



House of Commons
Public Administration Select
Committee

Machinery of Government Changes: Further Report

**With the Government
Response to the
Committee's First Report of
Session 2007–08**

Eighth Report of Session 2007–08

*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 and the Health Service Commissioners for England, 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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The 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), Pauline Ngan (Committee Specialist), Louise Glen (Committee Assistant), Anne Woolhouse (Secretary) and James Bowman (Senior Office Clerk).

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Machinery of Government Changes: Further Report

1. This Report continues a conversation with the Government on whether the Prime Minister should continue to exercise near-absolute power to reorganise the Civil Service Departments. The Government's most recent Response, received on 25 April 2008, is published below as an Appendix.¹

2. The Government's further response is thoughtful, and rightly points to a stumbling block to parliamentary control over the organisation of Government Departments under the existing system. This is that, constitutionally and legally, the "organisation and functions of a Government Department are fundamentally a reflection of the responsibilities of the minister in charge of the Department".² Thus, parliamentary control over the organisation of Government would effectively mean parliamentary control over the organisation of the Cabinet.

3. However, the current model is not the only possible model. Indeed, it has not always been in use in this country. Thus, the Ministry of Defence was established by Act of Parliament in 1946; further defence-related functions were transferred by Act in 1964.³ In Canada, Government Departments are established and dissolved and significant functions transferred between them through primary legislation. This shows that it is possible, in a Westminster-style parliamentary system, to provide for parliamentary control of the Executive's power to reorganise the Civil Service.

4. Reorganising Government Departments in line with ministerial responsibilities may be long-standing practice, but it is putting the cart before the horse. We are not calling for primary legislation for every government reorganisation, but for major changes to the machinery of government, new secondary legislation should be subject to a debate and vote in Parliament to ensure proper scrutiny and analysis of the consequences.

5. This would require a fundamental change to the way that Government is structured. It would mean giving statutory functions to Government Departments, rather than just to interchangeable Secretaries of State. It would not limit the Prime Minister's ability to appoint ministers of his or her choice, but it might mean that those ministers would exercise functions across Departments, at least until changes to departmental functions had been set out in law and agreed by Parliament. Such a change would be an important practical demonstration of the Prime Minister's commitment to "entrust ... more power to Parliament" and to "surrender or limit" his own powers.⁴ We call on the Government to reconsider their position.

1 We reported to the House on *Machinery of Government changes* in our Seventh Report of Session 2006–07, published on 15 June 2007 as HC 672. The Government Response was received on 15 November 2007, and published with our Third Special Report of Session 2007–08 as HC 90. We continued the conversation with *Machinery of Government changes: A follow-up Report*, our First Report of Session 2007–08, published on 17 December 2007 as HC 160.

2 p 2

3 Ministry of Defence Act 1946; Defence (Transfer of Functions) Act 1964

4 HC Deb 3 July 2007, c 815

Appendix

The Government welcomes the Committee's follow-up Report and interest in this subject. The Government recognises the important role of Parliament in holding the Executive to account, as shown by the Governance of Britain White Paper and draft Constitutional Renewal Bill.

For the reasons set out in this memorandum, the Government does not believe it is feasible to give Parliament a say in major machinery of government changes before they happen. However, the Government proposes to continue the recent practice of announcing significant changes with a Written Ministerial Statement and of placing detailed background material on significant changes in the Library of the House. The Government also believes that after significant machinery of government changes are made, ministers should make themselves available to select committees that wish to examine the consequences of those changes.

The Government's response to the Committee's recommendations is set out below.

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 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)

The Governance of Britain programme shows the Government's support for parliamentary scrutiny and limiting the power of the Executive, for example, through seeking the approval of Parliament before committing UK forces to armed conflict overseas or when requesting the recall of Parliament.

It is useful to consider briefly how machinery of government changes arise. The organisation and functions of a Government Department are fundamentally a reflection of the responsibilities of the minister in charge of the Department. The allocation of functions between ministers in charge of Departments is the responsibility of the Prime Minister of the day as part of his responsibility for the overall organisation of the Executive, as set out in the Ministerial Code. The Prime Minister is responsible for choosing the members of the Cabinet, and determining the responsibilities that each Cabinet member should fulfil.

Responsibilities of members of the Cabinet are determined according to the Prime Minister's assessment of the key challenges faced, and, as priorities shift over time, departmental structures will need to change with them. Fundamentally, the organisation of Central Government Departments cannot therefore be separated from the allocation of policy responsibilities among members of the Cabinet; so decisions on changes to Cabinet portfolios will very often bring with them changes to the structure, and sometimes the titles of Departments. Because the allocation of responsibilities by the Prime Minister and the necessary structural changes to Departments are so interlinked, the

Government does not believe that giving Parliament a vote on major machinery of government changes before they happen is compatible with preserving the right of the Prime Minister of the day to organise the distribution of responsibilities among members of the Cabinet.

3. 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 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)

4. 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)

5. 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)

The Government recognises that a Transfer of Functions Order does not always specify the details of the portfolio changes taking place. Depending on the changes, a Transfer of Functions Order may or may not be needed, and may be substantive in terms of the powers it addresses, or may deal with more minor matters. If for example, statutory functions are conferred on “the Secretary of State” (as is general practice) then no Transfer of Functions Order will be necessary to transfer those functions between Secretaries of State, though one may be needed for supplementary purposes (e.g. transferring property, rights and liabilities). Conversely, if statutory functions are conferred on a designated minister (e.g. the Lord Chancellor), then a Transfer of Functions Order will be needed to transfer those functions to another minister. This means that in some cases a TFO will not cover the substance of a change; but in others, where statutory functions need to be transferred from or to a designated minister, it may be a prerequisite to new arrangements coming into operation.

The Ministers of the Crown Act 1975 acknowledged the right of the Prime Minister of the day to organise the structure of the Government, subject to this accountability mechanism. The Government considers that this, coupled with the additional steps specified earlier, makes for the right balance between enabling parliamentary scrutiny, giving the Prime Minister the ability to appoint his Cabinet when needed, and minimising uncertainty for those in Departments affected by changes.

The Government is committed to facilitating Parliamentary scrutiny, and believes that after significant changes, ministers should make themselves available to Select Committees that wish to examine the consequences and management of changes.

In all recent significant changes, the Prime Minister has made a Written Ministerial Statement to announce the change. In addition, the larger changes last year were all accompanied by detailed papers placed in the Library of the House to explain the background to the changes. The Government intends to continue both of these practices.

As stated previously, the Government will provide for a debate on a Transfer of Functions Order if it is prayed against and if there is sufficient desire for a debate. Departments are of course responsible to Parliament for their spending through their Accounting Officer, which provides another mechanism for scrutiny of the use of public money and spending priorities.

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)

The Government agrees that consideration of the implications of machinery of government change is important before changes are decided upon or implemented, and examines these issues to the fullest extent possible. Prime Ministers need to be able to allocate responsibilities among Cabinet Ministers, and sometimes decisions need to be taken quickly. Where changes are proposed the Prime Minister is advised by the Secretary of the Cabinet and Head of the Home Civil Service.

The Government believes it is important to reserve the right of a Prime Minister to organise the responsibilities of members of the Cabinet, from which high-level Departmental structures are derived.

25 April 2008

Formal minutes

Thursday 8 May 2008

Members present:

Dr Tony Wright in the Chair

Paul Flynn

David Heyes

Kelvin Hopkins

Mr Ian Liddell-Grainger

Mr Gordon Prentice

Paul Rowen

Mr Charles Walker

Jenny Willott

Draft Report (*Machinery of Government Changes: Further 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 5 read and agreed to.

A paper was appended to the Report.

Resolved, That the Report be the Eighth 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 15 May 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 2007–08

First Report	Machinery of Government Changes: A follow-up Report	HC 160 (<i>HC 514</i>)
Second Report	Propriety and Peerages	HC 153
Third Report	Parliament and public appointments: Pre-appointment hearings by select committees	HC 152 (<i>HC 515</i>)
Fourth Report	Work of the Committee in 2007	HC 236 (<i>HC 458</i>)
Fifth Report	When Citizens Complain	HC 408
Sixth Report	User involvement in public services	HC 410
Seventh Report	Investigating the conduct of ministers	HC 318

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 (<i>Cm 1020</i>)
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 1961</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