

3.3 Report and Recommendation to the Executive Council

Examples of matters delegated by the Legislature in statutes to the Governor in Council are making regulations and making appointments to agencies, boards, and commissions (ABCs). Such matters are documented and submitted to the Executive Council office by the minister responsible in a Report and Recommendation to the Executive Council, commonly referred to as an R&R (See Appendix 3-C).

An R&R is required to effect an Order in Council (OIC, Appendix 3-F). The R&R should be prepared by the department officials who are familiar with the subject matter and understand the legislation being relied upon for authority to recommend a particular course of action to the Executive Council. Almost always, there must be legislative authority cited in the R&R for the action being recommended; only rarely will there be some precedent for the use of a prerogative power or authority.

The completed R&R must be approved by the department solicitor as to form and legal authority following corporate approval by the department. Any additional legal schedules and any other legal forms should also be drafted by the solicitor with support of department staff.

Report and Recommendation Requesting Regulations

The Registrar of Regulations will sign the R&R approving the regulations if they are in the form required by the registrar (to ensure consistent drafting form for regulations.)

The registrar returns the regulations to the department. The solicitor, on behalf of the Minister of Justice, will sign the R&R to approve the form and to approve statutory authority being relied upon in requesting the Executive Council and the Governor in Council to act.

The deputy head will initial the R&R next to his or her name on the first page of the document, signifying deputy head approval for the proposal to move forward to the minister responsible.

The minister will sign and date the R&R in the spaces provided on the last page of the R&R. Supporting documentation must be prepared and attached to the R&R. At this point the R&R is ready to leave the submitting department and be forwarded to Executive Council Operations, TPB. (See Appendix 3-H, How Regulations are Prepared.)

SUPPORTING DOCUMENTS

- Draft regulations
- Regulations Analysis Form (Appendix 3-I)
- Regulations (Red Tape Reduction) Criteria Checklist (Appendix 3-J)
- Briefing Note (Appendix 3-K)
- Communications Plan (Appendix 3-B)

Note: All government information is subject to the *Freedom of Information and Protection of Privacy (FOIPOP) Act* (Appendix 3-L).

Regulations Analysis Form

A Regulations Analysis Form (Appendix 3-I) must accompany the R&R when it pertains to adding, amending, or repealing regulations. This form compares the proposed regulations to the current regulations section by section. The Regulations Analysis Form provides Executive Council with the before and after implications of the amendments.

Regulations (Red Tape Reduction) Criteria Checklist

For amendments to regulations or to propose new regulations, the Regulations (Red Tape Reduction) Criteria Checklist (Appendix 3-J) must accompany the draft regulations and be attached to the Regulation Analysis Form. The checklist is designed as a tool to assist departments as they are developing new regulations and for the ongoing review of regulations that impact business. It should cause departments to conduct rigorous policy assessment that includes consideration of the impacts and benefits of the proposal. The criteria checklist is not required for minor changes that do not reflect policy changes, e.g., housekeeping measures.

Briefing Note

Briefing notes (Appendix 3-K) are intended to provide a quick overview of the proposal for Executive Council. The briefing notes, and any other non-legal forms or schedules, are prepared by department staff.

Communications Plan

Communications plans (Appendix 3-B) are required with all proposals to Executive Council and Treasury and Policy Board (TPB). The communications plan is intended to provide ministers with information on the communications impact of the request to be considered. The communications plan is prepared by

department communications staff based on discussions with department staff and a review of the draft R& R. The communications plan requires approval by the appropriate Communications Nova Scotia (CNS) managing director, the deputy head, and minister.

Freedom of Information and Protection of Privacy (FOIPOP)

All government information is subject to the *Freedom of Information and Protection of Privacy (FOIPOP) Act*. There are some limited and specified exemptions to the rights of access (see Appendix 3-L). Care must be taken in the way in which information is formatted. Background sections of Executive Council documents should contain factual information only. They should not contain information that would a) reveal the substance of deliberations of Executive Council or any of its committees; and/ or b) reveal advice and recommendations.

Report and Recommendation/Ministerial Appointment Form Requesting an Appointment to an Agency, Board, or Commission (ABC)

An R&R (Appendix 3-C) or Ministerial Appointment form (Appendix 3-M), requesting an appointment requiring the approval of the House of Assembly Standing Committee on Human Resources, must have attached to it a completed Form “A” (Appendix 3-N) and a Standing Committee on Human Resources Guidelines Form (Appendix 3-O). As always, a briefing note (Appendix 3-K) and a communication plan (Appendix 3-B) are also required.

All R&Rs and Ministerial Appointment forms must be signed by the minister responsible and submitted to Executive Council office for approval. All pertinent circumstances that make the request necessary should be recorded in the R&R or Ministerial Appointment form. This includes the name and address of the potential appointee and whether the appointee was nominated by a particular stakeholder group or is to be appointed due to his/her civil service position, etc. It also includes whether the appointment is a re-appointment, the relevant dates regarding the expiry of the previous appointment, the term of the new appointment, and the rationale for the length of term.

In the case of adjudicative boards, it should indicate that the appointee has been screened by the department’s advisory committee on adjudicative boards, and only the short list of the most qualified applicants was considered by the minister.

The third section of the R&R should contain the recommendation for the Governor in Council, leading to the exact form of Order being requested. For example:

“The Governor in Council, on the report and recommendation of the Minister of _____, dated _____, 20____, and pursuant to Section _____ of Chapter _____, Revised Statutes of Nova Scotia, 1989, the _____ Act, is pleased to... (insert appropriate wording for appointment requested, including name, address, term, remuneration, and any other relevant information)...effective _____, 20____”.

If a particular effective date is requested, it should be included in the form of Order. If the effective date is to be the date of the Order, the effective date should be noted as “date of Order.”

SUPPORTING DOCUMENTS

- Form “A” (Appendix 3-N)
- Standing Committee on Human Resources Guidelines (Appendix 3-O)
- Briefing Note (Appendix 3-K)
- Communications Plan (Appendix 3-B)
- applicants cover letter and resume

Note: All government information is subject to the *Freedom of Information and Protection of Privacy (FOIPOP) Act* (Appendix 3-L).

Form “A”

The Form “A” (Appendix 3-N) must be submitted with an R&R or Ministerial Appointment for appointments to ABCs that must be considered by the House of Assembly Standing Committee on Human Resources. This form provides background information on the potential appointee and the ABC. According to the Rules and Forms of Procedure of the House of Assembly, appointments to ABCs and ministerial appointments are reviewed by the Human Resources Committee with some exceptions as described in the Rules.

Standing Committee on Human Resources Guidelines

For those appointments that must be approved by the House of Assembly Standing Committee on Human Resources, the Human Resources Guidelines (Appendix 3-O) must be submitted. The form must be fully completed and “n/a” cannot be used as an answer to any question. All applications must include a resume.

When an appointment requiring approval of the House of Assembly Standing Committee on Human Resources is approved by Executive Council, the Clerk of the Executive Council signs and dates the Form “A” indicating Executive Council Approval and forwards the Form “A,” the Human Resources Guidelines form, and applicant’s cover letter and resume to the House of Assembly Standing Committee on Human Resources. The standing committee has jurisdiction to approve or not approve the candidate(s) recommended for appointment.

When the standing committee approves a candidate for appointment, the chair of the standing committee signs Form “A” indicating approval and returns all documents to the Clerk of the Executive Council. The clerk will then (a) prepare the Order requested by the R&R and process it for signature by the Lieutenant Governor, or (b) the Ministerial Appointment is complete and a Ministerial Order number is assigned.

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Communications Plan

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Report and Recommendation Requesting Approval for a Personal Services Contract for Senior Official

Subsection 15(2) of the *Public Service Act* requires Governor in Council (GIC) or TPB approval of terms and conditions of all personal services contracts. TPB and the Public Service Commission are preparing regulations under section 15(2) of the *Public Service Act* to clarify the approval process. Until these regulations are in place, a two-step approval process is required for personal services contracts for senior officials with a base salary of \$75,000 or greater. This also applies to renewals or extensions of any existing contracts.

Step 1

If a department, office, or Crown corporation wishes to enter into a personal services contract for a senior official, Executive Council must approve the position before it is posted, advertised, or the interview and selection process is initiated. (Requires a Memorandum to Executive Council and supporting documentation).

Step 2

If approval is granted, before entering into any agreement, the proposed contract must be submitted to Executive Council or TPB via Memorandum to Executive Council (Appendix D) with supporting documentation for formal approval of the final contract. (For Governor in Council approval, an R&R and supporting documentation including the proposed contract is required).

SUPPORTING DOCUMENTS

- Briefing Note (Appendix 3-K)
- Communications Plan (Appendix 3-B)
- Proposed Personal Services Contract (Step 2)

Note: All government information is subject to the *Freedom of Information and Protection of Privacy (FOIPOP) Act* (Appendix 3-L).

Briefing Note

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Communications Plan

Communications plans (Appendix 3-B) are required with all proposals to Executive Council and TPB. The communications plan is intended to provide ministers with

information on the communications impact of the request to be considered. The communications plan is prepared by department communications staff based on discussions with department staff and a review of the draft R&R. The communications plan requires approval by the appropriate CNS managing director, deputy head, and minister.

Proposed Personal Services Contract

The proposed contract should specify the purpose of the personal services contract, expected deliverables, as well as the terms and conditions of the contract.

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Enquiries

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