments in so-called government efficiency have given way to a displacement of public accountability. As such, the ALBs often enable enlarged executives populated by governing elites to remove important, sometimes contested, issues from wider public debate in society.

### **Improving public and parliamentary accountability**

1. Since the classification and taxonomy of public bodies – including understanding lines of accountability and responsibility – rests chiefly with the Cabinet Office, the majority of the issues considered in this submission may be most relevant to the Permanent Secretary at the Cabinet Office. It is notable the Public Accounts Committee previously reported in 2016 that the Cabinet Office must use its position at the centre of Government to ensure departments improve the way they manage business through arm’s-length bodies.<sup>1</sup>
2. Given the need to scrutinise how government decides when to use arm’s-length bodies to deliver its objectives, the most immediate need is to re-evaluate how government directs policy and parliament enacts law through those bodies in a way which is accountable to the electorate. While the existing Cabinet Office guiding principle underlying the framework for the classification of an arm’s length body (‘ALB’) should be determined by the degree of freedom that body needs from ministerial control to perform its functions,<sup>2</sup> some urgent rebalancing is required in order to review how ALBs can (if at all) provide genuine public accountability in tandem with their ability to perform in line with set objectives.
3. The growth of administrative power raises serious doubts about whether we can continue to work within our regular constitutional understandings of a separation of powers, including the supreme role given to parliament – as accountable to the public – in our governing arrangements. The Brexit process itself constituted a recent episode in British history as to where we believe democratic and accountable decision-making should reside within our political system. At the heart of the concern in the pandemic has been that the electorate has been living under some of the UK’s most restrictive peacetime law and policy, combined with significant increases in public spending, but in which public and parliamentary accountability for those decisions has been eroded so that little (if any) control has been genuinely exerted over the executive. Again, the absence of scrutiny and accountability in the devising of net-zero policies through the partly-remote, arm’s-length independence powers enjoyed by the Climate Change Committee (CCC) – established under the Climate Change Act 2008 – is also reflected in the currently unworkable and eye-wateringly expensive climate change policies advocated by government. Ministers repeated deference to the advice coming from specialist bodies, including unclassified expert committees, has masked the inappropriate passing of the

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<sup>1</sup> ‘Cabinet Office key to strengthening oversight of arm's-length bodies’, <https://committees.parliament.uk/committee/127/public-accounts-committee/news/98443/cabinet-office-key-to-strengthening-oversight-of-armslength-bodies/>  
Public Accounts Committee, ‘Cabinet Office key to strengthening oversight of arm’s-length bodies’, 21 October 2016, <https://committees.parliament.uk/committee/127/public-accounts-committee/news/98443/cabinet-office-key-to-strengthening-oversight-of-armslength-bodies/>

<sup>2</sup> Cabinet Office, ‘Classification Of Public Bodies: Guidance For Departments’, Public Bodies Handbook – Part 1, 27 April 2016, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/519571/Classification-of-Public\\_Bodies-Guidance-for-Departments.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/519571/Classification-of-Public_Bodies-Guidance-for-Departments.pdf)

ownership of trade-offs that only political decision-making could provide. Democratic and parliamentary accountability should therefore be a leading consideration, not an inconvenience to the executive.

4. When presented with the rise of opaque and secretive elaborate networks in which ministers at the apex of the system are being replaced by complex and overlapping arrangements – some 295 ALBs close to government, others operating at some distance from ministerial control – our central question should not only be whether they can deliver their assigned policy brief but whether we can allow the elaborate service networks and independent public bodies to operate while insulated from electorally-authorized sources of authority.
5. The danger is that unaccountable bodies emerge to constitute an unwieldy executive power which can restrict, rather than bolster, public and parliamentary accountability. Public bodies which do not generally exercise ‘governmental power’ can have a major impact on policy decision-making. This has the habit of conflicting powers in the UK context since major political decisions should be taken by politicians as accountable representatives, not by judges or by public bodies which can either be insulated or far removed from ministerial control. We have evolved this Westminster system simply because MPs are elected as representatives, they are removable at the ballot box and are accountable to Parliament throughout their tenure and ultimately to their electors.

#### **Arm’s length bodies – working remotely from electorally authorised sources of authority**

6. Within that frequently uneasy context of various ALBs operating at some distance from electorally-authorized sources of authority, the Cabinet Office is confronted with three categories of ALBs: Executive Agency, Non-Departmental Public Body (NDPB), and Non-Ministerial Department (NMD) – and as at 31 March 2019, they include 295 ALBs, 39 executive agencies and 235 NDPBs and 20 NMDs.
7. Over the last 30 years, we have witnessed a dramatic change in the specific use of executive agencies.<sup>3</sup> They are a distinct type of semi-autonomous public bodies which now dominate the structure of central government. It was a model recommended by Sir Robin Ibbs in a 1988 review of the civil service. The objective of the review was to improve the management and delivery of government services while reducing the perceived monolithic elements of the civil service with its desire for centrally set rules and a risk averse culture.
8. Few would have predicted back then that while some greater expediency had been achieved, the civil service traditions of risk-aversion and a wariness of engaging with industry would be so widely exported across government and into the ALBs. Nothing

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<sup>3</sup> James, O. Moseley, A., Petrovsky, N. and Boyne, G., ‘Agencification in the UK’, in Verhoest K., van Thiel S., Bouckaert G. and Laegreid P., ‘Government Agencies in Europe and Beyond: Practices and Lessons from 30 Countries’, Hampshire: Palgrave Macmillan. 2011, <https://socialsciences.exeter.ac.uk/media/universityofexeter/collegeofsocialsciencesandinternationalstudies/politics/projects/executive/Chaptersix.pdf>

could be clearer from the presentation of a decarbonisation policy through to the issuing of Covid-regulations that the meaningful sense of public and parliamentary accountability has been drastically eroded as the electorate are rarely considered as anything but 'end users' of a pre-formed, undebatable policy or service. By focusing on the role of ALBs during the pandemic, we find there is a need for caution in understanding the long-term democratic consequences of ALBs being used to decide some health policies.

9. A great deal of attention is directed towards the varying degrees of 'independence' of the various ALBs but this separation can also have highly problematic consequences. Ministers are able to relegate highly contested issues into so-called 'independent' bodies, which in turn can drastically reduce accountability to parliament and the public, including their own responsibility to form a political judgement. Moreover, the bodies may claim 'independence' but from whom? The broad trend reflected in the NAO report of 2016 is largely focused on how departments manage the relationship with ALBs, but rarely are questions asked of their independence from narrow sources of external advice, or membership lists formed around leading 'groupthink' narratives.
10. The Public Administration Committee (PAC) appointed by the House of Commons itself described over seven years ago how "*Parliament has made some public bodies accountable to Parliament rather than government. These arrangements are variable and inconsistent. Not enough up-to-date information is available. Lines of accountability need to be clarified and in some cases altered.*"<sup>4</sup> Can we now claim to have reached a point where the lines of accountability have been clarified?

### **Do advisory NDPBs hold the solution to public accountability?**

11. The general proliferation of ALBs in the UK and many other democracies has posed a real and genuine challenge to accountability and transparency. If many other advisory councils and bodies are enabled to operate as advisory NDPBs, sponsored by the responsible Department, we should consider why the enhanced roles of Scientific Advisory Group for Emergencies (SAGE) and the New and Emerging Respiratory Virus Threats Advisory Group (NERVTAG) could not also occupy a similar position, albeit made more directly accountable to the public and parliament. After all, NDPBs have a role in the process of national government but are not part of a government department. They operate at arm's length from ministers, though a minister will be responsible to Parliament for the performance of the NDPBs in their departments.<sup>5</sup>

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<sup>4</sup> Public Administration Committee, 'First Report: Who's accountable? Relationships between Government and arm's-length bodies', 4 November 2014,

<https://publications.parliament.uk/pa/cm201415/cmselect/cmpubadm/110/11012.htm>

<sup>5</sup> 'The Arms Length Body (ALB) landscape at a glance',

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/902991/Public\\_Bodies\\_2019\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902991/Public_Bodies_2019_2020.pdf)

12. If comparisons between SAGE were made with the Advisory Council on the Misuse of Drugs (ACMD), then under that arrangement of an NDPB with advisory competence, the Department usually sets the strategic framework, advice is impartial and apolitical, with the responsible minister being accountable to Parliament. That does not fit neatly with how SAGE or NERVTAG are working during the pandemic since members of those virus-specific groups gave views to those specialist groups in addition to independent interviews to the media on their own opinions. Neither could the advice they were called upon to provide be classified as apolitical – it was by its very nature political since it all alluded to (if not directly) the scale of social restrictions people must follow in their homes, schools or in social gatherings with other fellow citizens. Neither did government ministers then approach that community of scientists as an NDPB with advisory functions – instead becoming a tool for governing, rather than a tool for advice. However, it should be further considered that the SAGE structure, along with other scientific public bodies, should begin to migrate towards a model in which they are held to account as advisory NDPBs but with the proviso, that, in the twenty-first century, they should also be made more directly accountable to parliament and the public, not merely to ministers. Why could such bodies not invite a vastly expanded panel of lay members – from retired GPs through to former parish chairpersons to finance managers – to serve on their boards in order to respond to particular policies or guidance in the documentation presented? Since they would not be a member of the organisation and offer a sense of scrutiny more closely aligned to the public interest, they would bring an outside, independent and more public-focused perspective to enhance governance.
13. The issue of public accountability is central, particularly given that the Public Administration Committee (PAC) concluded in November 2014 of ALBs, *'As in meetings of local authorities, members of the public should have the right to film, blog and tweet during public meetings of arm's-length bodies. Ministers in sponsor departments should hold public bodies to account for failing to hold public meetings or publishing the minutes of their meetings, and provide an explanation of how this is being addressed in departmental annual reports.'*<sup>6</sup> This sense of ministerial and public accountability can be yet further buttressed by parliament so that MPs and sub-select committees (as suggested below) should hold public bodies to account for failing to hold public meetings or publishing the minutes of their meetings, and call for an explanation of how this is being addressed or rectified via committee proceedings.

### **Can the narrow remits of ALBs reconcile scientific, social, economic and political realities?**

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<sup>6</sup> Public Administration Committee, 'First Report: Who's accountable? Relationships between Government and arm's-length bodies', 4 November 2014, <https://publications.parliament.uk/pa/cm201415/cmselect/cmpublicadm/110/11002.htm>

14. The pandemic also raised questions as to how ALBs need to be freed from their narrow remit and designed to combine the different strands of health and economic analysis into a feasible strategy. The Treasury Committee made clear in their February report that economists should work together with epidemiologists and health experts to make decisions on social restrictions, and that the output of this work should be made public. It is not clear if this ever happened. They recommended a more multi-disciplinary approach to examine the health and economic costs of social restrictions – and urged that the Government should put more information in the public domain as to how economic and health factors have been taken into consideration regarding Government decisions on social restrictions.<sup>7</sup> Again, the recommendation was of vital importance but little evidence has been produced to suggest any reform in this area.
15. Deep within ALB arrangements, there is a strong tendency towards ‘groupthink’, namely, the adoption of a singular view or policy not wholly based on objective interpretation of the economic, social and health realities. The consensus of the ‘in group’ can result in the need to approach the views of anyone who questions the consensus as lacking merit or team spirit. It can have disturbing and poor outcomes. Putting aside personalities, the striking feature of such thinking is that it occurs when a group of individuals within an institution have formed a consensus without genuine critical reasoning or evaluation of the consequences or alternatives, including ignoring other relevant information. While not many would doubt the efforts of experts and members to strive for unanimity on a policy during a pandemic, they would question why this impulse might then automatically override any motivation to realistically appraise alternative evidence and courses of action. Important but contradictory data on healthcare, economic or social often appears to have been set aside.
16. In setting up the various committees and public bodies during the pandemic, which in ordinary times would have fallen under the functions of ALBs, it is ultimately a question for the Cabinet Office as to why it should create an ALB that combines the different strands of analysis together into a feasible strategy. It remains the work of the Cabinet Office to ensure that the set of Covid-19 cabinet committees is provided with an institutional framework that integrates health, social, economic and other advice in coordinating the response to the pandemic.<sup>8</sup> There has been an avoidance by institutions of taking responsibility to integrate or synthesise the different strands of analysis together to create a feasible strategy and form an overall judgement. The lines of responsibility and accountability must be clarified by the Cabinet Office.

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<sup>7</sup> House of Commons Treasury Committee, ‘Economic impact of coronavirus: gaps in support and economic analysis’, Eleventh Report of Session 2019–21, 10 February 2021,

<https://committees.parliament.uk/publications/4703/documents/47210/default/>

<sup>8</sup> Tom Sasse, Dr Catherine Haddon and Alex Nice, ‘Science advice in a crisis’, Institute for Government, December 2020, [https://www.instituteforgovernment.org.uk/sites/default/files/publications/science-advice-crisis\\_0.pdf](https://www.instituteforgovernment.org.uk/sites/default/files/publications/science-advice-crisis_0.pdf)

17. In considering the future design of ALBs, it is essential to clarify the responsibilities for decision-making and accountability because the Covid-19 government decision-making process to many citizens appears inadequately scrutinised and can become subject to a preoccupation with insulated expertise within 'arm's-length' government bodies. The role of uncategorised, free-floating committees, part-governmental in its hierarchy, part-NDPB in its actions, took on a mode of functioning which fell well outside the ordinary avenues of accountability to parliament, and is therefore of concern to the public. Major political decisions which were multi-faceted by nature – including on the economic and social costs associated with pandemic measures – should have been made with a far greater parliamentary role in decision-making and debates.
18. As specified in earlier evidence (ILG0013, June 2021), if we are to inquire into the coordination between departments and ALBs that any future governments must consider, then advisory groups to the government should not be granted 'a representational monopoly' within those networks. In designing ALBs, some caution needs to be shown as to why scientific groups of advisers in the pandemic were granted such broad powers beyond providing advice and scrutiny. Ministers repeatedly stressed their deference to the advice coming from SAGE, NERVTAG and the Scientific Pandemic Influenza Group on Modelling (SPI-M). Early modelling projection studies were used via those ad hoc groups to persuade the government to overhaul its approach to Covid-19 and then impose tougher lockdown measures to contain the virus, beyond concerns for society living with those measures. The increasing concern for the insulation of expertise from public accountability will only grow worse now that SAGE's original functions have been partially integrated into a conglomeration of executive agencies formed around the Joint Biosecurity Centre (JBC) and UK Health Security Agency (UKHSA).
19. A central concern from the very beginning of the pandemic had often been the lack of transparency of the membership of bodies and of the scientific advice being provided by those groupings to government ministers. The Department of Health and Social Care (DHSC) was faced with immense public concern resulting from the delays in publishing SAGE information and the absence of minutes from SAGE meetings. This was also followed by the absence of accountability in subsequent information provided in the setting up and the ongoing proceedings of the Joint Biosecurity Centre.
20. Parliament is there to hold the government to account and represent the people. As a matter of principle, parliament holds the executive to account by challenging its policies and actions, and enables ministers and senior officials to be held accountable publicly for their decisions. The primary responsibility for scrutiny of the executive rests with the House of Commons, as the elected chamber, with MPs put there by the electorate. In the House, why can each select committee not assign a sub-select committee to scrutinise and hold to account more systematically the

membership lists, activities and purposes of each public body? There may be critics who suggest it may generate some additional burdens or cost to parliament, but the entire challenge to parliament results from an advanced administrative bureaucracy vastly outsizing a comparatively minimalist system of parliamentary and public accountability. The solution may lie with the House of Lords' EU Committee structure which is made up of six committees: a 19-strong Select Committee, appointed by the House of Lords, and five sub-committees appointed by the Select Committee. The sub-committees conduct inquiries looking at major issues of the day and scrutinise EU proposals in detail in specific areas: EU Environment Sub-Committee, EU Goods Sub-Committee, International Agreements Sub-Committee, EU Security and Justice Sub-Committee and the EU Services Sub-Committee. In a similar fashion, why can't all the various ALBs report regularly, directly, and more systematically into a sub-Select Committee within the House of Commons committee system to improve parliamentary accountability?

### **Executive agencies**

21. In that context, the UK Health Security Agency (UKHSA) has now been set up as an executive agency, sponsored by the Department of Health and Social Care (DHSC). The Joint Biosecurity Centre (JBC) is part of the UKHSA and is an integral part of the NHS Test and Trace service within the DHSC. Working in partnership with Public Health England (PHE), it is viewed as an important element of an evolving and strengthening health protection ecosystem in the UK. The JBC is currently accountable to Parliament through the Secretary of State for Health and Social Care and the Minister for Care, but why not make its leading officials directly accountable to MPs? If, in the context of executive agencies, the department sets policy, and only the minister is accountable to Parliament, why should that formula remain? Ministers need to be given the tools to support their decisions, so why not involve parliament more greatly so that the lead officials could be questioned or scrutinised by MPs within a select sub-committee to get more comprehensive answers to the major questions (both in an emergency crisis and non-emergency settings)?
22. If the decision to replace Public Health England (PHE) as an executive agency was based on early decisions in March 2020 to stop mass testing and tracing, then this is obviously a matter for wider policy discussion (on all sides) in a later Inquiry. However, in understanding the broader Westminster handling of the pandemic along with PHE in the crisis, reports have identified both the 'impulse to centralise' and a 'wariness of engaging with industry'.<sup>9</sup> We may also be faced with a situation in which PHE did not necessarily fall by the wayside because of poor performance but more fundamentally, because of blurred lines of accountability. The blurring of accountability can mean that although PHE is tasked with prioritising infectious

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<sup>9</sup> 'Covid-19 unmasks weaknesses of English public health agency', <https://www.ft.com/content/e149101a-1c93-4b0a-bc12-14ca8bf11b0e>

diseases, credible analysis suggests that it could arguably spread itself too thinly over a broad range of issues, often retreating into a comfort zone of discussing lifestyle issues.<sup>10</sup>

23. However, accountability can be improved upon. The role of decision-making in Covid restrictions means policy has often been created with significant ALB involvement but without any rigorous cost-benefit analysis, impact assessment or any wider commitment to genuine public consultation, and often outside the bounds of democratic accountability. Policies are being created by an insulated expertise within ALBs who are then given almost free rein to describe, direct and govern whole areas of policy.
24. In terms of PHE, parts of which will now be integrated into another agency in the form of the UKHSA, it may in time suffer similar fates because our crude experiments in so-called government efficiency have given way to a displacement of public accountability. Whilst executive power may be more easily bolstered in the short term if it avoids the watchful gaze and scrutiny of a vigilant electorate, media and parliament, that is to miss the fundamental democratic point about our institutions of state. They should be driven to deliver and held accountable to the people they serve. In the context of the pandemic, the historic trend towards ‘agencification’ has been strongly amplified by an overreliance on experts in distinct fields of policy – which can often have significant outcomes outside of its purview – and which are increasingly being viewed as only technical. In the policy-making process, the ALBs enable enlarged executives populated by governing elites to remove important (and sometimes contested) issues from wider public debate in society. At the very least, an urgent rebalancing is required in order to review how ALBs can in the future, or if at all, provide genuine accountability to the public in tandem with their ability to perform in line with set objectives.

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<sup>10</sup> Christopher Snowdon, ‘You Had One Job: The shortcomings of Public Health England and the World Health Organization during the Covid-19 pandemic’, IEA Briefing 14: September 2020, <https://iea.org.uk/publications/you-had-one-job-the-shortcomings-of-public-health-england-and-the-world-health-organization-during-the-covid-19-pandemic/>