



House of Commons  
Public Administration Select  
Committee

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**Politics and  
Administration:  
Ministers and Civil  
Servants**

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**Third Report of Session 2006–07**

*Volume I*

*Report and Appendix, together with formal  
minutes*

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## The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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## Summary

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We are fortunate to have a civil service which has been held in high regard, both at home and internationally, above all for its commitment to fundamental procedural values. We are also fortunate to have a robust system of political accountability. It is essential that the key governing relationship between ministers and civil servants is kept in good repair, both for effective government and proper accountability. It is clear that there are currently strains on the system. We do not recommend a radical move towards politicisation, nor towards a formal separation of accountabilities as a response, but we do propose a number of steps which may contribute to the good working of a system which combines an independent civil service with political accountability for its operation.

We began this inquiry as an examination of the extent to which the British civil service had been politicised. Events over the last year have shown the need for a wider re-examination of understandings of ministerial and civil service responsibility. The relationship between ministers and civil servants is crucial to the efficient working of our democracy, yet the old version of the “public service bargain” in which there was an implicit division of responsibility between ministers and civil servants has become confused. There have long been concerns about the way in which responsibility and accountability are divided in the British system. Those difficulties have become more acute.

An impartial civil service has a key constitutional function. Civil service responsibilities are not simply to the government of the day; they should include responsibility to Parliament, and to the constitution. However, implementing the policies of the elected government is a core civil service role. Recent events have suggested that it is not always as effective as it could be in this. We do not think there can be a neat division of responsibility between civil servants and ministers, but believe that more should be done to clarify respective responsibilities. We also believe that civil servants should account to Parliament more freely than at present.

There needs to be a new public service bargain, underpinned by a governance code. Ministers should be able to have confidence that the civil service is responsive to their needs, and deals with poor performance properly. Civil servants should be confident that they have the right to give advice without adverse consequences, however unwelcome that advice might be, and to be judged on what they are responsible for.

Debate over the politicisation of the civil service should be set in an international and historical context. The British system is extreme in the limits set on political direction of the administration. On the other hand, it is also a system in which, legally, civil servants act on behalf of ministers, and do not normally have legal responsibilities in their own right. Not only is ministerial influence limited by the Civil Service Commissioners, and by the Commissioner for Public Appointments, but there have also been a number of recent developments which have reduced it still further. For example, it is no longer true to say that civil servants hold office at the minister’s pleasure. It is clear that civil servants, not ministers, are responsible for the dismissal of underperforming civil

servants. We have no wish to change this, but these developments give context to current arguments about politicisation.

The nature of such arguments (for example, the inordinate attention given to the role of special advisers) can make sensible discussion of the relationship between ministers and civil servants more difficult than it need be. We consider that those in key posts should be able to command ministers confidence, and welcome moves to ensure that ministers are involved in their appraisal. We also consider that the appointments systems for those key posts should recognize that ministers need to be able to work with those who are appointed, while ensuring that the civil service remains, as now, free from political patronage.

A new clarity about ministers' legitimate expectations should be accompanied by clarity about the civil service's constitutional position. The Government has prevaricated long enough about a Civil Service Act; it should now introduce one.

# 1 Introduction

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## Background

1. In announcing this inquiry we said:

The Public Administration Select Committee is inquiring into politicisation of the public service. The Committee wishes to explore what we now mean by politicisation, whether politicisation is an entirely negative phenomenon, and, if it is not, what kinds of politicisation would be appropriate in the United Kingdom.

At the time we launched the inquiry, the relationship between ministers and civil servants appeared less contentious than it has recently become. It seemed an opportune moment to take reflective stock of an old issue. We did not anticipate that events would ensure that the matters underlying our inquiry would soon become central to political debate.

2. This has happened because of a series of political and administrative failures, and arguments about where responsibility lies. The Department for the Environment, Food and Rural Affairs failed to implement the new system of farm payments. The Home Office failed to keep track of foreign prisoners who should have been considered for deportation. The National Health Service failed to make its budget balance. In each case there have been disputes about who was to blame. The particular cases are for other committees to examine, but it is clear that, if the first task of the civil service is to implement government policy, it has had some spectacular failures. The first seven Capability Reviews have also shown significant weaknesses in departmental management. Unprecedentedly, the current Home Secretary declared his own department's systems "not fit for purpose".<sup>1</sup> Former senior officials have responded with robust criticisms of ministers. We have therefore enlarged our inquiry from a focus on the politicisation issue to a wider exploration of the governing relationship between ministers and civil servants.

3. In 1996 William Waldegrave, the then Chancellor of the Duchy of Lancaster, set out the Government view on ministerial accountability. His speech was quoted in the Government Response to our predecessor Public Service Committee Report on *Ministerial Accountability and Responsibility*:

There is a clear democratic line of accountability which runs from the electorate through MPs to the Government which commands the confidence of a majority of those MPs in Parliament. The duly constituted government—whatever its political complexion—is assisted by the Civil Service which is permanent and politically impartial. Hence, Ministers are accountable to Parliament; civil servants are accountable to Ministers. That is the system we have in this country.<sup>2</sup>

In giving evidence to us, Jonathan Baume, General Secretary of the FDA, the trade

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<sup>1</sup> Home Affairs Committee, Fifth Report of Session 2005-06, *Immigration Control*, HC 755-III.

<sup>2</sup> Public Service Committee, First Special Report of Session 1996-97, *Government Response to the Second Report from the Committee (Session 1995-96) on Ministerial Accountability and Responsibility*, HC 67, Appendix, para 4.

union for senior civil servants, told us that this response “sets out probably as clearly as anywhere the current understanding of responsibility and accountability”. He claimed that “I do not believe that fundamentally anyone challenges that understanding”.<sup>3</sup> We are not so sure.

4. In the 1990s arguments centred on the extent to which civil servants should answer directly to Parliament. Those issues remain live, and will be discussed later in this Report. However, in the course of this inquiry it has become clear that the nature of the key governing relationship has also become problematic. There no longer appears to be a common view about the precise boundary between the responsibilities of ministers and public servants. There seems to be a developing view that, as Michael Howard said, “Ministers should be responsible for decisions which they have taken; civil servants should be responsible for decisions which they have taken”.<sup>4</sup> However, achieving clarity about which decision is which is far less straightforward than it sounds.

5. We explored in our earlier report on *Whitehall Confidential?: The Publication of Political Memoirs*, the idea of a “public service bargain”. That bargain held that officials were expected to trade political activity and high salaries for “relative anonymity, a trusted role at the heart of government and job security with generous pensions and honours”, and politicians were expected to give up the right to hire and fire in return for “a lifetime of loyal service from the best and brightest the top universities could produce, with the highest ability to work the state machine and offer better informed and more politically acute advice than anyone else could provide”.<sup>5</sup> This bargain no longer appears to be universally accepted.

6. When things go wrong, whether administratively or politically, ministers can be in the firing line. The previous Home Secretary lost his post as a result of failure to implement the policy of repatriating foreign prisoners. The consequences for those officials involved are less apparent, even though the subsequent Capability Review of the Home Office was scathing. The Home Office Reform Action Plan announced “a reshaped Home Office Board and 15 immediate changes at Director level, which is over a quarter of all our Directors”.<sup>6</sup> When we asked whether any of those who had moved from Director level posts had been disciplined in any way, or had suffered any consequence as a result of the Home Office failings, we were told “No one has been subject to formal disciplinary proceedings. But, as described above, a number have been asked to move from their current jobs”.<sup>7</sup> We were told that between eight and ten people would move from their jobs as a result of the changes, and the majority were likely to move out of the Home Office, but discussions were still going on with those involved. In evidence to us on 6 February 2007, Sir Gus O’Donnell told us that three people had taken early retirement.<sup>8</sup> This is in sharp

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<sup>3</sup> Q 298

<sup>4</sup> Ev 110

<sup>5</sup> Christopher Hood and Martin Lodge, *From Sir Humphrey to Sir Nigel: what future for the public service bargain after Blairworld?*, *Political Quarterly*, Vol 77, No.3, July to September 2006, p 360.

<sup>6</sup> *From Improvement to Transformation: An Action Plan to reform the Home Office so it meets public expectations and delivers its core purpose of protecting the public*, Home Office, July 2006.

<sup>7</sup> Ev 131

<sup>8</sup> HC 305-1, Q 62.

contrast to the immediate penalties extracted at the political level. On the other hand, the Chief Executive of the Rural Payments Agency lost his job over the failure to implement the single payment scheme effectively. Lord Bach considered that he too had lost his ministerial post as a result of this failure.<sup>9</sup>

7. These are complex issues, and the British tradition has been to deal with them pragmatically. In effect, our constitutional understanding adjusts to changes in the political and administrative context. That process has begun. As we write, the Home Office has embarked on a major programme of reform; the first two tranches of Capability Reviews of departments have been completed; and the programme is now being applied to all government departments. The Home Office has developed a “compact” between ministers and officials about respective responsibilities, which we discuss in paragraph 67 below. The extent to which such a compact is considered sensible and acceptable will be a useful indication of whether a new consensus about ministerial responsibility is indeed emerging.

8. But it is not enough just to allow events to take their course, and ultimately to describe whatever new settlement emerges. There is already a lively debate about the nature of the relationship between the civil service and ministers taking place outside Parliament; and Parliament itself needs to contribute to that debate. It involves important questions about effective government and proper accountability.

9. This inquiry was conducted in parallel with an inquiry into the structure of ethical regulation of government. We felt that it was unsatisfactory to look at such regulation without considering the system which was to be regulated. At the same time we wanted to ensure that our work remained manageable. In the course of these two inquiries we have taken evidence from former ministers; Sir Gus O’Donnell, the current Cabinet Secretary, two former Cabinet Secretaries, and many former Permanent Secretaries; current and former First Civil Service Commissioners and Commissioners for Public Appointments; and academics and commentators, with both national and international experience. We are extremely grateful to all those who assisted us.

10. We have visited Finland and Sweden, where there is debate about the role of political appointees within the civil service. We have also visited the United States of America, where the right of political appointment is unquestioned. It soon became clear that there is no agreed democratic approach to the division of responsibility between ministers and public servants, and certainly no universal model even among Westminster-style democracies. Britain sits at one end of a very wide spectrum. Much depends on political context and constitutional traditions. However, it was very valuable to look at how other countries approach the business of political and administrative accountability. We are extremely grateful to our hosts for their frankness in discussion.

## Defining politicisation

11. In our issues and questions paper we quoted the definition of politicisation given by B. Guy Peters and Jon Pierre as:

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<sup>9</sup> Oral evidence taken before the Rural Payments Agency Sub Committee of the Environment, Food and Rural Affairs Committee, 23 October 2006, HC(2005-06)1071-vi, Q 783.

“the substitution of political criteria for merit-based criteria in the selection, retention, promotion, rewards, and disciplining of members of the public service”.<sup>10</sup>

However, this useful definition covers a wide range of possible behaviour. At one extreme, it can be taken to mean something akin to the United States’ system, in which politicians are able to appoint directly to key posts, and in which those appointed retain their posts only as long as their political patrons retain power. It covers intermediate situations in which ministers are able to appoint political advisers to support them, or even a political “cabinet”. At the other end of the spectrum, the term has been applied to situations in which members of a formally impartial public service believe their chances of promotion depend on sharing, or appearing to share, the philosophy of the party in power. The definition itself is not without its own difficulties, as appointment by politicians could still be made on merit-based criteria. The common factor is the notion of political involvement in public bureaucracy, whether overt or covert, and issues about its extent and appropriateness.

12. On these definitions, despite the regular accusations of politicisation, Britain clearly remains singularly unpoliticised. External appointments to the senior civil service are regulated by the Civil Service Commissioners, and no witnesses suggested ministers were able to exercise significant powers of patronage. Although ministers are able to make political appointments to special adviser posts, there was broad agreement that the scale of political appointments was so small, in relation to the size of the civil service, that it did not undermine principles set out by the 1854 Northcote Trevelyan Report and, in significant respects, protected them. Moreover, in relation to appointments to public bodies, the role of ministers has actually been reduced by recent changes.

13. However, although there might be broad agreement that the formal independence of the civil service was not threatened, there were concerns about whether the wider role of the civil service was properly respected. David Faulkner, of the University of Oxford, considered that too great an emphasis was being given to the culture of exclusive service and accountability to ministers, and that civil service accountability should include “lateral relationships with colleagues, ‘stakeholders’, and public”.<sup>11</sup>

14. By contrast, David Blunkett, a former Home Secretary, asserted:

there is a muddled view which confuses neutrality (the Civil Service willing and able to serve Governments of all persuasions and to be able to give both impartial advice and committed implementation) and “independence” (from the political process) which presumes that the Civil Service has a life of its own—that Ministers are almost in an advisory role. This, of course, reverses entirely the role of the elected Government (in our system, the Executive being responsible within as well as to Parliament) and the administration serving that Government. To fail to serve the Government is to fail to carry out the inherent duty of the Civil Service.<sup>12</sup>

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<sup>10</sup> B. Guy Peters and Jon Pierre (eds), *Politicisation of the Civil Service in Comparative Perspective: The Quest for Control*, Routledge Studies in Governance and Public Policy, London and New York 2004, p 2.

<sup>11</sup> Ev 126

<sup>12</sup> Ev 110

Similarly, Sir Nicholas Montagu, formerly Chairman of the Inland Revenue, felt that “many of those who have complained about what they believe to be politicisation are, in fact, objecting to overt shifts of power which are entirely within the government’s prerogative, but which may upset the old balance between politicians and officials”.<sup>13</sup>

15. It can be difficult to decide where the balance is properly struck. Civil servants have permanent obligations, not least to propriety. However, one of the qualifications for success in public service is an ability to work effectively with elected representatives. Commanding the confidence of ministers is, and should be, a key civil service skill. The length of time ministers spend in particular posts varies widely, (the average time spent in ministerial posts between May 1997 and May 2005 was 2.1 years)<sup>14</sup> and the civil service can give a long-term perspective which may not be available to ministers. However, it will only be able to perform this function if its members are respected and trusted.

16. The situation is further complicated by what Professor Colin Talbot has called the “serial monogamy” of the civil service; namely, the fact that the civil service is not impartial between parties, but works for the elected government of the day, and is therefore partial to the successful implementation of the policies of that government. In this sense it is properly “politicised”. Witnesses were agreed that independence and impartiality should not prevent the civil service responding to political priorities. The role of civil servants was not to question the political basis of government policies, but to advise on their practicality and to carry them out effectively.

**17. “Politicisation” is a term which covers a wide range of meanings. In this report, we use it to mean political involvement in administration, in particular in relation to the appointment or promotion of public servants. We do not use it in its usual pejorative (and negative) sense, but as a way of exploring aspects of the governing relationship between ministers and civil servants.**

## Scope of the Inquiry

18. It is clear that there is a wide range of expectations of an effective civil service. These include the ability to:

- deliver government policy;
- help formulate that policy;
- challenge policy to ensure that it is workable;
- act as centre of a network of interested groups, both within and outside government;
- give continuity when administrations change;
- hold a constitutional line.

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<sup>13</sup> Ev 107

<sup>14</sup> Source: House of Commons Library.

19. Arguments over whether the civil service has been politicised and, if so, the extent to which this has taken place, will be conditioned by the relative priority given to each of these tasks, some of which may be in tension with others. There is one central tension. Some witnesses were most concerned about operational effectiveness—that is, the civil service’s ability to serve the government of the day—while others were most concerned about what might be termed its constitutional effectiveness—in other words, its ability to stand up to the government, whether internally or through greater public accountability. The difficulty is that what is expected of the civil service depends on political context, and the priorities of different perspectives. Even different ministers in a single administration may have differing expectations of the civil service. It is true that the Labour Government elected in 1997 brought with it a new kind of political management, which had implications for the conduct of government, but a different governing style should not be confused with politicisation.

20. This report looks at the operational and constitutional interface between politics and administration, ministers and civil servants. Chapter 2 tackles the issue of ministerial and civil service accountability. Chapter 3 considers the role of ministers in making appointments. Chapter 4 discusses whether it is time to give the civil service a proper constitutional footing.

## 2 The Accountability Gap

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21. The tradition of civil service impartiality in the United Kingdom runs so strong that the rationale for such impartiality is rarely questioned. It can seem an end in itself rather than a means to good governance. Yet the Northcote Trevelyan report that ended patronage and opened up appointment on merit to the civil service was clear that a system in which posts were obtained by patronage would deter “able young men” from the civil service as a career.<sup>15</sup> In other words, the argument for an impartial civil service was one of operational effectiveness.

22. Recent events have suggested that permanence, independence and impartiality do not necessarily secure an operationally effective civil service. In fact, it is possible to go further. Some have suggested that the current arrangements actively militate against effectiveness by blurring the division of ministerial and civil service accountability. It has been held that they create a system in which politicians and civil servants can hide behind each other, so that no one is really held to account. Ministers are politically accountable to Parliament, but although civil servants are theoretically accountable to ministers, the doctrine of independence makes it difficult for this accountability to be exercised effectively, and may prevent a minister from dismissing or disciplining individual civil servants.

23. There is no consensus about the respective responsibilities of ministers and civil servants. Indeed, Janet Paraskeva, the First Civil Service Commissioner told us “I believe that the doctrine of ministerial responsibility needs to be reviewed. ... We no longer understand what it means...”.<sup>16</sup> It has been possible to reconcile a doctrine of ministerial

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<sup>15</sup> Stafford Northcote and C E Trevelyan, *The Organisation of the Permanent Civil Service*, Parliamentary papers Volume XXVII, 1854.

<sup>16</sup> Oral evidence taken before the Committee, 15 June 2006, HC(2005-06)884-vii, Q 468.

accountability which holds that ministers are ultimately accountable for everything done on their behalf (whether by civil servants or other public employees) with the doctrine of civil service independence for over a century. Why has it now become more problematic? There are many reasons for this, but it is likely that the new attention to transparency, accountability and performance has played a major part. Indeed, the development of scrutiny by Parliamentary Committees has exposed the difficulties of assigning responsibilities. Senior civil servants have been made more visible by their regular appearances before Committees, supposedly on ministers' behalf. At the same time, Permanent Secretaries continue to appear before the Public Accounts Committee in their role as Accounting Officers, where they are individually responsible.

24. If ideas about ministerial and civil service responsibilities are varied and inconsistent, it is no wonder that the public service bargain is no longer as straightforward as once it seemed. We try here to tease out some of the theory and reality of civil service and ministerial responsibility. This is a complex area, where different kinds of responsibility and accountability are closely interrelated, and where assumptions about the proper roles of ministers and civil servants are contested. We look at:

- the doctrine of ministerial accountability to Parliament;
- the extent to which civil servants are responsible to ministers and to what extent they have wider responsibilities;
- the effect of civil service independence on ministers' ability to run their departments;
- where authority and accountability should lie;
- the extent to which clear division between political and administrative responsibilities is possible; and
- the benefits of impartiality and the extent to which they are effectively secured.

This brief survey will give some idea of the muddle that is reality. We then consider whether there are ways in which the muddle could at least be tidied up.

## Ministerial accountability to Parliament

25. The last Parliamentary examination of ministerial accountability was our predecessor Public Service Committee's report on *Ministerial Accountability and Responsibility*, which gives a detailed historical analysis.<sup>17</sup> As that Report says, government has attempted to draw a distinction between actions for which ministers are *responsible*, where their acts and omissions have contributed to a policy or operational failure; and those for which they are *accountable* where, although they are not directly culpable, they have a duty to explain to Parliament what happened. That formulation has influenced debate on the issue, but has not been entirely accepted.

26. The Public Service Committee recommended the following as a working definition of Ministerial Accountability:

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<sup>17</sup> Public Service Committee, Second Report of Session 1995-1996, HC 313-I.

Ministers owe a fundamental duty to account to Parliament. This has, essentially, two meanings. First, that the executive is obliged to give an account—to provide full information about and explain its actions in Parliament so that they are subject to proper democratic scrutiny . . . .

Second, a Minister's duty to account to Parliament means that the executive is liable to be held to account: it must respond to concerns and criticisms raised in Parliament about its actions because Members of Parliament are democratically-elected representatives of the people. A Minister's effective performance of his functions depends on his having the confidence of the House of Commons...<sup>18</sup>

27. The Committee also considered that, as part of ministers' obligation to explain their actions to Parliament, they should make civil servants available to committees. The Government accepted the broad principles set out by the Select Committee, but was concerned that giving civil servants the responsibility to give information to Parliament on their own behalf would muddle their accountability.

28. On 19 March 1997 the House agreed a resolution on ministerial accountability in the following terms:

(1) Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their Department and Next Steps Agencies;

(2) It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister.

(3) Ministers should be as open as possible with Parliament, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the Government's Code of Practice on Access to Government Information (Second Edition, January 1997);

(4) Similarly, Ministers should require civil servants who give evidence before Parliamentary Committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code (January 1996).

It can be seen that the resolution gives civil servants duties toward Parliament only in carrying out the requirements of their ministers. The existing responsibility of Accounting Officers to give an account to the Commons of their handling of public funds was not changed.

29. The Public Service Committee did a great deal to clarify the nature of ministerial responsibility, and the Resolution of 1997 set out the best compromise which could be

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<sup>18</sup> *Ibid.*, para 32.

reached on the matter.<sup>19</sup> Nonetheless, the Committee did not wholly accept the Government's attempts to distinguish between matters for which ministers were directly *responsible* and those for which they were merely *accountable*. As the Committee concluded "it is not possible absolutely to distinguish an area in which a minister is personally responsible, and liable to take blame, from one in which he is constitutionally accountable. Ministerial responsibility is not composed of two elements which have a clear break between the two".<sup>20</sup> **We agree that under our current constitutional arrangements there will never be precise clarity about the boundaries of ministerial accountability. That in itself suggests that we should be wary of constitutional changes which reduce ministerial responsibility without clearly transferring responsibility and accountability elsewhere.** The question is, whether it is possible to clarify matters further in a way that would improve the effectiveness and accountability of our governing arrangements.

### Civil service accountability to ministers

30. Just as it is impossible to be definitive about the boundaries of ministerial accountability, so civil service accountability is far from clear. The doctrine enunciated at the time of the Crichton Down affair was that civil servants were accountable to ministers.<sup>21</sup> Sir David Maxwell Fyfe asserted confidently that:

The position of the civil servant is that he is wholly and directly responsible to his minister. It is worth stating again that he holds his office "at pleasure" and can be dismissed at any time by the Minister; and that power is nonetheless real because it is seldom used. The only exception relates to a small number of senior posts, like a permanent secretary, deputy secretary or principal finance officer, where since 1920, it has been necessary for the Minister to consult the Prime Minister, as he does on appointment.<sup>22</sup>

It is clear from more recent cases, including the attempt by a former Home Secretary to dismiss the Director of the Prison Service, that matters are much less straightforward than that. In 1996 the Employment Rights Act extended many employment rights to civil servants.<sup>23</sup> When we pressed on the current constitutional position, we were told that employment law "applies to civil servants in the same way as it does to employees" and that the "Civil Service Management Code assumes that it is civil servants who take the actual decision to dismiss".<sup>24</sup> Yet successive governments have stressed that civil servants are responsible to ministers, not Parliament.

31. Some of our witnesses felt that civil service independence had a political function, in balancing the strong executive power of British governments. This concern with the wider

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<sup>19</sup> See Library Standard Note, *Parliamentary Resolutions on Ministerial Accountability*, House of Commons Library, 24 July 2000.

<sup>20</sup> Public Service Committee, Second report of Session 1995 to 96, *Ministerial Accountability And Responsibility*, HC 313-I, para 21.

<sup>21</sup> For details, see House of Commons Library Research Paper 04/31, *Individual Ministerial Responsibility – Issues and Examples*, 5 April 2004.

<sup>22</sup> HC Deb, 20 July 1954, Vol 530, c1285.

<sup>23</sup> See Library Standard Note, *Civil Servants: Employment Rights*, SN/BT/3698, 30 June 2005.

<sup>24</sup> Ev 132

responsibility of the civil service is not new. When the Armstrong Memorandum famously asserted that “civil servants are servants of the Crown ... for all practical purposes the Crown in this context is represented by the government of the day”, the FDA expressed concern that this approach ignored the wider responsibilities civil servants had to Parliament.<sup>25</sup>

32. The importance of those wider responsibilities was endorsed by our predecessors. Successive Committee Reports have made it clear that elected accountability does not mean that ministers should have the ability to act without any checks on their behaviour, or that the civil service should be considered as wholly the creature of a current administration. The Treasury and Civil Service Committee supported the introduction of a code which would clarify the duties and responsibilities of civil servants. The Code drafted by that Committee formed the basis of the Code issued by the Government, which noted “that civil servants owe their loyalty to the duly constituted Government”, subject to the provisions of this Code.<sup>26</sup> In other words, loyalty to the Government was fundamental but not unconditional.

33. Thus the civil service’s relationship with government has long been recognised as more complex than simply being the enthusiastic instrument of government policies. As Dr Matthew Flinders of Sheffield University put it: “In practice, it is quite clear that the bureaucracy has its own implicit values, wants and desires and these may on occasion conflict with the instructions of ministers”.<sup>27</sup> Yet the only explicit acknowledgement of this potential for conflict within the current system is when civil servants act in the role of Accounting Officers. In that context, they have a clearly defined role as the guardians of propriety in public expenditure. If they believe a particular expenditure would be a misuse of public funds, they may formally note the fact. The minister may override their objections, but the note is sent to the Treasury and the Comptroller and Auditor General.<sup>28</sup> Such a note will inevitably come to the attention of the Public Accounts Committee.

**34. The civil service is responsible to ministers, but, as the role of Accounting Officer shows, that responsibility is complex, and not limited simply to implementing government policies.**

### ***Ministers and departments***

35. Until now, we have been able to manage with the twin principles that ministers were accountable for everything, and that the civil service was independently appointed; but recent events have led some to question whether that remains possible. The problems of civil service capability do not come from the confusion of political and administrative accountability alone. However, it is clear that the lack of agreement about who should be accountable for what, to whom, and what that accountability and its consequences might mean, contributes to the difficulties.

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<sup>25</sup> see HC(1995-96)313-iii, pp.4-5.

<sup>26</sup> HC(1993-94)27, para 107.

<sup>27</sup> Ev 115

<sup>28</sup> *Government Accounting 2000*, Annex 4.1, The Responsibilities of an Accounting Officer, paras 16-17.

36. Former Home Secretaries who gave evidence to us had very different views about the extent to which politicians could in practice control departments. Michael Howard was very clear that:

I believe that it is a delusion to suppose that there is some different kind of structure which will make everything easy and solve the problems. What one needs in any department, including the Home Office, is strong political leadership and a clear expression of determination by the Secretary of State as to what he wants to do and a determination to get it done.<sup>29</sup>

Although David Blunkett agreed that strong political leadership was central, his memorandum suggested that Cabinet Ministers could feel the machine worked against them, and that they were excluded from managerial decisions:

Senior Civil Servants frequently tell Ministers, “Departmental Policy is this”. Good Ministers say, “Departmental Policy is what I, on behalf of the Government, say it is, so long as it is in line with the legislation available to me, the administrative or executive powers which have been accorded to me, or in line with the stated Policy of the Government and the Prime Minister and/or the Party’s own Manifesto when elected to Government”. However, there will inevitably be a large number of occasions where policy recommendations are made by the Civil Service and therefore the role of the civil service in policy making as well as in policy delivery is inevitably blurred.<sup>30</sup>

Mr Blunkett went on to argue that part of ministers’ problems in making sure their policies were implemented came from the structures which were intended to protect civil service impartiality:

What also makes this difficult is that Ministers are precluded from a direct role in ensuring that the structure to deliver the policies that Parliament has voted on or Ministers have executive power to implement, are capable or appropriate to do so.<sup>31</sup>

37. It is clear that there is no consensus currently about the proper constitutional relationship between ministers and their permanent officials. The Treasury has attempted to clarify the responsibilities of the Boards which assist Permanent Secretaries in running departments by producing a *Code of Practice for Corporate Governance*.<sup>32</sup> This should, in principle, make the division of responsibilities clearer by setting out board members’ roles. But Sir Nicholas Montagu was concerned that the Code muddled ministerial and civil service responsibilities, and:

would extend the power of Ministers—and therefore ultimately political control—into areas previously the preserve of Permanent Heads of Department.

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<sup>29</sup> Q 330

<sup>30</sup> Ev 109

<sup>31</sup> Ev 109

<sup>32</sup> *Corporate Governance in Central Departments: Code of Good Practice*, HM Treasury, July 2005.

In very broad terms the traditional split of responsibilities between Ministerial and Permanent Head is that the Minister sets the policy objectives and parameters within which the Department is to work; and the Permanent Secretary organises the Department and its management processes to see that those objectives are delivered.<sup>33</sup>

In his view:

corporate governance is the whole apparatus that we have to protect the Head of Department in the role of Accounting Officer. It is the totality of the systems and frameworks that ensure that Departments are run properly. That means ... planning processes are in place with a “clear line of sight” through the organisation, so that everyone knows where (s)he fits in to the delivery of the department’s strategic objectives: those objectives themselves will be shaped by the priorities of the government of the day and the minister in charge of the department. Perhaps above all, the culture of accountability permeates throughout the organisation, so that people know just what their responsibilities are and are equipped with the appropriate skills to exercise them.<sup>34</sup>

38. However, this view was challenged not only by the Code itself, which considers that the Board of a Department works for, and may properly be chaired by, a minister, but by Sir Michael Quinlan, a distinguished former Permanent Secretary, who supported the assumptions implicit in the Treasury code:

I dissent from Sir Nicholas Montagu’s view that ... Ministers and Permanent secretaries have in some sense parallel responsibilities. The Permanent Secretary’s responsibilities run to the Minister and are included within his/hers; they do not run separately, aside from the special category of Accounting Officer responsibilities. And these latter are, I believe, narrower than Sir Nicholas conveys; they are not “for the running of the Department”. I think it incorrect, unrealistic and undesirable to suppose that Ministers “should not [in the sense of ought not] get involved in the actual running of Departments”.<sup>35</sup>

**39. It is clear that there is no consensus, either among politicians or officials, about the way in which ministerial and civil service responsibilities are divided. This means there can be no consensus about where accountability should lie.**

## Authority and Accountability

40. The relationship between the government and the civil service is complex and shifting. We do not believe that it could ever be otherwise. But nor do we believe that complexity means that we cannot have guiding principles about accountability and authority, or make sensible suggestions for improvement. In deciding where authority should rest, we need to focus on accountability. Accountability to Parliament is a key constituent of general

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<sup>33</sup> Ev 105

<sup>34</sup> *Ibid.*,

<sup>35</sup> Ev 108

ministerial responsibility. It is Parliament which holds ministers to account and Parliamentary pressure can, in the end, force their removal. Discussions about ministerial accountability often end here, as if accountability to the House was the final point. But in fact ministers are in the electoral as well as the political firing line. Elected politicians, backbenchers and ministers alike, are accountable to the electorate.<sup>36</sup> Election is a great leveller. The permanent executive will be open to influence, quite properly, from a wide range of groups with direct interests who know how to work the system. Elections enable everyone to participate. They are the foundation of the key democratic relationship between governors and governed. Ultimately, therefore, ministerial accountability means accountability to the electorate.

**41. We consider that the relationship between government and civil service, and civil service and Parliament, should be structured to ensure the ultimate accountability of the government to the electorate. The corollary of this is that elected ministers should have freedom to perform their functions as they see fit, within any framework set by Parliament.**

### *International Comparisons*

42. In Britain the balance between independent appointment on merit and ministers' ability to give political direction through staffing decisions is struck in a way that sits at one end of an international spectrum. Sir Christopher Foster drew a parallel between civil service independence and independence of the judiciary.<sup>37</sup> However Ed Straw, a partner at PricewaterhouseCoopers, who appeared in a private capacity, was concerned about this:

No-one that I am aware of holds the independence of the Civil Service on the same state as the independence of the judiciary, which is what we have here in fact.<sup>38</sup>

Sir Robin Young considered "we are the least politicised civil service probably in the whole world".<sup>39</sup>

43. The sharpest contrast to the United Kingdom is the United States, where large numbers of appointments are made by the political executive. Yet even in very different political traditions, some political influence on the civil service is considered unexceptionable, and not incompatible with merit. For example in Finland, often ranked as the leader in good governance, Permanent Secretaries may themselves have political affiliations, and we were told that when there were a number of vacancies it was felt desirable to have some party balance in the appointments made. Nor is Britain unique in having concerns about the extent to which the civil service is, or should be, responsive to political direction. Both Sweden and Finland have introduced the "State Secretary" system, in which departments are headed by political appointees, as well as by Permanent Secretaries, and in both there is some concern about this development. Some of the pressure for State Secretaries comes from the fact that there is no provision for appointing junior ministers, but it is worth

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<sup>36</sup> Oral evidence taken before the Committee, 8 June 2006, HC 884-vii, Q 377.

<sup>37</sup> Ev 104

<sup>38</sup> Ev 104

<sup>39</sup> Q 229

noting that the State Secretaries have precisely the combination of political and administrative functions which has caused concern in the United Kingdom.

**44. Comparisons with other countries are far from straightforward. Much depends on history and political culture. Nonetheless, in relation to ministerial accountability and politicisation of bureaucracy, it is useful to be reminded that the British system is extreme in the division it makes between the administrative and the political world, and that this division is, in some respects, increasing. This at least provides a context for a discussion which tends to be very parochial.**

### A more independent civil service?

45. As we have seen, previous governments have resisted giving civil servants direct duties to Parliament, except in their role as Accounting Officers. On the other hand, it has long been clear that ministers cannot be expected to be responsible for everything which occurs within a department. Reforms such as the introduction of Next Steps Agencies have sought to give explicit responsibilities to Agency Chief Executives. When an agency has been successful, this has worked well; in the case of high profile and politically embarrassing failures, clarity has soon been lost.

46. The Institute for Public Policy Research (IPPR) has recently suggested a radical extension of mechanisms to separate political and administrative responsibilities.<sup>40</sup> It proposes that, while ministers would be responsible for setting policy, civil servants should be governed and managed by independent bodies, and should be accountable internally to a civil service executive and externally to a new statutory governing body for the civil service. The IPPR report cites the New Zealand system as a precedent for such a separation between ministerial and civil service responsibilities, although its proposals go further than the current New Zealand system.

47. The IPPR claims that its proposals would not lead to a loss of ministerial authority as it would be for the Government to decide the shape, configuration and size of the civil service, and how it should be funded. The powers delegated to the civil service would be defined, but ministers would still be free to make operational decisions provided that they did so explicitly. If that were the case though, it might be thought that a substantial infrastructure would have been erected for little more than might be gained through the establishment of a few more agencies, or even internal agreements like those currently published for the Home Office.

48. If such a scheme was to be effective, it would radically change the terms of trade between the Government and the civil service. The new Civil Service Governors would be charged with “defining and redefining” the values and role of the civil service.<sup>41</sup> Unlike the New Zealand States Services Commission, they would also be charged with demarcating roles and assigning responsibility.<sup>42</sup> If disputes arose about whether a failure occurred

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<sup>40</sup> Guy Lodge and Ben Rogers, *Whitehall's Black Box: Accountability and performance in the senior civil service*, IPPR, 2006.

<sup>41</sup> *Ibid.*, p 77.

<sup>42</sup> The State Services Commission does, however, investigate and report on matters relating to the performance of the Public Service departments.

because the policy was unworkable, or because it had been badly implemented, it would be for the Civil Service Governors to adjudicate, “investigating cases of administrative failure and, where required, laying out, as far as possible, where responsibility for the failure lies”.<sup>43</sup>

49. Not only is that a huge amount of political power, it would be extremely difficult to challenge such a body. It would not be directly or indirectly accountable to the electorate. Parliament would appoint its members, who would have to be approved by the Prime Minister, but it is hard to see how the Board of Governors could be effectively held to account. Once “operations” had come to be the sphere of a professional civil service, under control of a professional governing body, ministers would find it difficult to argue against that body’s recommendations. New governments may have new priorities, and may wish to do things in new ways. Political philosophy may not simply be about the distribution of resources, but about the ways in which the state engages with the citizen. In extreme cases, such a system could mean that ministers were only able to make policies approved by their officials. Nor does it seem desirable to increase the accountability of civil servants if this also means reducing the accountability of ministers.

50. There is the further question of what would become of the *Carltona doctrine*, the legal principle that civil servants act on behalf of ministers, and can exercise powers on their behalf. The doctrine has survived the introduction of the Executive Agencies, and might survive more extreme delegation, but would surely come under strain in an arrangement where a statutory body was responsible for so much policy on the civil service.

51. There are some roles where the need for independence overrides the need for accountability. We do not believe this is one of them. **The purpose of civil service reform should be to ensure that the civil service is effective in carrying out its functions, and is responsive to the government of the day. A system in which the civil service was itself beyond political accountability would not be effective.**

52. Leaving aside the constitutional difficulties in such a proposal, we have serious doubts about whether it would in fact improve the performance of the civil service or of government as a whole. Reviews of the New Zealand experience have noted that the emphasis on defined agreements between ministers and officials have led to departments taking a narrow view of their responsibilities, and have reduced the extent to which there is a sense of what the Government as a whole is trying to achieve.<sup>44</sup> Most of our witnesses felt that the separation of policy from operations was fraught with problems. Sir David Omand called it a “gigantic category error”.<sup>45</sup> Professor Christopher Hood and Dr Martin Lodge point out that “in the real world of politicking and blame-avoidance, the pressures for each side to cheat on such a deal, exploiting the ragged edges between policy and administration, are very strong”.<sup>46</sup> Giving control of interest rates to the Monetary Policy Committee (MPC) of the Bank of England, the most commonly used example of such separation, was felt to be exceptional, rather than a model with wider application.<sup>47</sup> It is

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<sup>43</sup> *Ibid.*, p 78.

<sup>44</sup> *Political Quarterly*, Vol 77, no.3, p 365; see also *Report Of The Advisory Group On The Review Of The Centre*, Presented to the Ministers of State Services and Finance, New Zealand, 2001, <http://www.ssc.govt.nz>.

<sup>45</sup> Q 242

<sup>46</sup> *Political Quarterly*, Vol 77, No. 3, p 367.

<sup>47</sup> See HC 305-I, Q 68.

also notable that the Chancellor may have given responsibility to the MPC, but it is a body that he appoints directly. Ed Straw was in no doubt that the Chancellor was ultimately responsible for its performance.<sup>48</sup>

53. This is not an argument against trying to clarify administrative and political responsibilities. As we have said, there are evident difficulties and confusions in the present arrangements. If the answer is not to be found by an inflexible and unrealistic separation of policy and administration, this does not mean that nothing can be done. Further defined delegation may well be possible, but in our view it should be tailored to particular functions and organisations. A single division between a monolithic, self-governing civil service and the elected government would not be conducive to effective government.

### Accounting to Parliament

54. The doctrine of accountability described above by Michael Howard, in which “Ministers should be responsible for decisions which they have taken; civil servants should be responsible for decisions which they have taken”,<sup>49</sup> can only work if there is transparency about what decisions were taken, and who took them. The current conventions about civil service relationship to Parliament prevent that transparency, and therefore inhibit accountability. The one exception is in the extremely rare cases when an Accounting Officer has formally advised against expenditure (see paragraph 33).

55. In the past Committees have called for civil servants to have some direct accountability to Parliament. This has been resisted, on the grounds that it would produce a division of loyalties for civil servants. Yet it is clear that in other jurisdictions civil servants have far more freedom to account for themselves, while ministers remain accountable for policy.

56. The doctrine of ministerial accountability means that when civil servants appear before Parliament it is as ministers’ proxies. They get neither credit nor blame. By contrast, in both Finland and Sweden, civil servants operate under legal frameworks which give them a considerable degree of autonomy and accountability. As we have already noted, political and constitutional systems are complex, and must be considered in their entirety. In the United Kingdom, the legal assumption is that civil servants act on ministers’ behalf, and exercise ministers’ powers. In contrast, in Sweden and Finland civil servants are legally accountable themselves for the decisions they take, and will personally be held to account for those decisions. We have argued against the feasibility or desirability of a formal separation of accountability of this kind. Nonetheless, we believe that civil servants could be considerably more open with Parliament without threatening the doctrine of ministerial responsibility.

57. Times are changing. We now have a Freedom of Information Act. Recent major inquiries have illuminated the inner workings of government. The Leader of the House has undertaken that select committees will have access to the civil servants they consider best able to help them. Witnesses before this committee have been remarkably frank about the policy making process. These are welcome changes, but the formal position has not altered

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<sup>48</sup> Q 76

<sup>49</sup> Ev 110

since the 1997 Resolution on ministerial responsibility. We consider it is time for it to do so. **We consider that increasing the expectation that civil servants will account honestly to Parliament does not undermine the principle of ministerial responsibility, but strengthens accountability as a whole.**

### ***A new Public Service Bargain***

58. There are good reasons for having an independent and impartial civil service. Sir Robin Mountfield set these out succinctly:

1. It is a defence against corruption: ‘jobs for the boys’ or the ‘spoils system’ invite abuse.
2. It provides continuity, especially after a change of government.
3. It maintains deep expertise and ‘institutional memory’ of the background to policy issues.
4. It provides real knowledge of how the machinery of government works, making it possible for a government to achieve the results it wants.
5. It provides a loyal and supportive, but detached and politically-neutral, analytical challenge to political enthusiasm: an essential health-check in a democratic process.
6. It entrenches a deeply-rooted and distinctive ethical base to the public service.<sup>50</sup>

We agree with this analysis. However, we heard evidence that these claimed benefits might not always be achieved in practice.

59. For example, some former ministers told us that, although individuals might be excellent, the service as a whole was not good at retaining collective memory. This is made worse where there is a rapid turnover of ministers themselves. The administrative structures deliberately encouraged circulation of staff, but this could be at the expense of experience and expertise. In other words, one of the key advantages of a permanent and impartial civil service was not in fact secured.

60. Similarly, impartiality does not seem to have fostered the ability to “speak truth unto power” to the extent that is sometimes claimed. Sir Christopher Foster told us that ministers should not influence civil service appointment and promotion because “it is impossible to get honest, independent but particularly challenging views from people, when, rightly or wrongly, they believe that those to whom they have given such views might use such power to influence their future and future careers”.<sup>51</sup> The Civil Service Commissioners feared that political appointees would tell ministers what they wished to

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<sup>50</sup> Ev 132

<sup>51</sup> Q 149

hear.<sup>52</sup> Lord Butler also considered political appointments would undermine the professionalism and objectivity of the civil service.<sup>53</sup>

61. Whatever the theoretical arguments, it is notable that the skills civil servants were found to lack in open competitions included “self-confidence, presentational skills ...putting your head above the parapet”<sup>54</sup>—exactly the qualities needed for speaking truth unto power. We also note that if the need to please an employer meant that objectivity and challenge were impossible, few businesses would ever succeed.

62. A high degree of independence has not prevented accusations that the civil service has neglected its traditional skills, and failed in its duty to ensure that ministers are properly briefed. The Butler and Hutton Reports have been cited as revealing the way in which good government is undermined by inadequate procedures.<sup>55</sup> The ability to speak truth unto power seems to have been lacking, together with a willingness or ability to hold a constitutional line. Clearly, there can be pressures which prevent the full advantages of independence from being secured. There is no easy answer to the division of responsibility between ministers and officials, but the relationship between ministers and their senior civil servants, particularly their Permanent Secretaries, is crucial to effective government. That relationship will necessarily be complex. It will depend on political context, personal styles, and different approaches to the job. Sir Gus O’Donnell told us that even principles of accountability were worked out in different ways with different ministers and civil servants.<sup>56</sup> Some ministers will want (as Baroness Shephard told us she had wanted) to be more administratively active than others.<sup>57</sup> Above all, it will depend on the current understanding of what has been described as the “public service bargain”.

63. As we have seen, there is no clear understanding of this at present. Delegating responsibility may help, but it is not as straightforward as is sometimes suggested. As Professor Hood and Dr Lodge point out, the attempt to demarcate accountability can bring with it damaging behavioural consequences for good government:

If civil servants can routinely expect to be fired for Government mistakes, they will not be disposed to help ministers out of political holes ... they will have every incentive to act defensively to make sure Ministers are formally committed on paper (or more likely through killer emails) to all potentially blameworthy courses of action...<sup>58</sup>

The task is to get ministers and civil servants working together effectively, not to lock them into potentially antagonistic bunkers.

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<sup>52</sup> Ev 100

<sup>53</sup> Q 192

<sup>54</sup> Q 269

<sup>55</sup> British Academy Occasional Paper, *Hutton and Butler: Lifting the Lid on the Workings of Power*, Ed., W. G. Runciman, Oxford 2004.

<sup>56</sup> Oral evidence taken before the Committee, 6 February 2007, HC 305-i, Qq 66-67.

<sup>57</sup> Oral evidence taken before the Committee, 14 December 2006, HC93-iii, Q 179.

<sup>58</sup> *Political Quarterly*, Vol 77, No.3, p 366.

64. Yet there is no doubt that the traditional public service bargain is under strain. Former ministers are heard to complain that civil servants lack the delivery skills, managerial competence and commitment to policy success that are demanded of them; while former civil servants are heard to complain that ministers do not take their advice, fail to provide consistent leadership and are obsessed with new initiatives of doubtful practicality. Such complaints are not new; but what is new is that they are now expressed (on both sides) so publicly. This suggests that it is time to consider whether a new public service bargain is needed.

65. What this means for civil service and ministerial skills we discuss in a separate inquiry that will report shortly. Here we confine ourselves to underlying principles. Without introducing artificial and unhelpful demarcation lines, it should be possible to be more explicit about the legitimate expectations and duties of both parties to this key governing relationship. That is what we mean by a new public service bargain. There is a code for ministers; and a code for civil servants. What is lacking is a code for ministers *and* civil servants, a good governance code that incorporates the operating principles of British central government. Unlike the code of this name produced by the Treasury, which excludes the relationship between ministers and civil servants, it would have this relationship at its centre.

66. Under its provisions, civil servants would expect to have their access to ministers safeguarded and their right to give advice, however unpalatable, protected. Their role in procedural and propriety matters should be made explicit. Just as Accounting Officers have a right to give clear advice about expenditure, and to be absolved from responsibility if it is overridden, so Permanent Secretaries should have a right to advise on procedure and propriety. Civil servants have a right to expect clear and consistent political leadership and that programmes will be matched by resources, and a right not to be made public scapegoats when things go wrong for which they are not responsible. For their part, ministers should expect professional and committed service to their governing objectives, along with good advice. They have a right to expect that poor performance will be dealt with effectively, that there is a robust system of performance management, and that civil servants will have the skills and experience to enable them to support ministers efficiently. It should be accepted that ministers may have a role in organising departments if they wish.

67. The compact that the Home Office has recently produced goes some way toward this, although it also demonstrates the difficulty of clear demarcation of responsibilities.<sup>59</sup> It states that ministers are responsible for “accounting to Parliament and the public for the policy and delivery of the Home Office”, while officials are responsible for “increasingly answering externally for operational matters for which they are responsible”. It is still far from clear who is accountable when “operational matters” affect delivery as a whole. Moreover, while ministers are enjoined to ensure their decisions reflect an understanding of resource constraints and officials are responsible for delivery of strategy and policy “within a clear performance framework and allocated resources”, the compact is silent about who is responsible for resource allocation, and for determining whether resources are appropriate. Even so, the compact may be helpful, since it increases pressure on each side to communicate properly with the other, and to clarify responsibilities in particular

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<sup>59</sup> See Appendix.

cases. We also note the increased emphasis on the performance of individual officials and the department as a whole, and the explicit involvement of ministers in performance review. We are similarly encouraged by the development of the Capability Reviews, which offer greater transparency about civil service performance. This is an important initiative, which we examine in more detail in our forthcoming report on *Skills for Government*.

68. A clearer understanding of the public service bargain should be accompanied by an increased willingness to give a full account of operational errors to Parliament, and an acceptance that civil servants do have some direct accountability to Parliament. That will only be possible if Committees accept that a blame culture will not lead to good administration. There will be circumstances in which individual responsibility cannot be overlooked, and ministers need to be held to account, but investigations of policy should not routinely become a political blame game. If that happens we will have swapped a culture in which ministers and civil servants can hide behind each other for one in which they push the other into the firing line.

69. For all its ambiguities, a revised and fuller version of the Home Office compact might form the basis of a clearer division of responsibilities between ministers and officials. There have been suggestions that such a governance code might also be extended to include wider requirements about how government should be conducted. Sir Christopher Foster and Sir Nicholas Monck have proposed such a broader code of good governance, spelling out precise steps in policy making and consultation, to ensure that policy proposals are sound, and well tested. This is certainly worth discussing. Former Cabinet secretaries are on record as deploring the decline of proper government process—Lord Butler told us “There are elements of our government that need improvement and it has got worse”.<sup>60</sup> **Parliament has a legitimate interest in the quality of the governing process that provides it with its core business. It is essential to get the key governing relationship between ministers and civil servants on to a clearer footing. That is why we propose a new public service bargain, underpinned by a good governance code.**

## 3 Ministers and appointments

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### Background

70. The question of politicisation arises particularly in relation to the making of appointments. Currently, there are distinct regimes for making appointments to the civil service itself, and for appointments to Non-Departmental Public Bodies (NDPBs) and similar organisations. Since 1855 the Civil Service Commissioners have been responsible for the appointment of civil servants. Recruitment to lower grades is delegated to departments, but the Commissioners oversee recruitment to the Fast Stream and direct recruitment to appointments in Pay Band 3 and above of the Senior Civil Service (and some other senior civil service posts). At the conclusion of competitions for senior posts, ministers are then given the right to accept or reject the successful candidate. They cannot pick and choose. If they reject the proposed candidate, the competition has to be re-run.

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<sup>60</sup> Q 152

71. In the past, appointments to NDPBs were made entirely at ministers' discretion, although in practice departments frequently had their own systems for finding suitable candidates. This gave rise to charges of patronage. In its First Report, published in 1995, the Committee on Standards in Public Life recommended that a Commissioner for Public Appointments should be appointed to regulate and report on the public appointments process.<sup>61</sup> Appointments are now made according to the Commissioner's code, and independent assessors are involved. For senior appointments, the Independent Assessor is supplied by the Commissioner herself. At the end of the appointment process, ministers get a choice of suitable candidates. Not all public appointments fall within the Commissioner's remit.

72. Policing impartiality through independent bodies produces its own dynamic. If the guarantors of the process made qualitative judgements, they would immediately become part of the political world. Instead, they concentrate on process and rules. The potentially negative effects of this concentration on process can be compounded by departments' own risk aversion, and failure to apply the rules intelligently.<sup>62</sup> It has been suggested that over-reliance on process means that less emphasis is given to preventing "massive waste and inefficiency", which may be as damaging as patronage.<sup>63</sup> That aside, the system gives all participants an intrinsic incentive to avoid any possible impropriety by adding ever more restrictions on ministers' actions. But this way of avoiding impropriety threatens to make ministerial accountability even less real than at present, as ministers are held to account because they may have failed to follow procedures to the letter, rather than because they made an imprudent appointment. Mr Blunkett considered that the new emphasis on standards in this area had had perverse effects:

the Nolan Rules were brought in precisely to avoid the misuse of executive power. However, as with so many things in public life, the law of unintended and often perverse consequences kick in. What happens now is appointments that were previously either made or influenced by politicians inside and outside the Service, are effectively made by Civil Servants. They make them, understandably and unintentionally, in their own image.<sup>64</sup>

73. Just as there is limited ministerial control over entry into public service, so there has been a reduction in control over exit. It is clear that the powers of ministers over both appointments and dismissal have been greatly reduced, not simply because of employment law but because it is no longer accepted that a minister's powers should be so wide. In this sense politicisation has diminished rather than increased.

74. Ministers have themselves reduced their freedom to influence appointments, perhaps more radically than was initially intended. Recently, the decision of the Secretary of State for Northern Ireland to appoint an interim Victims Commissioner was judicially reviewed.<sup>65</sup> We note that, although the appointment was not *formally* governed by the

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<sup>61</sup> First Report from the Committee on Standards in Public Life, Cm 2850-I, May 1995, paras 52-72.

<sup>62</sup> Q 39

<sup>63</sup> Q 78

<sup>64</sup> Ev 113

<sup>65</sup> Decision of 9 November, N.I. High Court, In the matter of an application by Brenda Downes for the judicial review of the appointment of Interim Victims Commissioner.

Northern Ireland Commissioner for Public Appointments, the Court held that ministerial discretion was nonetheless limited by the stipulation of the Ministerial Code that appointments should conform to the principles and procedures in the OCPA Code of Practice. It is possible there will be an appeal. **We do not wish to return to a situation in which patronage prevails, either in the civil service itself or in other public service bodies. However, in the urge to avoid patronage, it is worth asking whether the balance between ministerial control and ministerial accountability is now struck in the right place.**

### Beyond impartiality: political appointments?

75. In contrast to the proposals (as in the IPPR report) for greater separation between politicians and the civil service, Ed Straw argued for a civil service which was more political, and more open to direct ministerial influence. He believed that ministers should have the ability to appoint whom they wished. He argued that policies would be best implemented by those who believed in them (whether attached to the governing party or not). Ministerial appointments would be based on competence, not on political affiliation, and some appointees might well be acceptable to a different government. “Are these *political* appointments? Not if the politicians making them have any sense”.<sup>66</sup> On the other hand, ministers would be free to appoint people on political grounds, if they wished, just as new ministers would be free to dismiss people on such grounds.

76. Mr Straw argued that this change towards explicit politicisation was necessary to strengthen electoral accountability, and to increase the ability of those elected to get things done.<sup>67</sup> We have sympathy for the contention that electoral accountability needs to be strengthened. Mr Straw is right to point out that the British civil service is extreme in its insulation from political influence. We have recently returned from a visit to the United States of America, where it is commonplace for those elected to make senior appointments. In Britain, we have traditionally been suspicious of the “spoils” system, but the fact is that politically appointed officials can be highly capable and well respected. The political and administrative systems in the US are permeable, and there appeared to be surprisingly little resentment of the system among career civil servants. The question is whether such a system would sit comfortably in the United Kingdom.

77. On a purely utilitarian basis, there remains a strong case for an impartial civil service. In Northcote Trevelyan terms, even when appointment from outside becomes routine, able people are encouraged to apply to the public service because they know that appointment will be on merit, not by patronage. Sir Nicholas Montagu was concerned that:

over the years there has been an unfortunate tendency to behave as though bringing in outsiders is intrinsically virtuous, and if there is, if you like, that implicit preference for outsiders, then I have always been worried that it would have the effect that you fear on recruiting people. If they know that they will get so far but

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<sup>66</sup> *The Dead Generalist: Reforming the civil service and public services*, Demos, September 2004, p. 48.

<sup>67</sup> Qq 60-61, 64, 66

that, other things being equal, at such and such a level, somebody will come in from outside, then I think that could well influence their decision.<sup>68</sup>

78. As we have seen, not all the advantages claimed for impartiality have been secured by current arrangements, but they provide a persuasive case for an independent civil service. We note the long delays in establishing new administrations in the United States, and the danger of decisions being made by those without experience of the issues under consideration. Although we agree with Mr Straw that politicians are as likely to appoint people to the public service on merit as they are to appoint partisans, we consider the disadvantages that a wholesale extension of politicisation would entail outweigh its benefits. Such an extension would also undermine the high regard in which the civil service is held presently, because of its independence. We believe that an impartial civil service, free from routine politicisation, should be the preferred model. **Even though the British split between administration and politics is extreme, in international terms, and even though impartiality was first introduced as a means to improve administrative efficiency rather than simply to clean up the patronage state, we do not believe that wholesale introduction of appointments by politicians would necessarily solve the problems of civil service performance. Nor would it be consistent with our political culture.**

### A proper level of influence?

79. Within the framework of an independent civil service, though, the model's practical operation is somewhat more complicated. Ministerial influence on who is appointed to key posts within the civil service has been limited both by the developments noted above and by the increasing number of external appointments, in which they have little say. It was clear from our evidence that it has long been commonplace for ministers to be consulted about key appointments where those appointments are made from *within* the civil service. Indeed, Sir Michael Quinlan maintained that only convention prevented ministers from insisting they should be involved in all senior internal appointments.<sup>69</sup> Lord Butler described a process in which there was genuine consultation and discussion between ministers and Permanent Secretaries, in which each had legitimate objectives:

The Civil Service would initiate proposals for appointments, there would be a civilised discussion with Ministers, and sometimes Ministers would have a preference and that was a preference that you could go along with, but there was a good role of the Civil Service in it and I certainly did not find myself feeling during my time that appointments were being made on the basis of ministerial favouritism. If I did get any sense of that I tried strongly to oppose it. There were sometimes appointments made that I did not agree with but not generally simply because of ministerial favour. I had a reason when I was Head of the Civil Service because of long laid plans of wanting somebody to be in a particular appointment because it would fit them for something else later on. Understandably Secretaries of State were

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<sup>68</sup> Q 267

<sup>69</sup> Q 286

not often very sympathetic with that, they wanted the best person at the time, so I had to make compromises in those situations.<sup>70</sup>

80. However, if a post is subject to open competition there is no such consultation. Quite properly, because of the desire to avoid ministerial patronage, the minister is presented with a single name to accept or reject. In 1992 the then Home Secretary, Kenneth Clarke had been allowed to make a final decision over the appointment of Derek Lewis as Chief Executive of the Prison Service, but that was unusual. More recent reports from the Civil Service Commissioners show that any contact between applicants for senior posts and ministers has been discouraged, and the Civil Service Commissioners' recruitment code specifies that "The Minister cannot interview the candidates or express a preference among them".<sup>71</sup> We understand that there has been some relaxation recently, in that ministers are now allowed to meet candidates as a group, and brief them on their view of the post in question, but no individual contact is allowed.<sup>72</sup>

81. We consider that ministers are entitled to have confidence in those serving them. The ability to command this confidence is in itself one aspect of "merit". An ability to work with ministers is a key skill, particularly in the more senior posts in which ministers have most interest. Ministers from different parties have often been astute and non-partisan in identifying civil servants with talent. The facts that Lord Lawson identified Sir Gus O'Donnell as highly capable,<sup>73</sup> or that Alex Allan<sup>74</sup> was John Major's Private Secretary, have not prevented their promotion under a different administration.

82. We agree with Sir David Omand that it is entirely proper for a Secretary of State to be consulted about key appointments.<sup>75</sup> Unlike him, we cannot see why, if that is the case for internal appointments, it should not also apply *to an extremely limited extent* in external appointments. Sir David agreed that it would be possible to have a system in which the Civil Service Commissioners identified appointable candidates and ministers were then asked for their view.<sup>76</sup> One of the key criteria in determining whether a candidate was in fact appointable would (of course) be their ability to serve another government. The present appointments system seems to work well, but it would be unfortunate if fears about politicisation prevented discussion about how it might be sensibly adapted to deal with inconsistencies between internal and external appointments.

**83. Over the last two decades there has been an evolution in the common understanding of what degree of ministerial influence is appropriate over the employment of civil servants. The idea that the civil servant holds office at the minister's pleasure is no longer valid. We believe that there is a danger that ministerial influence over the civil service will be reduced to the extent that it is hard to reconcile**

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<sup>70</sup> Q286

<sup>71</sup> Ev 103

<sup>72</sup> Ev 103

<sup>73</sup> Nigel Lawson, *The View from Number 11: Memoirs of a Tory Radical*, London 1992, p 385.

<sup>74</sup> Now Permanent Secretary at the Department for Constitutional Affairs.

<sup>75</sup> Q 283

<sup>76</sup> Q 286

with ministerial accountability. Ministerial accountability to Parliament is indissolubly linked to government responsibility to the electorate.

84. It remains essential in our view that there should be no entrance into the civil service through ministerial patronage. Appointments should be made, as now, on merit, through a process which is rigorous, and which is policed by the Civil Service Commissioners. The ability to work impartially with governments of different political persuasions should be a key factor in deciding whether a particular candidate is appointable.

85. Nonetheless, we need to ensure that changes in appointment systems, or in patterns of recruitment, do not have the perverse effect of reducing democratic accountability. It is possible to guard against patronage without removing all ministerial choice about suitable appointees. Such choice should be exercised only in cases where there is external recruitment to extremely senior posts. There should be no ministerial involvement in recruitment below the senior civil service, and even at senior civil service level it should be confined to key appointments. In such cases, if a competition produces more than a single candidate who would be suitable for the post on offer, we believe that it is entirely legitimate for ministers to be given an opportunity to meet them, and to be asked to express a preference, as is the case with appointments to NDPBs.

86. Baroness Prashar, the former First Civil Service Commissioner, defended the current system, saying that once a job description has been specified, then efficient recruitment will find the person best suited to that role.<sup>77</sup> Ministers are encouraged to be fully involved in setting out the sort of person they want, and what they consider to be key elements of the job. Their involvement at this stage should ensure that the person appointed best meets ministerial requirements. We are not wholly convinced by these arguments. The job specification and person specification for senior posts will relate to a particular role. However, most appointments are made to the civil service as a whole; the post to which a person is recruited is potentially the first of many roles. Political impartiality is essential; ministers should not be able to appoint their own supporters. Nonetheless, the emphasis on confining ministerial input to job and person specification means that the ability to work with ministers may not be tested, even cursorily. **The appointments process should take account of the fact that appointments are made to the civil service, as well as to a particular post. Assessment of external candidates should not focus too narrowly on the post in question.**

87. Moreover, we are not convinced either that job or person specifications can be drawn up so well that only one candidate will always fit them. There may well be cases where there is a legitimate choice between candidates, and an appointment board may have to trade off different qualities. In those circumstances, and in view of the fact that the minister would have a say if the appointment was an internal one, we do not see why a minister could not be consulted about the weight that should be given to different qualities, or even consulted about the short list. This would not be politicisation; but it would recognise that ministers had a legitimate interest in the process.

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<sup>77</sup> Qq 102, 143-145

## Promotions

88. The Civil Service Commissioners have been increasingly involved in internal promotions. We welcome this, in the interests of consistency. If appointment and promotion is to be on merit, then independent scrutiny and advice is helpful. Independent involvement may challenge departmental patronage, as well as any ministerial patronage. However, we think it is important that the Commissioners engage in dialogue with ministers about their requirements and that, where appropriate, the promotion system takes account of ministers' views about competence. We were surprised by the apparent lack of any systematic way to elicit such information. As we have noted before, the ability to command ministerial confidence is a key public service skill, and should be recognized as such.

## Appointments to NDPBs

89. Just as ministerial influence over the appointment of civil servants to senior posts has diminished, so ministerial control over other public appointments has been reduced. Although we have some concerns over the detail of the current system, we welcome the introduction of an independent regulator to ensure public appointments are made on merit.

90. The First Report of the Committee on Standards in Public Life concluded that “responsibility for appointment [to NDPBs] should remain with ministers, advised by committees which include independent members”.<sup>78</sup> In evidence to us Baroness Fritchie, the former Commissioner for Public Appointments, agreed that “Ministers are held accountable and therefore must have confidence in the people they appoint”.<sup>79</sup>

91. Under the Commissioner’s Code, ministers are consulted early in the planning stage to agree both the selection criteria and the way the process is to be conducted. Ministers and officials are equally free to suggest names of possible candidates who might be encouraged to apply for the vacancy. Applications from those they suggest must be received by the same closing date and should be treated in the same way as for other applications. Once the panel has selected appointable candidates, ministers will then be offered a choice from which to make a final selection.

92. During our concurrent inquiry into Ethics and Standards, a number of witnesses commented adversely on the recruitment process of the Office of the Commissioner for Public Appointments (OCPA). It was seen by some as ponderous and over-elaborate, especially for minor or non-controversial appointments. As Simon Jenkins noted:

I think that if you place so much weight in the participatory organs of government on the appointments system, the appointments system itself will require ever greater scrutiny and accountability to be seen to be fair, and it will become cumbersome and relatively ineffective as a result.<sup>80</sup>

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<sup>78</sup> *Ibid.*, page 65.

<sup>79</sup> Q 2

<sup>80</sup> Oral evidence taken before the Committee, 2 February 2006, HC 884-I, Q 42.

Peter Riddell agreed:

The original Nolan Report has just been taken too far, particularly with things like local government and the lower level quangos, and the regulatory burden needs to be eased and made less onerous.<sup>81</sup>

93. Lord King of Bridgwater recalled how when the Committee on Standards in Public Life (of which he was a member) had originally looked at appointments, the thrust of their deliberations favoured a totally independent system, free of any ministerial involvement. Then they heard from Lord Kalms, who said he would not put himself up for selection since it would be personally and commercially damaging to him to go and fail a lengthy and bureaucratic selection system. He was however prepared to give public service if a minister asked him to do so. Lord King explained that:

One of the things which has worried me since is that these rules have become tighter and tighter around public appointments and they are always described as the Nolan rules, whereas actually we on the Nolan Committee made very clear that there should be discretion for Ministers, but the Ministers then had to take responsibility.<sup>82</sup>

94. He was not the only witness who believed the rules had been gold-plated in a way which turned the Nolan proposals into a much more rigid system. However, not everyone held this view: Lord Smith of Finsbury (another former member of Committee of Standards in Public Life) did not want to see the current system, which he judged to work pretty well, to be disrupted.<sup>83</sup> OCPA itself has tried to clarify the rules, and ensure they were understood throughout departments.

**95. We believe the OCPA process should be a pragmatic solution to the need to ensure that political patronage is properly controlled, while allowing ministers the ability to set the direction of policy. We applaud the work that OCPA has done to clarify the rules, and ensure they are understood by all participants in the appointments process.**

96. However, in most cases it is now no longer possible for a minister to identify someone for a particular appointment without going through a regulated appointment process. The difficulty is that the current system can lead to a position which is the worst of both worlds. It is still possible for the public and press to be concerned about cronyism, but it is also possible for ministers to feel that they are now held accountable for appointments they do not in fact control.<sup>84</sup>

97. Our witnesses were divided about the desirability of the present arrangements. Ed Straw argued that political accountability was found in results, not in process, and that ministers should have retained their control over appointments: “I do not care whether he selects a gorilla, an elephant or his mate next door if that organisation delivers”. In his view “anyone who has been in significant office wants and has to have people around him to do that office, people they know and can work with and know they are going to deliver. Often

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<sup>81</sup> *Ibid.*, Q 43.

<sup>82</sup> Oral evidence taken before the Committee, 16 March 2006, HC 884-iii.

<sup>83</sup> *Ibid.*, Q 160.

<sup>84</sup> Qq 46-49

that does not mean going through some administrative recruitment process; it means knowing people and trusting them”.<sup>85</sup> This was an organisational imperative. To be held accountable for the performance of an organisation in which you had little or no control over personnel was a formula for failure.

98. By contrast, Baroness Prashar called for removal of even the current level of ministerial choice, claiming that professionalism in recruitment processes did away with the need for it.<sup>86</sup> Baroness Fritchie considered that ministers should be closely involved in the job specification, allowed to suggest names, and outline the process they felt appropriate, but go no further.<sup>87</sup> She drew a distinction between engaging a public figure, such as Jamie Oliver, to act as an adviser, and appointing someone to a board with legal responsibilities for its management and governance.<sup>88</sup>

99. There can be problems even with the current system. As Baroness Fritchie told us, the way in which ministers are given the names of appointable candidates is crucial:

the information I have from solicitors currently is that, when the panel (who have done the work to find the right group of people for the minister to consider so the minister can make a selection) does their work, the minister has to have said in advance—this is their involvement in the beginning—“I want you to find people who fit this bill and I want you to present them to me with pen pictures of the best three above the line, each of them having merit”. If you put three people and say, “Here are three different candidates and these are their abilities and qualities”, then the minister is perfectly free to choose any of them. However, some ministers—or some departments without consulting the ministers—rank them in order one, two and three and when you do that you make it very difficult to choose someone who is not ranked number one, particularly if a member of the panel has told someone, “By the way, we’ve ranked you number one”.<sup>89</sup>

**100. We recommend that, if ministerial accountability for appointments is to be a reality, ministers should be given clear descriptions of appointable candidates, rather than a ranking in merit order. Only then will ministers be able themselves to decide who is best fitted for a particular job. There may be cases where a minister is sufficiently confident of the job description to ask for a ranking in merit order, but that should be for the minister concerned to decide.**

## Exempt posts

101. Not all posts are subject to Nolan procedures. We were surprised to be told by Lord Turner of Echinwell, the Chairman of the Pensions Commission, that because his post

did not go through the Nolan processes, it was impossible to pay me anything, and I think that is the basic rule here—it may again be an implicit rule—that if you appoint

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<sup>85</sup> Q 75

<sup>86</sup> Q 105

<sup>87</sup> Q 2

<sup>88</sup> Qq 3-8

<sup>89</sup> Q 17

anybody these days to any sort of quango or commission which involves any sort of payment, then you do have to go—I think those are the rules these days—through official formal processes and applications and panels of selection, et cetera; but where you have asked somebody to do something which is in a sense ad hoc in its working processes—the exact way that it works is simply made up, it has no defined constitutional role—then you can basically ask whoever you want to do it.<sup>90</sup>

The Ministerial Code says a minister:

should appoint the person(s) he or she considers to be best qualified for the position. In doing so, the Minister should have regard to public accountability, the requirements of the law and to The Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies. The process by which such appointments are made should conform to the principles in the Code—Ministerial responsibility, merit, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality—and to the procedures set out in detail in the Code.<sup>91</sup>

Many excellent appointments, such as that of Lord Turner, appear to be made without conforming “to the procedures set out in detail in the code”, because they are asked to undertake a one-off task, or because the procedures would not be proportionate. If the Ministerial Code is serious in suggesting that all ministerial appointments should be made according to OCPA rules, we see no reason why all appointments should not be subject to the Commissioner's authority. Since not all public appointments are so subject, we consider the Ministerial Code should be redrafted to ensure it reflects reality.<sup>92</sup>

**102. Different accountability processes are needed for different bodies. Not all appointments are suitable for Nolan procedures. Some of the current difficulties arise from a lack of transparency over what posts are or are not covered by the rules. In 2003 we recommended that NDPBs and similar bodies should be reviewed, so that there was clarity about which bodies were subject to the OCPA process. We are frustrated that this review has not yet been completed.<sup>93</sup> In addition, we believe that the Ministerial Code should make clear that not all ministerial appointments are made according to the OCPA rules.**

### **Starred appointments**

103. There have been suggestions that ministerial involvement in public appointments should be reduced still further. In January 2005 the Committee on Standards in Public Life (CSPL) published its report ‘Getting the Balance Right: Implementing Standards of Conduct in Public Life’, which was concerned directly with this issue. Giving evidence to

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<sup>90</sup> Second Report of Session 2006-07, *Governing the Future*, HC 123-II, Q 363.

<sup>91</sup> *Ministerial Code*, para 2.6.

<sup>92</sup> Q 81

<sup>93</sup> Fourth Report of Session 2002-03, *Government by Appointment: Opening up the Patronage state*, HC 165-I, paras 35-43; see also Q 46.

that Committee, Baroness Fritchie expressed concern about the way in which ministers were able to alter short lists. Her concern was that a minister saying “I cannot work with this person, take that name off” at short list stage would breach the principle of merit and equal opportunity. She told the CSPL that:

Four departments misunderstood my Code and routinely share short lists with Ministers when it is not a recognised part of the process, when the independent assessor is not around to see that happening, when the candidates themselves do not know that is the case and when, on vary rare occasions, names may be removed, and indeed names added. Even if the Minister does not alter the list, the Minister in private in an unrecorded meeting can say, ‘I like this one, do not like that one’ a kind of nod and wink approach.<sup>94</sup>

Sir Brian Bender, then Permanent Secretary at Defra, argued to the CSPL that:

If it is a matter of fact that this Minister cannot work with that individual then there is an interesting question of whether there is a real point in putting that individual through the next stage of the process, when it is pretty clear the Minister is not going to appoint them. It seems to me a perfectly legitimate issue for the Minister to raise, provided there are reasoned arguments as to why they cannot work with that individual. That would then go back to the panel for a judgement. Ultimately, one is trying to develop a relationship of trust between the body and the Minister.<sup>95</sup>

104. The CSPL eventually recommended that a small number of senior and strategic appointments be classified as “starred” appointments which would attract legitimate ministerial interest. In such “starred” posts the Committee recommended that ministers would be consulted throughout the process and included at short-listing stage, but would no longer have a choice between appointable candidates, as this decision would be delegated to the responsible panel on the grounds that “Full ministerial involvement up to and including short-listing **as well as** ministerial choice from appointable candidates is not consistent with the overriding principle of merit”.<sup>96</sup>

105. The Government rejected the Committee on Standards in Public Life’s recommendation, albeit in guarded terms:

The Government welcomes the Committee’s acknowledgment that the principle of participation by Ministers in the public appointments process is not incompatible with the independence and integrity of the system. It also welcomes the fact that there is common ground here among a variety of important stakeholders, including the Commissioner for Public Appointments, Permanent Secretaries, Ministers and other informed players and observers. Ministers are a very important stakeholder in the public appointments process. Under the legislation which establishes public bodies, Ministers are responsible for making appointments. They are accountable for the performance of individual public appointees and the bodies to which they are

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<sup>94</sup> Annex D: Committee on Standards in Public Life, Tenth Report, *Getting the Balance Right: Implementing Standards of Conduct in Public Life*, Cm 6407, 2005, para 2.73.

<sup>95</sup> *Ibid.*, para 2.90.

<sup>96</sup> *Ibid.*, para 2.109.

appointed. For these reasons, the Government therefore believes it is only right that Ministers should have a proper and transparent involvement in the process. The Government will work with the Commissioner to ensure that there is an agreed approach which provides clarity and openness about the degree of ministerial involvement.<sup>97</sup>

**106. In earlier reports previous committees have fully supported the principle of independent involvement in the appointments process, and have proposed measures to strengthen the system by ensuring the involvement of independent assessors at all stages of the process. We support those recommendations. Nonetheless, it is hard to reconcile ministers' ultimate responsibility for public appointments with limits on their involvement in the appointments process so stringent that they have no real choice over whom is appointed. We see no case for such "starred appointments".**

### **Direct ministerial appointment**

107. In our view there is a case for increasing ministerial powers over some public body appointments. The public appointments system operates, as Baroness Fritchie said, for "thousands and thousands of people who apply for public bodies".<sup>98</sup> There needs to be a clear, merit-based system in which the public can have confidence for the vast bulk of these appointments. But as Baroness Fritchie also said "we have to have a system which takes account of occasional exceptions".<sup>99</sup> There may sometimes be key posts where ministers feel they wish to have personal knowledge of, and confidence in, the individual at the head of an organisation carrying out their policies. Baroness Fritchie highlighted the governance role of those appointed to important public posts, but sometimes people are also appointed explicitly to implement political priorities, not simply to govern NDPBs. For example, it is clear from Lord Lawson's memoirs that the appointment of Walter Marshall to the CEGB<sup>100</sup> and Sir Ian McGregor to the Coal Board was a crucial part of the Chancellor's strategy.<sup>101</sup> Whether or not Lord Lawson's policy aims were desirable is a matter of debate, but the government of the day had the right to want them implemented.

108. Since the leaders of key public bodies can have a major role in implementing government policy, and may not always be congenial to the civil service, we believe that it is appropriate for ministers to have a reserve power to ensure that they can make the appointment that they wish in specified cases. In such cases, if there was an operational failure, the minister would not be able to evade responsibility by claiming that his or her influence over the post was limited. **We recommend that ministers should have a reserve power to make appointments to public bodies in specified cases without going through the normal Nolan processes, even when those posts would normally fall within the OCPA remit. Such cases should be transparent and explicit. The Commissioner for Public Appointments should report on every such case, making it clear that ministers**

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<sup>97</sup> *The Government's response to the Tenth Report of the Committee on Standards in Public Life*, Cm 6723, p 2.

<sup>98</sup> Q 56

<sup>99</sup> Q 56

<sup>100</sup> Central Electricity Generating Board.

<sup>101</sup> *The View from Number 11*, Chapters 12 to 14.

had exercised this power, and, if appropriate, publishing the reason given for such an appointment.

109. We do not believe that ministers would use this power frequently. A government which made numerous direct appointments would face intense scrutiny of them. However, if ministerial responsibility is to be a reality, it is reasonable for ministers to have such a power.

110. The extent of the changes we propose should not be exaggerated. We consider that entry to the civil service should remain on merit, and that an independent body should continue to determine that merit. We suggest that the current procedures for making public appointments are generally appropriate. Although we do not support proposals to make them still more stringent, we suggest they should be relaxed only rarely, and that any departure from the normal rules should be transparent and explicit.

### Special Advisers and Ministerial Cabinets

111. If ministers may properly have a little more influence over appointments without running the risk of inappropriate politicisation, do they also need more ability to appoint special advisers or political *cabinets*? The evidence we received about special advisers was generally positive. Sir David Omand told us:

It is quite dangerous to use the label ‘Special Adviser’ to cover what are entirely different kinds of people. ... Very, very briefly, you have experts, and the public service is very lucky to have the services of a number of experts recruited through that Special Adviser route, who are acknowledged experts but they have political affiliations ... That has never caused a problem, as far as I am aware. You have another group, media minders and media assistants ... Ministers have to have somebody who can go and pad the corridors of the newspapers and put their side of the story in a political sense. There is nothing wrong with that, and it is enormously helpful to the Government Information Service because it does not lead to pressure on them to become political. ... The third group is the Number 10 Special Advisers, 24-odd, another nine in the Treasury, who are bright, young, policy-makers, and there are issues there about how those groups interrelate. Then finally you have a smaller number, who their Ministers hope will act as *chefs de cabinet* and progress-chasers, general chiefs of staff. ... There, there are very significant risks of upsetting proper relationships with the official machine and relationships between junior Ministers and the Secretary of State, if a Special Adviser actually is being used as a *chef de cabinet*.<sup>102</sup>

112. It is unfortunate that particular events have obscured the generally positive role played by Special Advisers.<sup>103</sup> Rarely can such a small group, fewer than ninety, even if the Chancellor’s Council of Economic Advisers is included, have received such disproportionate attention.<sup>104</sup> As the only politically appointed members of the civil service,

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<sup>102</sup> Q 231

<sup>103</sup> See Eighth Report of Session 2001-02, “These Unfortunate Events”: Lessons of Recent Events at the Former DTLR, HC 303-I.

<sup>104</sup> HC Deb, 24 July 2006, col 87WS.

they are a testimony to the general absence of politicisation rather than evidence of its presence. Indeed, they can buffer civil servants from pressure to act in ways which would undermine their impartiality.<sup>105</sup>

113. However, Sir David Omand's point about the danger of using some special advisers for a role which is not properly theirs, cutting across normal departmental relationships, is a good one. They should simply be political assistants, of assorted kinds. There may be a case for one or two key political appointees in Downing Street having executive powers, but this should remain the exception rather than the rule.

114. Sir David Omand put it to us that there were advantages in having special advisers as temporary civil servants because then they were drawn "into a machine with an expectation that they will get training, which they will not otherwise do or receive, in the values of the Service of which they are temporary members, and about the informal relationships, informal rather than formal ones, with the permanent secretary and senior officials, it puts them within a framework".<sup>106</sup>

115. A contrasting view was put by Lord Butler, who considered that there should be greater separation between special advisers and the civil service, because "it is an impossible situation for a permanent secretary ... to be responsible for the disciplining of a special adviser".<sup>107</sup> The First Civil Service Commissioner considered that the Commissioners should not be responsible for such discipline.<sup>108</sup> There was a general consensus, with which we concur, that ministers should take full responsibility for their special advisers. **Special advisers are appointed by ministers directly; ministers need to take full responsibility for their conduct.**

116. Although there was general support for the role of special advisers, our witnesses were divided on whether a more formal *cabinet* system was desirable. Here a small team of political appointees, working with civil servants, provide a support group for a minister. Lord Butler considered that the system was undesirable, because ministers would "cut themselves off from the other streams of advice they ought to be getting, both from civil servants and maybe from outside".<sup>109</sup> Mr Blunkett felt that there was a choice between introducing a *cabinet* system, with an increase in the number and function of special advisers, or giving ministers a greater role in key appointments, as we have proposed.

117. **We remain neutral on whether a formal *cabinet* system would be a useful innovation. If proposed at some point, it would require careful and critical examination. This report has suggested a modest rebalancing of ministerial powers, in relation to appointments, in line with ministerial accountability. If this increases civil service effectiveness and responsiveness to ministers, it may reduce any pressure to introduce such a system, or to increase the number or powers of special advisers.**

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<sup>105</sup> Ev 123

<sup>106</sup> Q 232

<sup>107</sup> Q 213

<sup>108</sup> HC 884-viii, Q 470

<sup>109</sup> Q 212

## 4 Civil Service Legislation

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118. We have argued that giving ministers some role in the selection of those who serve them could be done without reintroducing political patronage, or succumbing to cronyism or politicisation, and was necessary to ensure that ministers remained ultimately accountable, both to Parliament and the electorate. But although we consider that in some respects the “Nolan procedures” have been applied in ways which went beyond their original intention, and which have had unintended constitutional consequences, those procedures were introduced to serve a real purpose. This was to prevent cronyism by ensuring probity and transparency. This remains fundamental. If the system is to be trusted, then it must be clear, and there must be defined limits on what politicians can do.

119. The proposals we make here should be balanced by legislation to give the principle of appointment on merit to the civil service the protection of statute, and giving the civil service itself, and the independent bodies which ensure its integrity, a statutory identity.

### A Civil Service Bill

120. As we have seen, the principle of a permanent, independent and politically neutral Civil Service in the UK dates back to the publication of the Northcote Trevelyan Report in 1854. Yet the final recommendation of that report still remains outstanding:

It remains for us to express our conviction that if any change of the importance of those which we have recommended is to be carried into effect, it can only be successfully done through the medium of an Act of Parliament ... A few clauses would accomplish all that is proposed in this paper, and it is our firm belief that a candid statement of the grounds of the measure would insure its success and popularity in this country, and would remove many misconceptions which are now prejudicial to the public service.<sup>110</sup>

121. Yet no Government until the present has conceded the merits of codifying the governance arrangements of the Civil Service in statute. An exhaustive inquiry was carried out by the Treasury and Civil Service Committee in 1993-94.<sup>111</sup> That Committee set up a sub-committee to consider the role of the Civil Service, which heard from 41 witnesses over 21 evidence sessions. Its report considered that the time had come to implement the last recommendation of Northcote Trevelyan, and urged all parties to indicate their support for such a Bill. The Bill envisaged in that report would have required the Government to consult on a new Civil Service Code, and to seek the approval of both Houses in ratifying it. It would also have recast the Civil Service Commissioners as custodians of that code, with powers to initiate and investigate alleged breaches.

122. The Government’s response, published in a Command Paper in January 1995, argued that much of the proposed content was appropriate and achievable without legislation. In particular, it saw no need for legislation to confer new functions on the Civil Service

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<sup>110</sup> Stafford Northcote and C E Trevelyan, *The Organisation of the Permanent Civil Service*, Parliamentary papers Volume XXVII, 1854.

<sup>111</sup> Treasury and Civil Service Committee, Fifth Report of Session 1993-94, *The Role of the Civil Service*, HC 27-I.

Commissioners, and was content to consult on a new Civil Service Code but without the extra step of Parliamentary approval. It did, however, acknowledge some benefit to legislation, in that it would give additional authority to the Code and to the Commissioners, and might entrench the general agreement in favour of a non-partisan Civil Service. Nonetheless the Government did not commit itself to introducing a Bill, explaining that any legislation would need wide political agreement:

The Government is, however, cautious about the prospect of opening up the possibility of change in the constitutional position of the Civil Service, and thereby risking its politicisation. It would not introduce or support legislation which ran such risks or specified in detail the employment rights of the civil servants, conferring on them privileges or disadvantages relative to other employees, or inhibiting effective and efficient management. Before introducing a Civil Service Bill the Government would, therefore, need to be satisfied that there was a broad measure of agreement on legislation which sustained rather than altered the existing constitutional position of the Civil Service, retained the flexibility of the existing arrangements for regulating the terms and conditions of civil servants, and did not change the position of civil servants under general employment law.<sup>112</sup>

### **Developments after 1997**

123. All three main parties entered the 1997 general election pledged to introduce a Civil Service Bill. There was clearly a growing and widening consensus about its desirability. One of its objectives was to guard against the potential for politicisation of the Civil Service.

124. Sir Richard Wilson, then Cabinet Secretary, had stated that he expected a Bill “on his watch”,<sup>113</sup> but when he was succeeded as Head of the Civil Service by Sir Andrew Turnbull in 2002, no such legislation was forthcoming. It was indicated that this project would not be a legislative priority. This provoked a vigorous response, including a debate in the House of Lords on 1 May 2002, and the announcement of an inquiry by the Committee on Standards in Public Life, which invited staff from the Prime Minister’s Office, including Alistair Campbell and Jonathan Powell, to give evidence. The invitation was declined.

125. This Committee’s predecessors have long taken an interest in Civil Service legislation, and have consistently pressed for its introduction. It was therefore frustrating to hear in 2002 that a Bill promised in 1997 was still unlikely to become a legislative priority. It was for this reason that our predecessor Committee took the unprecedented step for a Select Committee of announcing that, in the absence of the promised Government Bill, the Committee would be drafting its own Bill. This reflected the continuing and cross-party support for such a Bill.

126. Against this backdrop, in April 2003 the Committee on Standards in Public Life published its Ninth Report, *Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service*.<sup>114</sup> The Committee considered that it was time to

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<sup>112</sup> Cabinet Office, *The Civil Service: Taking Forward Continuity and Change*, Cm 2748, January 1995, para 2.17.

<sup>113</sup> Sir Richard Wilson, *Portrait of a Profession Revisited*, March 2002.

<sup>114</sup> Committee on Standards in Public Life, *Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service*, Cm 5775, April 2003.

put the Civil Service on a statutory footing, and called for a Bill which also gave powers for the Civil Service Commissioners to investigate and report on the operation of the Civil Service recruitment system on their own initiative. It also suggested that any such legislation should place limits on the roles that could be carried out by special advisers; and on the overall number of such advisers, amendable by secondary legislation.

127. The Government's response to this report was notable because it contained a first public pledge to publish a draft Civil Service Bill, although the basis of its support for such a Bill was not explained, and much of the response was dedicated to describing why legislation was not necessary to achieve the Committee's goals:

The Government accepts the case in principle for legislation but any legislation has to compete for its place alongside many other priorities. The Government also believes that much more can be done to implement most of the Committee's concerns without or in advance of legislation ... The Government believes that the present arrangements work well but it will continue to reinforce the impartiality of the Civil Service. Once the Public Administration Select Committee's proposals for legislation for the Civil Service have been published, the Government will itself publish a draft Bill, as a basis for further consultation.<sup>115</sup>

### ***The Public Administration Select Committee's Draft Bill***

128. Our predecessor Committee published its draft Civil Service Bill on 5 January 2004.<sup>116</sup> The draft Bill followed a lengthy consultation which showed overwhelming support for a Bill, as long as it was brief and contained nothing which might hamper the proper management of government business. The Committee strove to meet these criteria, working on the basis that any legislation on the Civil Service should attract widespread support across party lines to avoid any possibility that it might be seen as politically motivated or contentious.

129. The draft Bill provided for the establishment of a permanent civil service in statute. It also provided for:

- the statutory establishment of the Civil Service Commission, empowering the Commission to undertake inquiries into the recruitment of civil servants and, in particular, the operation of the Codes of Conduct for Civil Servants and Special Advisers;
- the Commission to be funded through, and directly accountable to, the Houses of Parliament rather than the Government;
- Commissioners to be appointed by the Queen on the advice of the Prime Minister acting with the agreement of the Leader of the Opposition;

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<sup>115</sup> *The Government's Response to the Ninth Report of the Committee on Standards and Public Life*, CM 5964, September 2003, p 5.

<sup>116</sup> Public Administration Select Committee, First Report of Session 2003-04, *A Draft Civil Service Bill: Completing the Reform*, HC 128-I, December 2003.

- the codification of existing arrangements with regard to Special Advisers—namely, that they should not manage civil servants, exercise statutory powers or authorise public expenditure;
- limits on numbers of Special Advisers, to be made by affirmative resolution;
- the Civil Service Code and all terms and conditions of civil servants to be made by statutory instrument; and
- the removal of certain nationality requirements for being employed by the Crown.

130. The Committee’s draft Bill received the public support of the Conservative Party and the Liberal Democrat Party, and was presented as a Bill by Oliver Heald MP (then the Shadow Leader of the House of Commons).<sup>117</sup>

### ***The Government’s Draft Bill***

131. As promised, although not until ten months after the publication of PASC’s draft Bill, the Government eventually produced its own draft Civil Service Bill in November 2004. The Bill was published as a consultation document, with the curious statement in its introduction that “the Government wishes to consult on whether legislation is a necessary and desirable step”, an odd way to introduce a proposed Bill and seemingly a retraction of the Government’s earlier acceptance in principle of the case for a Bill. The consultation was decidedly lukewarm about the merits of its draft Bill :

The Government believes that the current arrangements remain workable and afford welcome flexibility in the way in which the Civil Service can be organised and managed in accordance with the employment market and changes in public expectations and consequent changes in the requirements of government. Political commentators have often noted that even the best-intended changes can bring with them unintended consequences, and before adopting a statutory approach, the Government would want to be sure that these advantages would be preserved.<sup>118</sup>

132. Nonetheless, the production of a Government draft Bill was a significant step and was widely welcomed. Its key features were similar to those of our predecessor Committee’s draft, but with a few significant changes:

- the Government did not believe that it was desirable for the Civil Service Commissioners to be empowered to investigate potential breaches of the Civil Service Code on their own initiative, as it considered this to be a role for the Cabinet Secretary;
- perhaps consequently, the Government felt that funding for the Commissioners should continue to be received through the Cabinet Office rather than through Parliament;

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<sup>117</sup> Civil Service Bill [Bill 37 (2003-04)].

<sup>118</sup> Cabinet Office, *A Draft Civil Service Bill: A Consultation Document*, Cm 6373, November 2004.

- the Government saw no need for all Civil Service Commissioners to be appointed in consultation with the Leader of the Opposition, and provided only for the First Commissioner being appointed in that manner;
- while agreeing that it was no longer appropriate for Civil Service terms and conditions to be set by Order in Council, the Government did not agree that this should be done by statutory instrument, and instead proposed that it be done by the Minister for the Civil Service; and
- the Government did not accept the case for a legislative cap on the number of special advisers it might appoint. The Government's draft Bill instead provided for an annual report setting out the names, functions and cost of each special adviser.

133. Our predecessor Committee welcomed the Bill in its response to the Government's consultation, published on 22 February 2005. While the Committee continued to have concerns over the policy differences between the two draft Bills, they nonetheless saw no reason why there should be further delay in converting the draft Bill into an actual Bill once the consultation period had closed.<sup>119</sup>

### ***Whatever happened to the Civil Service Bill?***

134. The Cabinet Office Code of Practice on Consultations specifies that there are six criteria which must be applied to all consultations. Of those, criterion number four is the most relevant here:

Give feedback regarding the responses received and how the consultation process influenced the policy ... The consultation document should state the date when, and the web address where, the summary of responses will be published. As far as possible this should be within three months of the closing date of the consultation.<sup>120</sup>

135. The consultation on the Civil Service Bill, itself carried out by the Cabinet Office, closed on 28 February 2005. In October 2005, some eight months after the consultation closed, we asked Sir Gus O'Donnell why no summary of responses had been forthcoming. He told us " ... we are in consultation and we have had 50 responses to that. I am going through them – some are in favour, some against." He also mentioned that "there are some issues there that will emerge out of the consultation".<sup>121</sup> If so, they are yet to emerge. As far as this Committee is aware, this is the most information which has been made public on the contents of the consultation. We have now written to the Cabinet Secretary pressing for a response.

136. Last session Lord Lester of Herne Hill once again introduced legislation on the Civil Service in the House of Lords. The Constitutional Reform (Prerogative Powers and Civil Service Etc) Bill received a second reading on 3 March 2006.<sup>122</sup> During that debate, Lord

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<sup>119</sup> Public Administration Select Committee, Third Report of Session 2004-05, *Response to the Government's Consultation on the Civil Service Bill*, HC 336, February 2005.

<sup>120</sup> Cabinet Office, *Code of Practice on Consultation*, January 2004, Paras 4 – 4.3.

<sup>121</sup> Oral evidence given before the Committee on 11 October 2005, HC(2005-06)513-i, Q 120.

<sup>122</sup> Constitutional Reform (Prerogative Powers and Civil Service Etc) Bill [Bill 62 (2005-06)].

Basham of Brighton indicated that the Government were still considering the responses received, and refused to put a date on a published summary of responses.<sup>123</sup> This debate was followed by some protracted correspondence between Lord Holme of Cheltenham, as Chairman of the House of Lords Select Committee on the Constitution, and Lord Basham, which culminated in Lord Basham's letter of 3 July which repeated that he was "unable to be more specific on the timing of our response". That correspondence is printed in full in that Committee's Final Progress Report 2005-06.<sup>124</sup>

**137. The Government's consultation on a draft Civil Service Bill closed on 28 February 2005. Its own guidelines state that a summary of responses and ensuing policy changes should be published within three months. Fifty responses is not an unusually high number to process. By any reckoning, that summary of responses should have been published a long time ago. We recommend that the Government publishes that summary alongside its response to this report, within two months. Given the long delay, we would expect that summary of responses also to explain the delay.**

## A new Civil Service Act

138. The Civil Service Commissioners are merely one of a number of ethical regulators, and we examine the structure of ethical regulation in government as a whole in a separate report. It is possible that other regulators would also benefit from a statutory footing. Nonetheless, the broad outline of our proposals remains as it was in 2004: statutory establishment of the Civil Service Commissioners and replacing their accountability to Government with accountability to Parliament. A statutory framework would ensure that ministerial discretion was properly limited, and that those limits emerged through Parliamentary debate rather than negotiations between the Government and the regulators. It would help define what the majority of parliamentarians felt to be the proper role of the Civil Service.

**139. We need an Act which gives the civil service the institutional self-confidence to perform its constitutional role effectively, but also ensures that it is properly accountable. Just as we believe that government stewardship of the civil service should be subject to Parliamentary control, so we believe that the operations of the independent regulators should be brought within a framework of Parliamentary scrutiny and authorisation.**

## Conclusion

140. Placing the civil service and the Civil Service Commissioners on a statutory footing is a key component of a new public service bargain. In it, there would be explicit recognition of ministers' rights to set policy and ensure they are supported by an administration which gives professional and committed service to their governing objectives, and can perform effectively. Civil servants require a structure which guarantees them the right to tender

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<sup>123</sup> HL Deb, 3 March 2006, cols 479-483.

<sup>124</sup> House of Lords Select Committee on the Constitution, Sixteenth Report of Session 2005-06, *Final Progress Report*, HL 255, Appendix 4.

advice, however unwelcome, and extends the formal rights of Accounting Officers to wider matters of propriety.

141. We are fortunate to have a civil service which is held in high regard, both at home and internationally, above all for its commitment to fundamental procedural values. We are also fortunate to have a robust system of political accountability. It is essential that the key governing relationship between ministers and civil servants is kept in good repair, both for effective government and proper accountability. We have made some suggestions about how this might be done, at a time when there are clearly strains in the system. We do not recommend a radical move towards politicisation, nor towards a formal separation of accountabilities: but we do propose a number of steps which may contribute to the good working of a system which combines an independent civil service with political accountability for its operation.

## Conclusions and recommendations

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1. “Politicisation” is a term which covers a wide range of meanings. In this report, we use it to mean political involvement in administration, in particular in relation to the appointment or promotion of public servants. We do not use it in its usual pejorative (and negative) sense, but as a way of exploring aspects of the governing relationship between ministers and civil servants. (Paragraph 17)
2. We agree that under our current constitutional arrangements there will never be precise clarity about the boundaries of ministerial accountability. That in itself suggests that we should be wary of constitutional changes which reduce ministerial responsibility without clearly transferring responsibility and accountability elsewhere. (Paragraph 29)
3. The civil service is responsible to ministers, but, as the role of Accounting Officer shows, that responsibility is complex, and not limited simply to implementing government policies. (Paragraph 34)
4. It is clear that there is no consensus, either among politicians or officials, about the way in which ministerial and civil service responsibilities are divided. This means there can be no consensus about where accountability should lie. (Paragraph 39)
5. We consider that the relationship between government and civil service, and civil service and Parliament, should be structured to ensure the ultimate accountability of the government to the electorate. The corollary of this is that elected ministers should have freedom to perform their functions as they see fit, within any framework set by Parliament. (Paragraph 41)
6. Comparisons with other countries are far from straightforward. Much depends on history and political culture. Nonetheless, in relation to ministerial accountability and politicisation of bureaucracy, it is useful to be reminded that the British system is extreme in the division it makes between the administrative and the political world, and that this division is, in some respects, increasing. This at least provides a context for a discussion which tends to be very parochial. (Paragraph 44)
7. The purpose of civil service reform should be to ensure that the civil service is effective in carrying out its functions, and is responsive to the government of the day. A system in which the civil service was itself beyond political accountability would not be effective. (Paragraph 51)
8. We consider that increasing the expectation that civil servants will account honestly to Parliament does not undermine the principle of ministerial responsibility, but strengthens accountability as a whole. (Paragraph 57)
9. Parliament has a legitimate interest in the quality of the governing process that provides it with its core business. It is essential to get the key governing relationship between ministers and civil servants on to a clearer footing. That is why we propose a new public service bargain, underpinned by a good governance code. (Paragraph 69)

10. We do not wish to return to a situation in which patronage prevails, either in the civil service itself or in other public service bodies. However, in the urge to avoid patronage, it is worth asking whether the balance between ministerial control and ministerial accountability is now struck in the right place. (Paragraph 74)
11. Even though the British split between administration and politics is extreme, in international terms, and even though impartiality was first introduced as a means to improve administrative efficiency rather than simply to clean up the patronage state, we do not believe that wholesale introduction of appointments by politicians would necessarily solve the problems of civil service performance. Nor would it be consistent with our political culture. (Paragraph 78)
12. Over the last two decades there has been an evolution in the common understanding of what degree of ministerial influence is appropriate over the employment of civil servants. The idea that the civil servant holds office at the minister's pleasure is no longer valid. We believe that there is a danger that ministerial influence over the civil service will be reduced to the extent that it is hard to reconcile with ministerial accountability. Ministerial accountability to Parliament is indissolubly linked to government responsibility to the electorate. (Paragraph 83)
13. It remains essential in our view that there should be no entrance into the civil service through ministerial patronage. Appointments should be made, as now, on merit, through a process which is rigorous, and which is policed by the Civil Service Commissioners. The ability to work impartially with governments of different political persuasions should be a key factor in deciding whether a particular candidate is appointable. (Paragraph 84)
14. Nonetheless, we need to ensure that changes in appointment systems, or in patterns of recruitment, do not have the perverse effect of reducing democratic accountability. It is possible to guard against patronage without removing all ministerial choice about suitable appointees. Such choice should be exercised only in cases where there is external recruitment to extremely senior posts. There should be no ministerial involvement in recruitment below the senior civil service, and even at senior civil service level it should be confined to key appointments. In such cases, if a competition produces more than a single candidate who would be suitable for the post on offer, we believe that it is entirely legitimate for ministers to be given an opportunity to meet them, and to be asked to express a preference, as is the case with appointments to NDPBs. (Paragraph 85)
15. The appointments process should take account of the fact that appointments are made to the civil service, as well as to a particular post. Assessment of external candidates should not focus too narrowly on the post in question. (Paragraph 86)
16. We believe the OCPA process should be a pragmatic solution to the need to ensure that political patronage is properly controlled, while allowing ministers the ability to set the direction of policy. We applaud the work that OCPA has done to clarify the rules, and ensure they are understood by all participants in the appointments process. (Paragraph 95)

17. We recommend that, if ministerial accountability for appointments is to be a reality, ministers should be given clear descriptions of appointable candidates, rather than a ranking in merit order. Only then will ministers be able themselves to decide who is best fitted for a particular job. There may be cases where a minister is sufficiently confident of the job description to ask for a ranking in merit order, but that should be for the minister concerned to decide. (Paragraph 100)
18. Different accountability processes are needed for different bodies. Not all appointments are suitable for Nolan procedures. Some of the current difficulties arise from a lack of transparency over what posts are or are not covered by the rules. In 2003 we recommended that NDPBs and similar bodies should be reviewed, so that there was clarity about which bodies were subject to the OCPA process. We are frustrated that this review has not yet been completed. (Paragraph 102)
19. In addition, we believe that the Ministerial Code should make clear that not all ministerial appointments are made according to the OCPA rules. (Paragraph 102)
20. In earlier reports previous committees have fully supported the principle of independent involvement in the appointments process, and have proposed measures to strengthen the system by ensuring the involvement of independent assessors at all stages of the process. We support those recommendations. Nonetheless, it is hard to reconcile ministers' ultimate responsibility for public appointments with limits on their involvement in the appointments process so stringent that they have no real choice over whom is appointed. We see no case for such "starred appointments". (Paragraph 106)
21. We recommend that ministers should have a reserve power to make appointments to public bodies in specified cases without going through the normal Nolan processes, even when those posts would normally fall within the OCPA remit. Such cases should be transparent and explicit. The Commissioner for Public Appointments should report on every such case, making it clear that ministers had exercised this power, and, if appropriate, publishing the reason given for such an appointment. (Paragraph 108)
22. We do not believe that ministers would use this power frequently. A government which made numerous direct appointments would face intense scrutiny of them. However, if ministerial responsibility is to be a reality, it is reasonable for ministers to have such a power. (Paragraph 109)
23. The extent of the changes we propose should not be exaggerated. We consider that entry to the civil service should remain on merit, and that an independent body should continue to determine that merit. We suggest that the current procedures for making public appointments are generally appropriate. Although we do not support proposals to make them still more stringent, we suggest they should be relaxed only rarely, and that any departure from the normal rules should be transparent and explicit. (Paragraph 110)
24. Special advisers are appointed by ministers directly; ministers need to take full responsibility for their conduct. (Paragraph 115)

25. We remain neutral on whether a formal *cabinet* system would be a useful innovation. If proposed at some point, it would require careful and critical examination. This report has suggested a modest rebalancing of ministerial powers, in relation to appointments, in line with ministerial accountability. If this increases civil service effectiveness and responsiveness to ministers, it may reduce any pressure to introduce such a system, or to increase the number or powers of special advisers. (Paragraph 117)
26. The Government's consultation on a draft Civil Service Bill closed on 28 February 2005. Its own guidelines state that a summary of responses and ensuing policy changes should be published within three months. Fifty responses is not an unusually high number to process. By any reckoning, that summary of responses should have been published a long time ago. We recommend that the Government publishes that summary alongside its response to this report, within two months. Given the long delay, we would expect that summary of responses also to explain the delay. (Paragraph 137)
27. We need an Act which gives the civil service the institutional self-confidence to perform its constitutional role effectively, but also ensures that it is properly accountable. Just as we believe that government stewardship of the civil service should be subject to Parliamentary control, so we believe that the operations of the independent regulators should be brought within a framework of Parliamentary scrutiny and authorisation. (Paragraph 139)

## Compact between Ministers and the Home Office Board

We will work together to achieve effective frontline delivery and high performance, in support of our core purpose of protecting the public

*In order to do so, we will:*

- demonstrate a **shared commitment to succeed**
- behave and work **in line with the Home Office values**
- exude **pace and passion** in the way that we work by adopting a **proactive approach**
- ensure that **decisions are taken at the right level**
- **work effectively with our partners and stakeholders**

### Ministers are responsible for:

- **setting the overall strategy and policies** of the Department
- **setting clear performance targets** for each part of the Home Office and **holding officials accountable for delivery**
- **accounting to Parliament and the public** for the policy and delivery of the Home Office

### *In doing so they will:*

- take and communicate **clear and timely decisions** based on evidence and accurate data
- ensure that decisions reflect an **understanding of resource constraints**
- **focus on policy and outcomes** knowing that weakness, in relation to both processes or individual performance, will be tackled effectively
- **support the need for officials to make operational judgments**, with the expectation that they will be kept informed of matters which potentially have a strategic or reputational risk or impact
- **allow managers the freedom to deploy staff and resources** to achieve the policy and performance objectives
- **review performance** regularly and give feedback

### Officials are responsible for:

- **providing accurate advice to Ministers** to enable them to set the overall strategy and policies of the Department
- **delivery** of the strategy and policies set by Ministers and **implementing decisions** taken by Ministers quickly, **within a clear performance framework and allocated resources**
- (in the case of the heads of our operational services) increasingly **answering externally for operational matters** for which they are responsible

### *In doing so they will:*

- take **personal responsibility for delivery**
- **manage performance effectively**, providing regular performance reports for Ministers and tackling problems quickly
- provide **timely, accurate and clear advice based on evidence and accurate data**
- **understand the political and wider context in which we work**, effectively supporting Ministers in discharging their responsibilities to Parliament
- ensure that **Ministers are informed promptly about risks and operational issues which might affect the strategy or reputation of the Department**
- ensure that **accountabilities are clear**, always knowing which individual is responsible for which decision and area of work and **tackling weak performance**

**Private Offices play a critical role in managing and supporting the relationship between Ministers and officials**

This compact will be reviewed by Ministers and the Home Office Board on a regular basis

# Formal Minutes

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**Thursday 15 March 2007**

Members present:

Dr Tony Wright, in the Chair

Paul Flynn  
David Heyes  
Kelvin Hopkins

Mr Gordon Prentice  
Mr Charles Walker

Draft Report [*Politics and Administration: Ministers and Civil Servants*], proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs entitled Summary read and postponed.

Paragraphs 1 to 141 read and agreed to.

Postponed paragraphs entitled Summary read again and agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order 134.

The Compact between Ministers and the Home Office Board was appended to the Report.

Several papers were ordered to be appended to the Minutes of the Proceedings.

[Adjourned till Thursday 22 March at 9.45 a.m.]

# Witnesses

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## Thursday 10 November 2005

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**Mr Ed Straw**, PricewaterhouseCoopers

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## Thursday 9 February 2006

**Baroness Prashar CBE**

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## Thursday 2 March 2006

**Rt Hon Lord Butler of Brockwell KG GCB CVO, Sir Nicholas Monck KCB, and Sir Christopher Foster**

Ev 27

## Thursday 9 March 2006

**Sir Michael Quinlan GCB, Sir David Omand GCB, Sir Nicholas Montagu KCB, and Sir Robin Young KCB**

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## Thursday 15 June 2006

**Mr Jonathan Baume**, General Secretary, First Division Association

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## Thursday 29 June 2006

**Rt Hon Michael Howard QC MP, and Rt Hon David Blunkett MP**

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**Mr Nick Pearce**, Director, and **Mr Guy Lodge**, Research Fellow, Institute for Public Policy Research

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12 Dr Chris Eichbaum, Victoria University, New Zealand, and Dr Richard Shaw, Massey University, New Zealand	Ev 121
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14 Sir Robin Mountfield KCB	Ev 125
15 David Faulkner, Centre for Criminology, University of Oxford	Ev 128
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# Reports from the Public Administration Select Committee since 2005

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2006-07

First Report	The Work of the Committee in 2005-06	HC 258
Second Report	Governing the Future	HC 123

## Session 2005-06

First Report	A Debt of Honour	HC 735
Second Report	Tax Credits: putting things right	HC 577 ( <i>HC 1076</i> )
Third Report	Legislative and Regulatory Reform Bill	HC 1033 ( <i>HC 1205</i> )
Fourth Report	Propriety and Honours: Interim Findings	HC 1119
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689
Sixth Report	Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications	HC 1081
Seventh Report	The Ministerial Code: the case for Independent Investigation	HC 1457
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690
Second Special Report	Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Fifth Report (Session 2004-05)	HC 853
Third Special Report	Inquiry into the Scrutiny of Political Honours	HC 1020