



House of Commons

Public Administration Select
Committee

Machinery of Government Changes: A follow-up Report

First Report of Session 2007–08



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Report, together with formal minutes

*Ordered by The House of Commons
to be printed 11 December 2007*

HC 160

Published on 17 December 2007
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

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.

Current membership

Dr Tony Wright MP (*Labour, Cannock Chase*) (*Chairman*)
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Mr Charles Walker MP (*Conservative, Broxbourne*)
Jenny Willott MP (*Liberal Democrats, Cardiff Central*)

Powers

Powers of the Committee are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pasc>.

Committee staff

The current staff of the Committee are Steven Mark (Clerk), James Gerard (Second Clerk), Louise Glen (Committee Assistant), Anne Woolhouse (Secretary) and James Bowman (Senior Office Clerk).

Contacts

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Machinery of Government Changes: A follow-up Report

Background

1. We reported to the House on *Machinery of Government Changes* in June 2007.¹ In November 2007, we published the Government Response which we had received earlier the same month.² The response did not accept our recommendations designed to ensure that decisions by the Prime Minister to reorganise the Civil Service would be subject to timely and effective public parliamentary scrutiny and some measure of parliamentary control.

2. In July 2007 the Government published a Green Paper entitled *The Governance of Britain*, with a foreword by the new Prime Minister and Secretary of State for Justice. This foreword described the paper as a “first step in a national conversation” intended to “begin the journey towards a new constitutional settlement ... that entrusts Parliament and the people with more power”. The paper announces that “the Government will seek to surrender or limit powers which it considers should not, in a modern democracy, be exercised exclusively by the executive”. These include royal prerogative powers such as those to deploy the armed forces overseas and to organise the civil service.³

3. The Governance of Britain paper and the response to our Report show strongly contrasting attitudes to the role of Parliament, which we believe ought to be reconciled.

Parliamentary scrutiny

4. The Government’s power to re-organise the civil service is currently limited only by the requirement for secondary legislation in the form of Transfer of Functions Orders. As the Government has made clear in its response, these Orders serve a primarily legislative function; they do not exist so that Parliament can hold Government to account. They are usually laid before Parliament only many months after the reorganisations in question have taken effect. They sometimes deal only with “incidental and supplementary matters”, rather than the issues that may concern Members. Sometimes, they are not required at all.⁴

5. This makes it hard for us to accept the Government’s claim in its response that “parliamentary scrutiny is provided through the procedure for making a Transfer of Functions Order”.⁵

6. Transfer of Functions Orders do not provide for effective parliamentary scrutiny of changes to the organisation of the civil service, both for the reasons set out in paragraph 4 above, and because any debate or vote on an order can only take place at

1 Seventh Report of Session 2006–07, *Machinery of Government Changes*, HC 672

2 Third Special Report of Session 2007–08, HC 90 (henceforth *Government Response*)

3 *The Governance of Britain*, Cm 7170, pp 5–6

4 *Government Response*, p 4

5 *Government Response*, p 2

the behest of the Government. There have been no debates or votes on such orders for more than 25 years. A different mechanism is required.

7. It is true, as the Government also points out, that “Parliament has ... determined and approved an overall structure for transferring functions between Ministers” in primary legislation.⁶ But it is worth pointing out that this structure was established in 1946.⁷ This sixty-year-old structure does not necessarily fit well with the “new constitutional settlement” proposed by the Prime Minister in the *Governance of Britain*.⁸

Ministerial accountability to Parliament

8. The Government response also claims that Ministers exercise their duty of accountability to Parliament for machinery of government changes through written ministerial statements explaining the changes the Prime Minister has decided upon, stating that this process “provides accountability for the principle and nature of the change”.⁹

9. It might amount to accountability if there were a requirement for a debate in the House or in Committee before civil service reorganisations took place—or immediately afterwards in genuinely urgent circumstances. It might amount to accountability if the relevant select committees were given an opportunity to take evidence and report before machinery of government changes were made. **Making a written ministerial statement is an important way of providing information to Parliament, but it does not require Government to engage with Parliament in a way that would provide meaningful accountability.**

A way forward

10. We hold to the central finding in our Report: that Parliament should be given the chance to vote, not on Transfer of Functions Orders, but on the machinery of government changes themselves.¹⁰ We disagree with the Government that the current formal mechanisms provide sufficient accountability to Parliament. **Machinery of government changes should always take place after proper analysis of the consequences. It is not appropriate that Prime Ministers should be able to alter the structure of the civil service departments on a whim, and we do not understand why they should ever need to do so.**

11. The Government has accepted in the *Governance of Britain* that it is “no longer appropriate in a modern democracy” for the Executive to “exercise authority in the name of the Monarch without the people and their elected representatives in their Parliament being consulted”, and has stated that “in general the prerogative powers should be put onto a statutory basis and brought under stronger parliamentary scrutiny and control”.¹¹ **If the**

6 *Government Response*, p 2

7 The Ministers of the Crown Act 1975 was a consolidation measure, passed by the House of Commons without debate, as is usual for such measures. The requirements relating to Transfer of Functions Orders derive from the Ministers of the Crown (Transfer of Functions) Act 1946.

8 *The Governance of Britain*, p 5

9 *Government Response*, p 4

10 *Machinery of Government Changes*, HC 672 (2006–07), para 45

11 *The Governance of Britain*, pp 15 and 17

Government is prepared to allow Parliament a vote on matters as important and urgent as the deployment of the armed forces overseas, we do not understand why it should be resistant to giving Parliament a more effective voice on the reorganisation of civil service departments.

12. The forthcoming draft bill on constitutional reform is likely to include provisions to put the civil service on a statutory footing. As part of these provisions, we recommend measures to allow Parliament effective scrutiny of changes to the organisation of government itself.

Conclusions and recommendations

1. The Governance of Britain paper and the response to our Report show strongly contrasting attitudes to the role of Parliament, which we believe ought to be reconciled. (Paragraph 3)
2. Transfer of Functions Orders do not provide for effective parliamentary scrutiny of changes to the organisation of the civil service, both for the reasons set out in paragraph 4, and because any debate or vote on an order can only take place at the behest of the Government. There have been no debates or votes on such orders for more than 25 years. A different mechanism is required. (Paragraph 6)
3. Making a written ministerial statement is an important way of providing information to Parliament, but it does not require Government to engage with Parliament in a way that would provide meaningful accountability. (Paragraph 9)
4. Machinery of government changes should always take place after proper analysis of the consequences. It is not appropriate that Prime Ministers should be able to alter the structure of the civil service departments on a whim, and we do not understand why they should ever need to do so. (Paragraph 10)
5. If the Government is prepared to allow Parliament a vote on matters as important and urgent as the deployment of the armed forces overseas, we do not understand why it should be resistant to giving Parliament a more effective voice on the reorganisation of civil service departments. (Paragraph 11)
6. The forthcoming draft bill on constitutional reform is likely to include provisions to put the civil service on a statutory footing. As part of these provisions, we recommend measures to allow Parliament effective scrutiny of changes to the organisation of government itself. (Paragraph 12)

Formal minutes

Tuesday 11 December 2007

Members present:

Dr Tony Wright in the Chair

David Heyes
Kelvin Hopkins
Mr Ian Liddell-Grainger
Julie Morgan

Mr Gordon Prentice
Paul Rowen
Mr Charles Walker
Jenny Willott

Draft Report (*Machinery of Government Changes: A follow-up Report*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 12 read and agreed to.

Resolved, That the Report be the First 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 No. 134.

[Adjourned till Thursday 10 January at 9.45 am]

List of Reports from the Committee during the current Parliament

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 (<i>Cm 7154</i>) |
| Third Report | Politics and Administration: Ministers and Civil Servants | HC 122 |
| Fourth Report | Ethics and Standards: The Regulation of Conduct in Public Life | HC 121 (<i>HC 88</i>) |
| Fifth Report | Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme | HC 523 (<i>HC 922</i>) |
| Sixth Report | The Business Appointment Rules | HC 651 (<i>HC 1087</i>) |
| Seventh Report | Machinery of Government Changes | HC 672 (<i>HC 90</i>) |
| Eighth Report | The Pensions Bill and the FAS: An Update, Including the Government Response to the Fifth Report of Session 2006–07 | HC 922 (<i>HC 1048</i>) |
| Ninth Report | Skills for Government | HC 93 (<i>HC 89</i>) |
| First Special Report | The Governance of Britain | HC 901 |

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 (<i>HC 91, Session 2007–08</i>) |
| Sixth Report | The Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications | HC 1081 (<i>Cm 6961</i>) |
| Seventh Report | The Ministerial Code: the case for Independent Investigation | HC 1457 (<i>HC 1088, Session 2006–07</i>) |
| First Special Report | The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee | HC 690 |