

# Governance Review PAB Issues

## Contents

1.	Introduction .....	1
2.	What are the issues?.....	1
3.	PAB Title.....	2
4.	What is Policy? .....	2
5.	PAB Work Programme .....	4
6.	Conflicts of Interest and Code of Conduct .....	4
6.1	Conflicts of Interest .....	5
6.2	Code of Conduct.....	5
7.	Policy Development Process (PDP) .....	6
7.1	The current PDP position .....	6
7.2	Proposals.....	8
7.3	Proposed policy development flow.....	9
7.4	Summary.....	12
8.	The PAB Chair.....	13
8.1	What are the existing problems?.....	13
8.2	Suggested Changes for PAB Consideration .....	14

## 1. Introduction

The Policy Advisory Board is a group representing the UK Internet community, comprised of representatives from the Internet industry and key stakeholder groups such as Government, business, intellectual property and academia.

The Policy Advisory Board gives non-binding policy advice to the Board of directors, for implementation by the Executive. It helps ensure that we remain in tune with the ethos and needs of the UK local Internet Community and can see the bigger policy questions in the round, rather than just from the internal perspective. Policy is a disproportionately important area for us, as we do not have profit as our sole purpose and our mission is to respond to the needs of our customers and stakeholders.

The Governance review discussions have raised a number of issues relating to the Policy Advisory Board (PAB). A summary of those issues was shared with the PAB in January 2006. This paper explores the issues in greater depth and makes some recommendations for consideration and discussion by the PAB.

## 2. What are the issues?

The issues identified as a result of the Governance review are as follows:

- The 'board' element of the Policy Advisory Board title causes some confusion - have we got the title of the PAB right?
- What is policy, what is operational? – should we define these terms and also should we have a schedule of matters reserved for the PAB?
- Should the PAB work programme be re-instated?
- Should the PAB have a register of interests and/or a code of conduct?

- Should the policy development process be faster? When we consult as part of the policy development process, is Nominet consulting stakeholders and the PAB (as representative of stakeholders) or is the PAB consulting?
- Can we improve the way we elect the Chair of the PAB and how the chair hands over to a new chair?

The following sections explore each of these areas in order that the PAB can consider them further.

### **3. PAB Title**

Whilst the ‘Policy’ and ‘Advisory’ elements of the title of the PAB seem to be clear, the ‘Board’ element has resulted in some confusion.

For example, prospective candidates for the PAB have queried whether they would take on any Board/Director responsibilities when elected, particularly in the light of the increasing responsibilities of legal company Directors in the UK. Some members and others mistakenly view the PAB as being the Board of Nominet and suggestions for operational improvements and also complaints are sometimes sent to the PAB, which then needs to re-direct them to either the Board or the Executive team. In addition, some members remain unclear about the role of the PAB and communication and clarification of this is complicated by the inclusion of the ‘Board’ element of the title.

To address this issue, the title of the PAB could be changed. Possible changes suggested include ‘Committee’, ‘Panel’ or ‘Group’. Of these options, it is felt that ‘Committee’ might better reflect the formal status and stature better than the others.

The PAB is asked to consider this issue further and the proposal that the PAB title be revised to Policy Advisory Committee.

### **4. What is Policy?**

#### **4.1 Background**

The PAB is viewed by Nominet as being the main vehicle for receiving policy feedback and suggestions from the Membership and other stakeholders, developing relevant policy and referring agreed policy proposals to the Board for their consideration.

Over the past few years, there have been some attempts to clarify the position on ‘What is Policy?’ While it has always been maintained that the PAB should advise on policy only and not operational, governance or other matters, defining what is ‘policy’ has not been straightforward. In some areas of policy, it is clear that the PAB does not have a responsibility. For example, the Human Resource policies of Nominet are set by the Management Team and the Board. In other cases, the role of the PAB may be less clear. For example, if an issue has strategic, policy and operational aspects.

If a definition of ‘policy’ can be agreed upon, this will have the benefit of making the PAB role clearer to members, stakeholders and others. In addition, it would assist in the policy development process.

#### **4.2 Defining Policy**

Policy is defined in many different ways. Some general examples are:

“ A course or principle of action adopted or proposed by an organisation or individual” (Oxford English Dictionary)

“A plan or course of action, as of a government, political party, or business, intended to influence and determine decisions, actions, and other matters.” (youthink.worldbank.org)

“A statement that directs present and future decisions.” (Illinois State University)

“A written principle or rule to guide decision-making.” (Clemson University, South Carolina)

These definitions are helpful in providing guidance in relation to what can constitute ‘policy’ but also underlines the elusive nature of the term ‘policy’ since whilst there are common themes there is no single clear definitive definition of policy. The difficulty is highlighted even further in that when we looked to government departments, other registries and organisations that had aspects in common with Nominet (and who ought to have such a definition), there was no useful definition of policy which could be found.

### 4.3 Nominet’s Definition of Policy

The work of the PAB over the past few years has been on various issues. On occasion, some of the advice has been operational advice while other advice has wholly policy based. It can be hard to separate the two. Here are some examples:

Issue	Advice/Recommendation	Comment: Policy/ Operational or Both
IDN March 2006	Nominet should introduce IDN as soon as possible with reasonable support following an Executive response and further discussion at PAB level.  Suggested use of DNAMES	Both – The first point is a guiding principal advising us to adopt IDN. The second point is on the technical implementation, which is in the operational arena.
Child Abuse Images May 2005	Cancellation for false contact details should be used quickly where information is received from a competent authority in relation to child abuse images and domain names.	Policy – The advice is clearly on the approach we should take.
Automaton Nameserver Check January 2005	The check on the TLD of nameserver records held in the register move from the zone file build process to the Automaton at the point of registration or modification and that any operation that fails this check at this point is prevented from completing and returns an appropriate error message.	Operational – The advice concerns technical implementation.
Domain Names registered to dissolved registrants November 2005	If a third party organisation can demonstrate established use of such a domain name, it is permitted to take over the name.	Policy - This is a good example of how policy and operational matters can be dealt with separately. The Executive submitted a paper that discussed both the policy and operational aspects of the issue and the

		PAB made a recommendation on the policy aspect only.
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In defining what we mean by policy we have looked at the various ways policy is defined and how this could fit into our corporate structure. With this in mind we would propose a definition of policy for the PAB consideration as:

To provide and advise on the non-operational guiding principles which inform the decision making process regarding the oversight of the .uk domain name registry.

#### **4.4 Matters Reserved for the PAB**

As part of the governance review, the Board developed a schedule of matters reserved for the Board. This document defines the role of the Board and lists which matters have to be decided by the Board and which cannot be delegated. It is proposed that a schedule of matters reserved for the PAB might also be helpful. This could draw on the definition of policy, clarify the role of the PAB and include areas that are not relevant to be included in the PAB rules. Some suggested headings and possible text is shown in Appendix A for discussion and further development by the PAB.

### **5. PAB Work Programme**

In the early days of the PAB, a work programme would be published each year. Members were involved in the development and discussion of the work programme at the AGM and member meetings. The work programme was helpful in planning the PAB schedule, ensuring that issues did not ‘fall off the radar’ and in managing stakeholder expectations regarding the work of the PAB.

The PAB is asked to consider the proposal that the work programme be re-instated and that a draft programme be compiled for consideration at the next PAB meeting. PAB members are asked to contribute suggestions of items for the programme to the PAB secretariat.

### **6. Conflicts of Interest and Code of Conduct**

The drivers for thinking about a process for dealing with conflicts of interest and the introduction of a Code of Conduct for PAB members are as follows:

- As Nominet moves towards strategies to implement our 10-year vision, this may involve PAB participation in confidential business development plans. Therefore, any PAB member’s conflicts with outside business interests may become more relevant than they have been so far.
- Our positioning as a neutral and impartial body suggests that we should seek to maintain public trust and confidence through professional conduct, transparency and accountability. Given the role and prominence of the PAB, it is important that PAB member conduct should be professional at all times and that there should be transparency as to the interests of those advising on the future policy directions of the company.
- The governance review has concentrated our thinking on how we can be effectively governed and directed for the future in a transparent and effective way. We have put a scheme in place for the Board, which consists of a register of interests, in order to comply with good practice standards as part of this governance process. It is natural that attention now turns to the PAB.

PAB members bring independence, outside expertise and perspectives to the Nominet policy process and offer their time as volunteers. It is therefore inevitable that members of the PAB will have interests and

sources of remuneration outside of Nominet. However, the members of the PAB have particular influence over the policy development process, and it is therefore important that the recommendations they make are made (and perceived to be made) for the right reasons, and not for personal reasons or benefit.

Equally, while members of the PAB are not Nominet staff, and do not control Nominet, they are associated with Nominet in the wider public perception, and their conduct can reflect on the PAB as a whole and on Nominet.

This section asks the PAB to consider these topics, and discuss the questions raised, with a view to asking the Executive to make first drafts of any policies or statements that may be required as a result of those discussions

## 6.1 Conflicts of Interest

The policy on conflicts of interest for the Board requires them to list in a register all significant interests, and also the interests of close family members. This can be an onerous requirement, but the Board felt it to be an appropriate one given the influence they have over the company and in order to comply with corporate governance best practice.

There are a number of questions that need answering when considering how the PAB should deal with conflicts of interest, including:

- Given that most PAB members will have outside interests, to what degree should PAB members have to declare them, either generally or for a specific issue?
- What sorts of interests should be declared?
- Should declarations be recorded on a register?
- If there is a register, should it be made available?
- If there is not going to be a register, how should declarations be recorded?
- Who should maintain the records of declarations made?
- Should the record be kept after someone leaves the PAB?
- Should declarations have to be made before being elected/appointed?
- Would the Board representatives on the PAB be excluded from the PAB rules on the basis they already declare interests in the Board register of interests?
- Would there be any sanctions for failure to declare?
- If there was an allegation that a PAB member had failed to declare an interest, and the PAB member denied this, could there be any further investigation, or should this operate entirely on trust?

## 6.2 Code of Conduct

The actions of PAB members, even when possibly acting outside their PAB activities, can reflect on the PAB or Nominet generally. For example, there have been situations where someone has emailed a PAB member because of their PAB membership, and whilst their response was made in an individual capacity, the recipient did not perceive this to be the case.

This raises the question of whether there could or should be a code of conduct for the PAB, and if there was, what it should contain. Questions to answer include:

- Who would set the code?
- What sort of conduct should be covered?
- How would the code distinguish between “PAB” and “not PAB” activity?
- Should the code contain any obligations of confidence or secrecy? If yes, how is this to be balanced with the need to keep the membership generally informed? If no, how is Nominet going to be able to tell the PAB about any confidential matters?

- Who would decide whether it had been breached?
- Could there be any appeal from that decision?
- How would the decisions be publicised (or kept secret)?
- How should it be enforced, and by whom?
- Would there be any sanctions for breaching it?

## **7. Policy Development Process (PDP)**

Nominet's process for the development of policy has grown in a piecemeal way over the years, with no firm rationale behind it. One effect of this is that policy development can be extremely slow – often taking over a year. This defeats one of the original aims of Nominet to be faster and more agile than the public sector. The current processes have meant that potentially important new policies are still under discussion whilst other registries have in the meantime been able to make and implement decisions on them. This will further reduce Nominet's effectiveness if it is allowed to continue.

This section briefly looks at the problems with the current process, and then proposes some new processes. These processes include changes to the way in which Nominet handles policy development internally. These elements of the plans are shown for clarity but will be subject to discussion and approval by the Board.

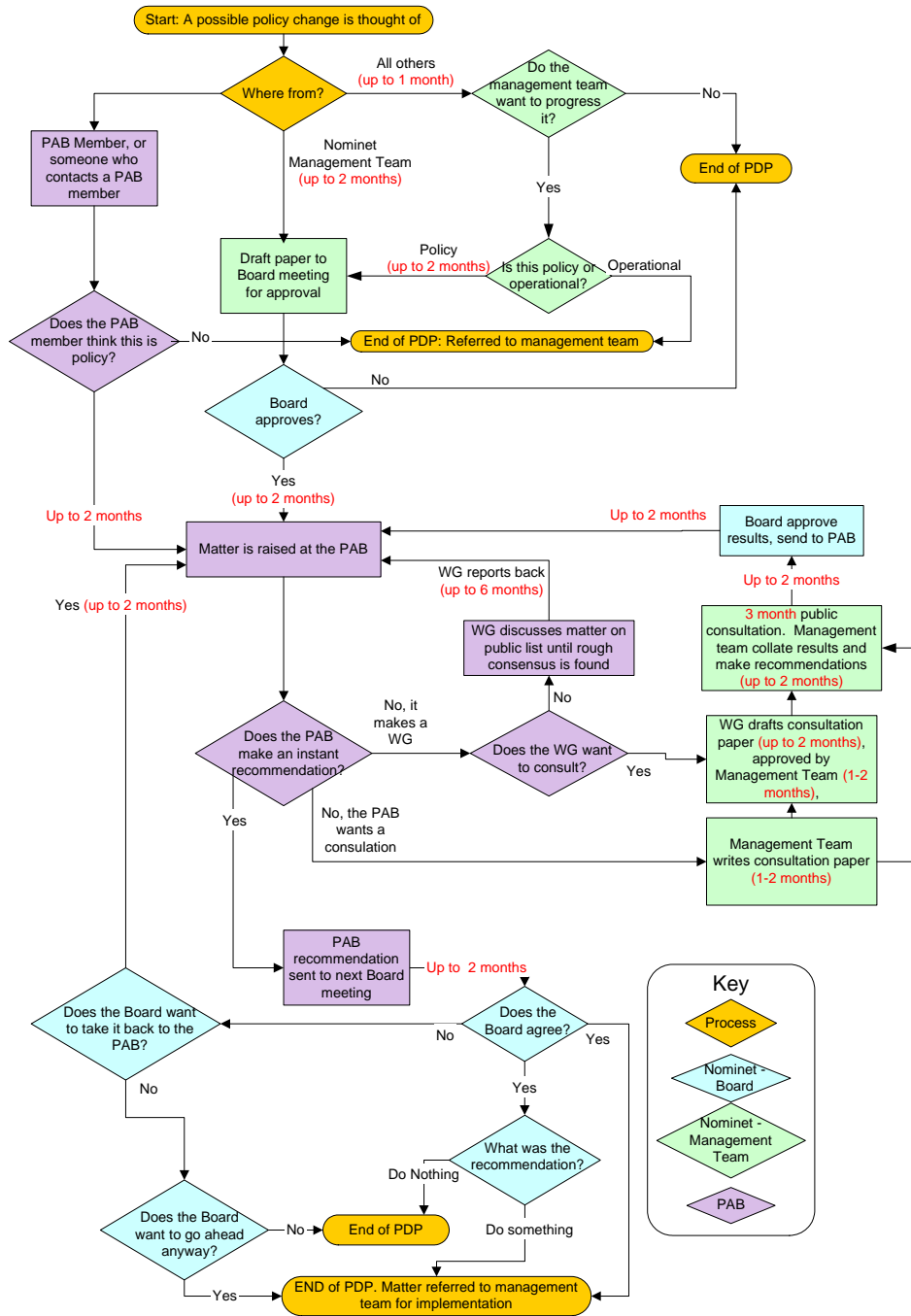
The main problems identified involve the handling of consultations and the time lost in some of the more complex policy “flows” – some of which are unintended consequences of the introduction of working groups.

This section recommends a number of changes to the policy development process and the PAB is requested to endorse its recommendations.

### **7.1 The current PDP position**

Our current policy development process was not designed from scratch, but has rather evolved over time. There have been attempts to improve the system, with the formalisation of consultations and the development of working groups, but the underlying concepts have remained fairly unchanged even though the industry and Nominet have changed considerably in the intervening years. We have also not provided supporting resources – partly driven by a desire not to interfere with the policy process, but this means that the development of policy on major issues can be in the hands of one voluntary PAB member who is trying to run a consultation or working group in their spare time with little support or resources to call upon.

The current system is summarised in the following flowchart.



This process leads to policy development times of anywhere between 6 months and 17 months.

### Elements of the Current System

**'Fast Track':** Where a matter is passed to Board (up to 2 months) who pass it to the PAB (up to 2 months). If PAB decides immediately, it is passed back to the Board (up to 2 months) and then, if the board agree, the process is over. This rarely happens. Total: up to 6 months.

**Working Group:** Where a matter is passed to Board and PAB (up to 4 months). PAB decides to create a working group (4 months) and the matter then returns to Nominet (2 months). Total: Up to 10 months.

**Public Consultation:** Matter goes to Board then PAB (up to 4 months). The PAB asks the PAB secretariat to run a consultation (which takes a month to write and a month to analyse, and lasts for 3 months). Board

then returns result to PAB (up to 2 months) who then return it to the Board (2 more). Total: Around 13 months.

*Working Group goes to Public Consultation:* As for Working Group, plus 7 months taken by consultation. Total: 17 months.

In each case, meeting schedules may mean that things can happen faster, but the closing dates for documents before a meeting sometimes means that things can wait for over two months before getting to a meeting, so this evens out.

In each case, a great deal of time can be lost in the “Is this policy?” stage, where ideas have to be passed around before becoming a formal policy idea. It is hoped that some of the suggestions below will also assist in reducing this stage.

## **7.2 Proposals**

### **7.2.1 General proposals**

There are a few general proposals to speed up all versions of the policy development process:

- Board approval of papers to go to PAB to be done on Board email list, rather than at meetings, saving time. (this has now been implemented)
- PAB meeting papers to be provided one week before meeting, making it easier to get to the next PAB meeting (and not having 2 month delay).
- All PAB WGs should have a deadline of completing their work within 4 months (i.e. be ready to report back 2 meetings after they were set up). This will require pro-active WG chairing and support from the secretariat.

### **7.2.2 Specific issues in relation to consultations**

There are a series of general problems in relation to the operation of consultations:

- It is unclear who “owns” a consultation - who writes the consultation paper, whether Nominet is collating the results in on its own behalf or as PAB secretariat, whether Nominet supports the questions in the paper, the degree to which Nominet is responsible for publicising and “promoting” the consultation and what the future steps from a consultation are.
- It is unclear how the consultation fits in with the wider process. With Nominet, the PAB, PAB subcommittees and PAB working groups all able to ask for a consultation – with no unified process to decide whether this step, which is long, often costly and labour intensive – is needed and/or the best option.
- In addition, there is no planning as to how consultations fit into other events – for example, the Raising Industry Standards consultation has been running at the same time as the EGM process, which can only have distracted from it.
- It is unclear whether a consultation can contain policy and operational points – generally they do, even if issued by the PAB, which blurs the line.

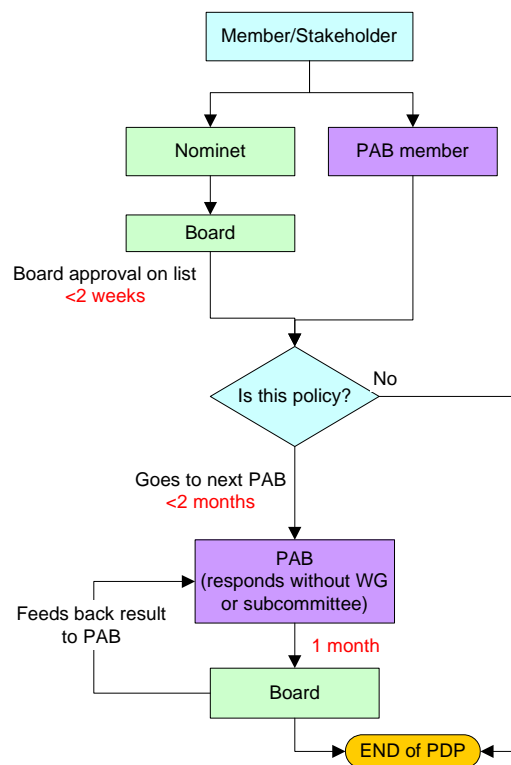
Consultations are clearly useful and valuable, but there is a risk that we reduce their effect by this treatment of them. It is therefore recommended that all consultations be Nominet consultations (as opposed to PAB, PAB subcommittee or PAB WG documents). The policy element of any consultation would be determined by the PAB, who might also wish to nominate a PAB member to be involved in the review of any draft consultation paper. Nominet may add to the policy elements being consulted upon any relevant operational matters for consultation – therefore a consultation can potentially contain both policy and operational matters. The PAB would contribute a PAB response to consultations at the same time as the public, and would remain able to suggest a public consultation. However, if the PAB suggested

a consultation, it would then be up to Nominet to issue it in its own capacity, rather than on behalf of the PAB. The effects of this are shown below.

### 7.3 Proposed policy development flow

Our suggestions can be split into three policy development “tracks” – short, medium and long. We show below these three tracks separately, and then together so that they can be fairly compared with the current version shown at the start of this paper.

The basic flow for the “short” version of policy development would be as follows (following the progression of an idea from a Member/Stakeholder onwards):

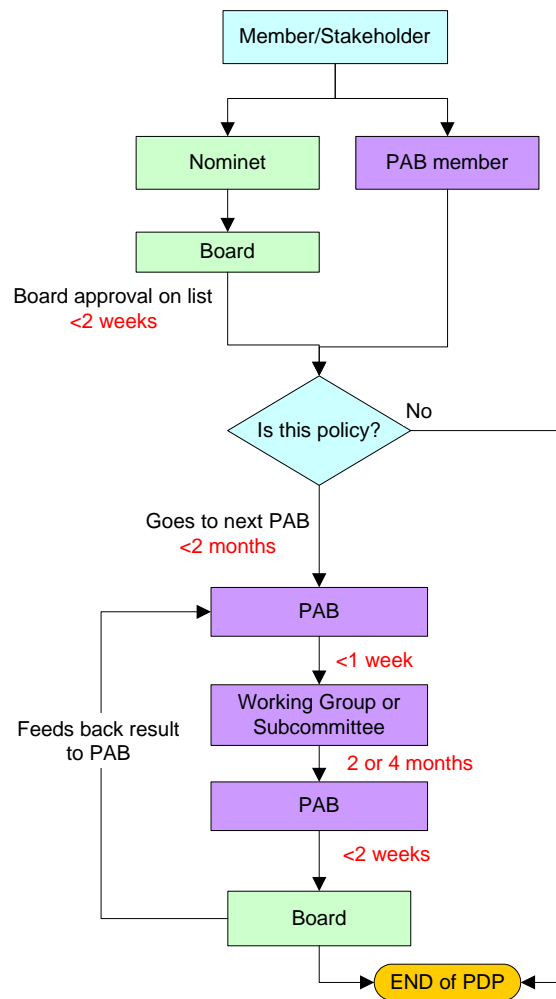


**Notes:**

1. The time taken to write a paper and get it to PAB is likely to be no more than 2 months, unless the paper cannot be written until a couple of days before meeting.
2. PAB response can be passed to Board on Board list and dealt within a month. Management team can then act more quickly.
3. If it is decided that the issue does not raise a policy matter, then it would be passed to the Executive for consideration.

Overall timescale is therefore 3 months.

The basis flow for “medium”, where a working group or sub-committee is chosen would be:

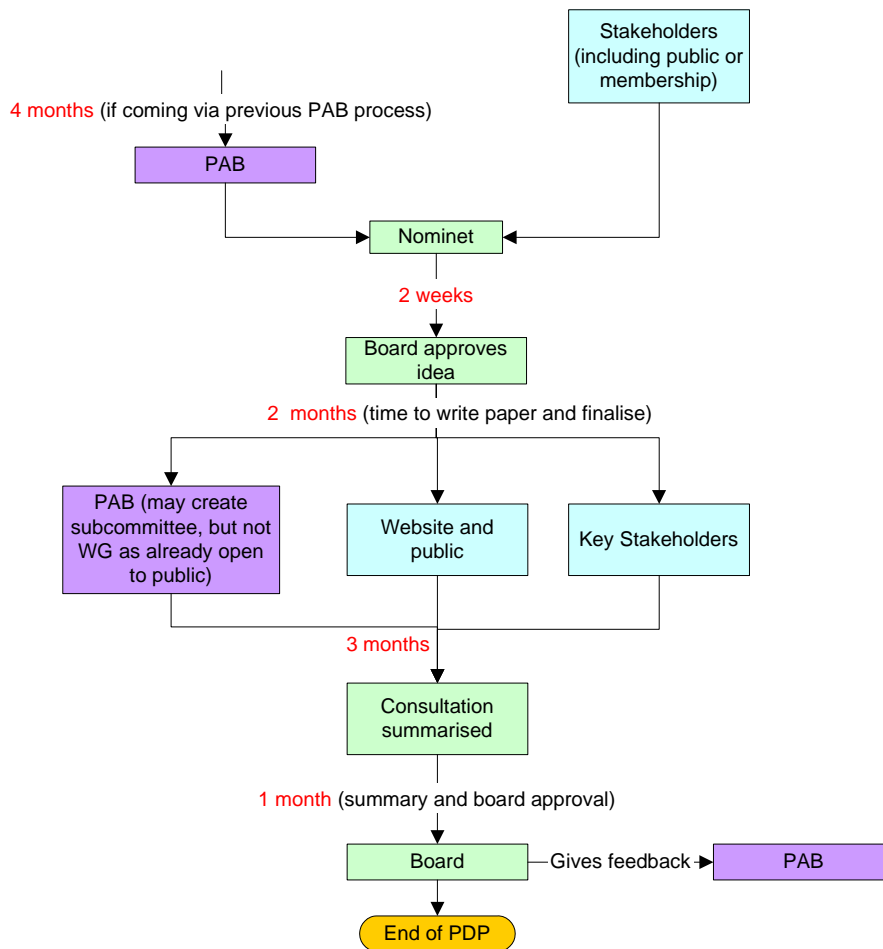


Notes, as before plus:

1. All PAB WGs or sub-committees must complete their work within 4 months (i.e. in order to report back to the PAB no later than 2 meetings after they were created).
2. WGs and subcommittees would not request a public consultation as such. Their recommendation to the PAB can be that there should be a public consultation, and the PAB can pass this to the Board. The Board may then run a Nominet public consultation. However, if this is a matter for consultation, it is hoped that Nominet would simply run one, rather than have to be told by the PAB.

Timings: 4 –6 months

If a Public Consultation is run (whether or not as the result of a PAB recommendation) the “long” version would be:

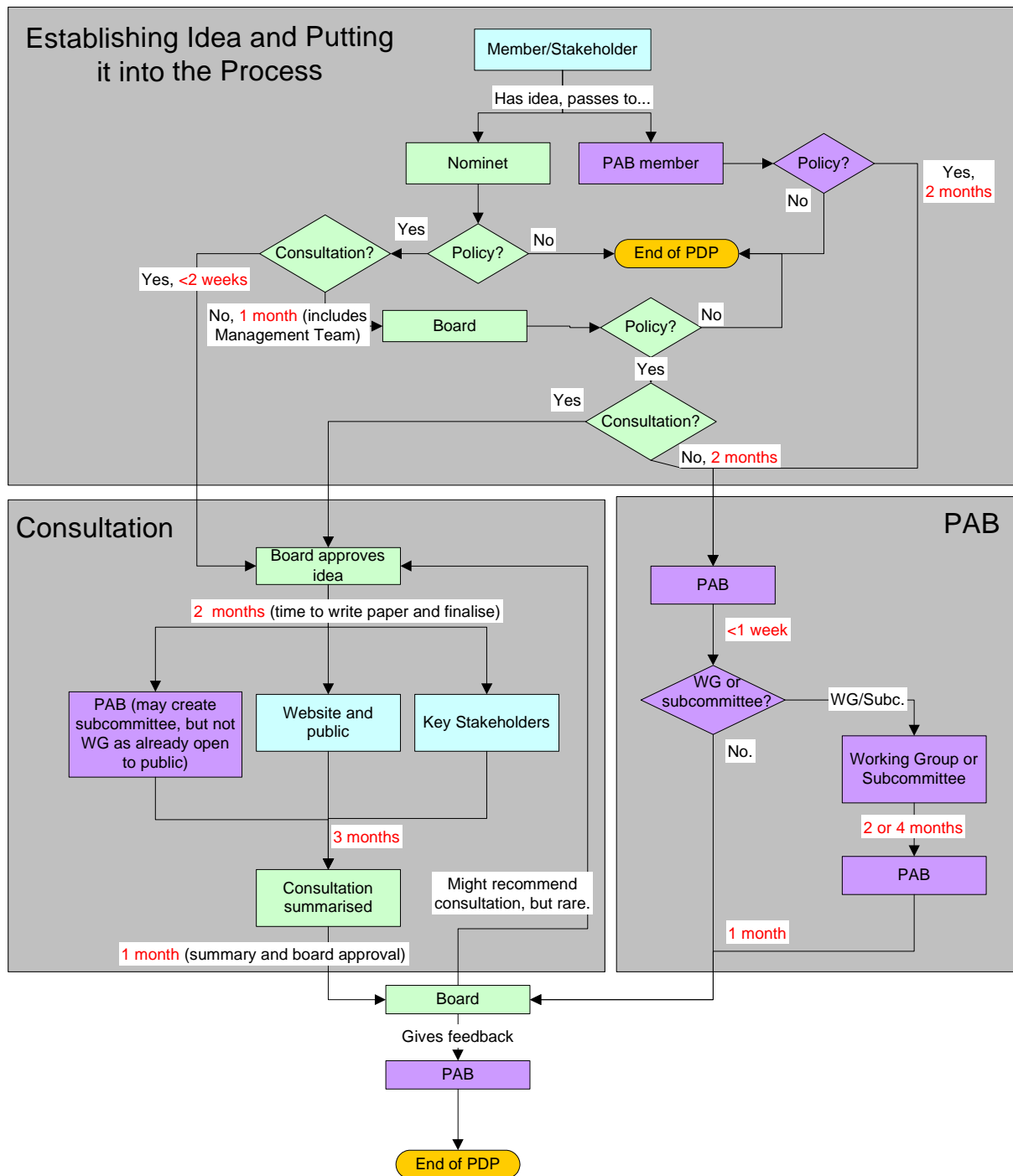


Notes, as before.

Timescales:

- Normally, around 6 -7 months.
- If, for some reason, a PAB process has happened first, but then it still needs to go to consultation: 10 -11 months.

Finally, putting these all together, so that they can be properly compared with the final system:



## 7.4 Summary

We propose that the processes above be adopted, to reduce policy development times, improve the efficiency of the policy development process and reduce the time and input required by chairs of working groups and subcommittees.

Overall what we propose is a clearer flow of policy development and clearer responsibilities within it, without taking away the key policy role of the PAB, which has been so valuable for so long.

We believe that these changes will allow policy development to move at a faster pace without excluding the PAB, stakeholders or public, and enable Nominet to regain its position as a responsive and agile company at the forefront of policy development and operational implementation.

## **8. The PAB Chair**

The role of the PAB Chair is one that has developed over time, as has the process by which a Chair is appointed. There are some problems with the way that the PAB Chair post is appointed including the timing of the appointment and the handover between chairs. These problems have mainly been identified by the current PAB Chairman. This section proposes changes to the process for the PAB to consider. If the PAB recommends changing the process, we will draft the necessary changes to the PAB rules for presentation at a later PAB meeting.

### **8.1 What are the existing problems?**

#### **8.1.1 Timing of appointment**

Currently, the appointment of a PAB Chair is the first item of business on the first PAB meeting each 'PAB Year' (i.e. in May just after the new members have been elected). It is handled before the discussion about which appointed members to invite (although, in practice they rarely change at this meeting).

This means that several of the potential candidates for the post have never sat through a PAB meeting before, so have no idea what format the meetings should take or what the role of PAB Chair involves. It also means that several of those on the PAB who are voting for the PAB Chair do not really know the candidates, their skills or their suitability for the post.

#### **8.1.2 Announcement of election**

The timing of the election is set by the PAB Rules, and so there is no call for nominations. Members of the PAB therefore turn up to the meeting without necessarily having fully considered whether they might like to stand for the role of PAB Chair or who they might like to support for the role.

#### **8.1.3 Taking control**

As soon as the result of the election for the PAB Chair is known, that person assumes the role of PAB Chair and chairs the rest of the meeting. This means that someone who may not have prepared for this role, and who may have had no formal induction to Nominet conducts the meeting.

#### **8.1.4 PAB Chair is 'always an elected member'**

Although not mandated by the PAB Rules, the role of PAB Chair has come to be seen by some as a job for an elected member. In reality, of the four PAB chairs, three have been elected members and one was an appointed member. The appointed members have a wide range of skills and knowledge to contribute, so this perceived convention is potentially damaging to the PAB.

#### **8.1.5 Handover**

There is very little hand-over between the outgoing Chair and the incoming appointee. This tends to mean that the incoming Chair spends part of their tenure learning the ropes, and since the appointment is only for a year (six meetings) this learning curve has a serious impact. This problem is most severe when the previous PAB Chair is leaving the PAB altogether, and is not available to contribute before or at meetings.

#### **8.1.6 Voting Process**

There is nothing in the PAB Rules to explain how the Chair is appointed. As this is a paid appointment, the process should perhaps be more formalised.

## **8.2 Suggested Changes for PAB Consideration**

### **8.2.1 Changing the appointment time**

The election for PAB Chair could be moved back in the PAB year from its current position in the May meeting to the September meeting in order to allow all members more time to get used to the PAB before having to consider whether to stand or to get to know potential chairs. If the PAB Chair is voted off the PAB part-way through his appointment the appointment of a new PAB Chair will have to take place early – however, it is hoped that this will be reasonably rare unless the PAB Chair is retiring and in that situation it is hoped that they would not have stood for election.

### **8.2.2 Call for nominations**

At the PAB meeting before the election (July), the current Chair should remind all members that the election is due at the next meeting and ask people willing to act as Chair to put their names forward to the PAB secretariat. The PAB secretariat will then announce to the PAB members via email the names that have been received, and remind members that they will be asked to vote at the next meeting.

### **8.2.3 Election and voting**

If any member will not be attending the next meeting, they may appoint any member of the PAB, or the PAB secretariat as their proxy and may specify how they wish to vote (including how they may wish to vote in any subsequent rounds). For simplicity, voting will be on a first-past the post basis, and one-member, one-vote. If no clear majority is achieved in the first round of voting, the lowest placed candidate drops out and another round of voting takes place.

### **8.2.4 Taking control**

The PAB Chair should take office for the meeting following his/her appointment. The outgoing PAB Chair can then assist the new PAB Chair to prepare for their first meeting.

### **8.2.5 PAB Chair ‘always an elected member’**

It should be clarified in the rules that this does not have to be the case.

## Schedule of Matters Reserved for the PAB

### Role of the PAB

To provide and advise on the non-operational guiding principles which inform the decision making process regarding the oversight of the .uk domain name registry. This includes:

- Giving policy advice to Nominet's Board of directors. This advice is not binding but carries strong influence and the Board is obliged to take any such advice into consideration when making decisions.
- Providing policy advice which:
  - Is sufficiently clear to be acted upon and flexible enough to apply as a general theme/rule/idea.
  - Assists in advising on the direction Nominet should be moving towards, but not how to get there.
- Considering and bringing to the attention of the Board any policy issues that may be of future importance or affect the .uk namespace.
- The periodic review of current policies.
- Periodic review of the performance of the PAB and PAB members

### Structure and Controls

The PAB is governed by the PAB rules. The PAB can propose changes to the PAB rules, taking into account input from the Executive or others where appropriate, for approval by the Board.

- PAB controls include a code of conduct and processes for:
  - The declaration of potential conflicts of interests
  - The removal of PAB members for gross misconduct.
  - The maintenance of a PAB register of interests.

### PAB and Member Communication

PAB members should:

- Be prepared to represent the PAB at member events such as member lunches and tag holder workshops.
- Educate members about the work of the PAB and the effect that policy changes have had.
- Communicate with members via a PAB session at relevant meetings of the company.
- Report to members as part of the Nominet annual report.
- Communicate with members generally on matters of policy.
- Pass on any relevant communications, feedback and comments made by members to the Company.
- Approve and publish the PAB meeting report.
- Get members views on nom-steer and contribute to the open public debate of Nominet's policies.

### PAB and Stakeholder Communication

PAB members should:

- Be prepared to represent the PAB at stakeholder events.
- Assist Nominet in educating stakeholders about the work of the PAB and the effect that policy changes have had.
- Report to stakeholders as part of the Nominet annual report.
- Assist Nominet in communicating with stakeholders generally on matters of policy.

- Pass on any relevant communications, feedback and comments made by stakeholders to the Company.

**Consultations**

The PAB should agree, communicate to Nominet and publish a PAB response to Nominet consultations. This may include the setting up working groups and/or sub committees as appropriate. (The terms of reference for these committees will specify the relevant responsibilities).