



Civil Service Legislation

Standard Note: SN/PC/02863

Last updated: 23 September 2009

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Section: Parliament and Constitution Centre

The *Governance of Britain* Green Paper, published in July 2007, indicated that the Government would bring forward legislation on the civil service. A White Paper *The Governance of Britain-Constitutional Renewal* and draft bill were published in March 2008. The *Constitutional Reform and Governance Bill 2008-09* was introduced into the Commons in July 2009 and a second reading is expected shortly.

Previous draft civil service legislation was published by the Government on 15 November 2004. This earlier draft bill fulfilled a commitment to the House that the Government would bring forward its own proposals in response to draft legislation published by the Public Administration Select Committee (PASC) in January 2004. The Opposition presented a Bill identical to that published by PASC on 12 January 2004, and Lord Lester of Herne Hill introduced a series of bills into the Lords on this topic.

This note sets out the Government's 2008 proposals for civil service legislation and the responses by the Joint Committee on the Draft Constitutional Renewal Bill and the Public Administration Select Committees. It also includes some details of the Bill published by the Public Administration Select committee, the Private Member's Bills introduced in the House of Commons and House of Lords, and the previous Bill published by the Government. Finally it summarises the Government responses to both Committees. Please see the forthcoming Research Paper on the *Constitutional Reform and Governance Bill 2008-09* for details on the current Government proposals in that Bill.

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1 Background

The current impartial British civil service selected on merit dates from the Northcote Trevelyan reforms of 1854.¹ That report recommended that the principles of the merit based civil service be set out in statute, but this remains unimplemented and the civil service is established through royal prerogative powers, set out in Orders in Council. The *Civil Service Order in Council 1995* has been informally consolidated and is available on the Civil Service Commission website.²

Since 1855 the Civil Service Commissioners have been responsible for the appointment of civil servants. Recruitment to lower grades was delegated to departments in 1982, 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. They chair the appointment boards for the Top 200 senior civil service posts. The Commission also hear appeals from civil servants on alleged breaches of the Civil Service Code.³ Commissioners are not civil servants and generally have experience in recruitment and public sector issues. They are serviced by civil servants based in the Cabinet Office. Their annual report is available online.⁴ On 20 December 2005 the then Prime Minister, Tony Blair, appointed Janet Paraskeva as First Civil Service Commissioner.⁵

The Committee on Standards in Public Life reviewed the civil service in its report: *Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service* in April 2003.⁶ This followed an earlier review in 2000, *Reinforcing Standards: review of the First Report from the Committee on Standards in Public Life*.⁷ The Government responded to the CSPL report in September 2003.⁸

In brief, the Committee on Standards in Public Life (CSPL) recommended a Civil Service Act, following a similar recommendation made in 2000.⁹ The Government response was as follows:

R6. The Civil Service should be established in statute.

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. For example, in recommendation 14, the Committee feels strongly that the appointment of the First Civil Service Commissioner needs to be able to carry the confidence of each new Administration. As the Committee acknowledges this can be achieved through consultation with Opposition leaders. Another example is the appointment procedures for public appointments where a rigorous and effective process has been established without legislation. The Government believes that the

¹ Northcote Trevelyan is accessible in Appendix B of the Fulton Report Cmnd 3638 June 1968

² http://www.civilservicecommissioners.org/Reference_Documents/Order_in_Council_1995/

³ See Library Standard Note 3926 *the Civil Service Code* at <http://www.parliament.uk/commons/lib/research/briefings/snpc-03924.pdf>

⁴ <http://www.cscannualreport.info/CSC/>

⁵ Cabinet Office press notice 20 December 2005 Appointment of the First Civil Service Commissioner and Commissioner for Public Appointments http://www.cabinetoffice.gov.uk/newsroom/news_releases/2005/051220_commissioner.aspx

⁶ Cm 5775. For more information see Library Standard Note SN/PC/2609, *Wick's Committee report 'Defining the Boundaries' and the Government Response*

⁷ Sixth Report Cm 4557 January 2000

⁸ Cm 5964

⁹ Cm 4557

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.¹⁰

The Public Administration Select Committee (PASC) published a draft bill in January 2004, which attempted to set out the principles of civil service legislation. The Government published its own draft bill on 15 November 2004 attached to a consultation paper, but there was no pre-legislative scrutiny, and the Blair Government did not commit itself to immediate legislation.

The Green Paper *The Governance of Britain*¹¹ published a few days after Gordon Brown took office as Prime Minister in July 2007, promised civil service legislation. The intention of the legislation would be to:

- place the independent Civil Service Commissioners on a statutory footing;
- make the principle of appointment by merit following fair and open competition a legal reality;
- clarify the "legitimate and constructive role" of Special Advisers within government; and
- make permanent the new administration's belief that "it is inappropriate for even a limited number of special advisers" to be allowed to give orders to civil servants. Previously, Article 3(3) of the Civil Service Order in Council 1995 (as amended in 1997) had given the Prime Minister the ability to appoint up to three such advisers.

2 The draft Constitutional Renewal Bill 2007-8

Part 5 of the draft *Constitutional Renewal Bill* published in March 2008 as part of the *Governance of Britain White Paper* included provisions to the civil service and the Civil Service Commissioners on a statutory footing.¹² The provisions are outlined below.

2.1 The civil service

Clause 25 defines those parts which are to be excluded from the Bill. These are:

- the Secret Intelligence Service
- the Security Service
- Government Communications Headquarters
- Northern Ireland Civil Service
- Northern Ireland Court Service

Clause 27 gives the Minister for the Civil Service power to manage the civil service excluding the diplomatic service which is to be managed by the Secretary of State (in practice for Foreign Affairs) and security vetting which will continue to be covered under existing prerogative powers. The ministerial power includes appointment, dismissal and general

¹⁰ Cm 5964

¹¹ Cm 7170 July 2007

¹² For background see Library Standard SN/PC/4703 [Governance of Britain-An Update](#)

rules, remuneration and retirement policy. **Clause 28** applies the statutory basis of the civil service to the *Civil Service (Management Functions) Act 1992*. This legislation allowed ministers to delegate functions to private sector bodies. **Clause 29** makes supplementary provision for civil servants already in post.

Clause 30 requires the Minister for the Civil Service to publish a code of conduct for civil servants (excluding the diplomatic service), to be laid before Parliament. Different codes for Scotland and Wales may apply, as currently, and these will be laid before the Scottish Parliament and Welsh Assembly. Unlike the PASC bill, there is no provision for Parliament to amend or debate the Code. **Clause 31** provides for a diplomatic service code. **Clause 32** sets out minimum requirements for the civil service and diplomatic service codes, whether in the UK, Scotland or Wales, including requirements on integrity and objectivity, provisions on special advisers and an appeal system to the Civil Service Commission. **Clause 33** provides for a code of conduct for special advisers, also to be laid before the relevant parliament/assembly. Once again, there is no provision for a parliamentary debate on its contents.

2.2 Civil Service Commission

Clause 26 and Schedule 4 establish the Civil Service Commission, as a body corporate whose purpose is to maintain the principle of selection on merit on fair and open competition.

Clauses 35 and 36 provide for the recruitment principles to be published to specify those appointments which require the approval of the Commission before they can be made. The Commission is empowered to participate in the selection process for any such appointments.

The exceptions to the selection on merit are:

- Direct crown appointments
- Diplomatic appointments as head of mission or Governor of overseas territory
- Special advisers
- A selection excepted by the recruitment principles, where justified by the needs of the civil service, with Commission involvement.

Clause 37 gives the Commission power to monitor and review department's recruitment policies for compliance with the principles, and to demand information about selections.

Clause 40 enables the Minister for the Civil Service to confer additional functions on the Commission, such as special inquiries into the civil service. This appears to limit the Commission's freedom to initiate an enquiry without reference to the Cabinet Office. A number of respondents to the Government draft bill of 2003-4 and consultation paper called for the Commission to have the right to initiate enquiries.

Schedule 4 provides for a minimum of seven members of the Civil Service Commission, one as First Civil Service Commissioner. The Minister for the Civil Service must consult the First Ministers for Scotland and Wales and the two major opposition parties (defined by share of vote at the most recent parliamentary election) on the appointment of the First Commissioner.

There is no provision for a specifically parliamentary dimension to the appointment, such as reference to the Public Administration Select Committee, or a joint committee of both

Houses, unlike for the Comptroller and Auditor General (C&AG), whose appointment is made by the Crown following an address by the House on a motion by the Prime Minister ‘acting with the agreement of the Chairman of Committee of Public Accounts’. This is set out in section 1 of the *National Audit Act 1983*.

The term of office is for a single non renewable term of five years for all Commissioners. Again, this contrasts with the proposals for the C&AG following the Tiner review, where a longer term of 8 to 10 years is expected.¹³ On the other hand, the Parliamentary Commissioner Standards has a five year non renewable term. There is provision for appointment of ex-officio Commissioners, such as the Commissioner for Public Appointments. Civil Service Commissioners are currently appointed one five year non renewable terms,¹⁴ and the Commissioner for Public Appointments is a Civil Service Commissioner.¹⁵

The Commission is not to form part of the civil service itself and will have power to appoint its own staff. Grant in aid is provided from the Minister for the Civil Service following consultation with the Commission. The Minister has the right to impose conditions on the use of funds. The former First Commissioner, Baroness Usha Prashar, argued for funding guarantees in evidence to PASC in November 2003 and this is likely to be a theme repeated by Janet Paraskeva in her response.¹⁶

The Commission annual report will be provided for the Prime Minister and for the Scottish and Welsh executives who will have the responsibility to lay the report before the respective parliaments, but there is no provision for an annual debate on the topics raised. There are transitional arrangements to allow for the existing Commissioners to continue in post.

2.3 Special advisers¹⁷

Clause 34 (3) (c) specifically exempts special advisers from the appointment on merit and in open competition principles. This is in line with the Civil Service Orders in Council which currently regulate their employment. The draft bill does not make provision for a cap on their numbers or for a parliamentary debate on the numbers, unlike the PASC bill. **Clause 38** defines a special adviser as a person appointed directly by a minister to “assist” that minister. The appointment must be approved by the relevant Prime Minister or First Minister. The term of office ends with that of the Minister or the relevant election day. These provisions mirror the current position as set out in the Order in Councils, except that at present there are limits on the numbers of special advisers in both Scotland and Wales introduced as devolution took effect in 1999.¹⁸ The draft bill removes those limits.

The Committee on Standards in Public Life expressed its concerns in 2005 about the change in the definition of the role of the special adviser from advising to assisting ministers, but the change went ahead and both the Model Contract and the Order in Council were changed.¹⁹

¹³ See Library Standard Note SN/PC/4595 [Comptroller and Auditor General](#)

¹⁴ For details, see Government response to PASC report *Ethics and Standards: The Regulation of Conduct in Public Life* in PASC First Special Report HC 88, November 2007 at <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpubadm/88/8804.htm>

¹⁵ For more information see Library Standard Note SN/PC/4720, [Officers of Parliament: recent debates](#)

¹⁶ HC 128-II 2003-4 Q293. For background see Library Research Paper 03/77 *Officers of Parliament- A Comparative Perspective*

¹⁷ For general information about special advisers, see Library Standard Note SN/PC/3813 [Special Advisers](#)

¹⁸ *Civil Service (Amendment) Order in Council 1999*. Background is given in the Committee on Standards in Public Life Sixth Report, para 6.13.

¹⁹ For general information about special advisers, see Library Standard Note 3813 [Special Advisers](#)

However, Gordon Brown made clear when he became Prime Minister that he had no intention of appointing special advisers with executive powers to direct civil servants, unlike Tony Blair who had appointed Jonathan Powell and Alastair Campbell with such powers in 1997.

There is expected to be some pressure for parliamentary involvement in the numbers and roles of special advisers, given the perennial political interest. The PASC bill provided for a cap on numbers to be approved by a resolution of each House.

2.4 Other provisions not in the bill

The draft bill did not contain any clauses to deal with the nationality qualifications for the civil service. The Labour backbencher, Andrew Dismore, has introduced a series of private members bills entitled *Crown Employment (Nationality) Bill*. Mr Dismore has received all party support for the proposals, but his bills have failed due to lack of parliamentary time.²⁰ These were included in the PASC bill.

Nor did the Bill make statutory the requirement on Ministers under the *Ministerial Code* to uphold the political impartiality of the civil service and not to ask civil servants to act in any way which would conflict with the Civil Service Code.²¹ A number of respondents to the Government's draft civil service bill of 2004-04 argued that the duty of Ministers in this respect should be statutory. These included the CSPL and PASC.

Finally, the Bill did not address the position of other non statutory Cabinet Office watchdogs, notably the Office of the Commissioner for Public Appointments (OCPA) or the Advisory Committee on Business Appointments or the Committee on Standards in Public Life. PASC's enquiry *Ethics and Standards: The Regulation of Conduct in Public Life* published in April 2007 suggested a move to a more collegiate arrangement for such watchdogs. The Government response of November 2007 promised to examine the PASC conclusions on establishing permanent structures for such ethical watchdogs as part of the Governance of Britain process.²²

3 Scrutiny of the Draft Bill

3.1 Public Administration Select Committee

In April 2008 PASC announced that they would hold two evidence sessions on the proposals in the Constitutional Renewal White Paper and Draft Bill which related to the Civil Service and prerogative powers. They published their report, *Constitutional Renewal: Draft Bill and White Paper*, on 4 June 2008. This broadly welcomed the Government's proposals but made proposals for changes to the draft Bill. The Summary to the report stated:

We find much to welcome in the Government's proposals for the civil service. After four years of consultation, it is now time to move to legislation. It is more than 150 years since the idea of a Civil Service Act was first mooted. The core values of the service – integrity, honesty, objectivity, impartiality – and its key characteristics – recruitment on merit and the ability to serve governments from across the political spectrum – have stood the test of time. The purpose of legislation would be to protect these core values and key characteristics against the kind of government that might

²⁰ See Library Standard Note SN/PC/3044 *The Crown Employment (Nationality) Bill 2006-7*

²¹ *Ministerial Code* July 2007, para 5.1 at http://www.cabinetoffice.gov.uk/propriety_and_ethics/ministers/~media/assets/www.cabinetoffice.gov.uk/propriety_and_ethics/ministerial_code_current%20pdf.ashx

²² PASC First Special Report 2007-8 HC 88 at <http://www.publications.parliament.uk/pa/cm/cmpublicadm.htm>

seek to undermine them, in an environment where the understandings that exist now between civil servants, Ministers and the Civil Service Commissioners had broken down. We make a number of suggestions to strengthen the provisions in the draft bill with this aim in mind.²³

PASC concluded the chapter of their report on the Civil Service aspects of the draft Bill with the following comment:

We trust that our recommendations will receive due consideration; but it is now time to move from consultation to legislation. We welcome the announcement that a bill is expected to be in the Queen's Speech this autumn.²⁴

The Report also includes an Annex which compares the provisions in the current *Draft Constitutional Renewal Bill* to those in the Government's 2004 draft Bill and the PASC 2004 draft Bill.

3.2 Joint Committee on the Draft Constitutional Renewal Bill

A Joint Committee was established in May 2008 to undertake pre-legislative scrutiny of the *Draft Constitutional Renewal Bill*. The Committee was chaired by Michael Jabez Foster MP. The Joint Committee published their report at the end of July 2008. They were able to consider some of the recommendations in the PASC report during evidence sessions, and comment on some of them in their report. In summary, on the civil service aspect of the draft bill, they stated:

We welcome the Government's intention to put the civil service and the Civil Service Commission on a statutory footing and set out the historic principle of appointment on merit on the basis of fair and open competition, 154 years after Northcote and Trevelyan called for a Civil Service Act. Ideally, we would like to see this as a separate Civil Service Act rather than part of wider constitutional legislation.²⁵

3.3 Recommendations of the two committees

This section discusses the recommendations of the two committees, together with the Government responses which were published in July 2009 as Cm 7690 for the Joint Committee and Cm 7688 for PASC.

Definition of a Civil Servant (Clause 25)

PASC drew attention to the fact that this version of the Bill did not cover the Government Communications Headquarters (GCHQ). PASC suggested that:

The Joint Committee [on the Constitutional Renewal Draft Bill] may wish to explore further if the draft bill would have the effect of restricting access to the Civil Service Commissioners by staff of the intelligence agencies, and if so, whether this restriction is appropriate. The Committee may also wish to explore if there is a good reason for excluding the intelligence agencies from the statutory requirement that their staff should normally be recruited on merit.²⁶

²³ Public Administration Select Committee, *Constitutional Renewal: Draft Bill and White Paper*, 4 June 2008, HC 499 2007-08, Summary

²⁴ *Ibid*, para 68

²⁵ Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill*, 31 July 2008, HL 166-I and HC 551-I 2007-08

²⁶ Public Administration Select Committee, *Constitutional Renewal: Draft Bill and White Paper*, 4 June 2008, HC 499 2007-08, para 19

The Joint Committee recommended that the Government should provide greater clarity about who is a civil servant. Although the Committee agreed that GCHQ should not be included in the definition of the civil service in the draft bill, they recommended that the Government should ensure that GCHQ staff are given the same right of access to an independent complaints mechanism as other agencies, and that as a general rule staff at GCHQ should be recruited on merit.²⁷

The Government responses to PASC and the Joint Committee noted that staff at GCHQ would continue to be covered by their own code of conduct and that appointments to GCHQ would continue to be made on merit.²⁸

Management of the Civil Service (Clause 27)

PASC concluded that:

...giving Ministers the general power to appoint and dismiss civil servants does not seem in keeping with the Government's commitment to a civil service recruited on merit and able to serve administrations of different political persuasions. This is a matter that the Joint Committee may wish to investigate further.²⁹

The Joint Committee repeated PASC's concerns about the power of ministers to appoint and dismiss civil servants, and recommended that this clause be redrafted.³⁰ They also noted that Clause 27 "is the only transfer of power from the prerogative to statute in the Draft Bill". The Committee questioned whether, if Clause 27 became law, the Minister would retain any prerogative power to manage the civil service. The Committee recommended that this should be clarified before the Bill is introduced.³¹ The Government response to the Joint Committee stated that "the effect of the proposals is to remove prerogative powers with respect to the management of the civil service. The only power which is saved in the prerogative is the power of positive vetting".³²

In response to concerns about the management powers of Ministers, the Government argued that the drafting simply reflected the current position under the Orders in Council, whereby the power to manage the civil service is vested in the Minister for the Civil Service by the Crown. This was in turn delegated to Heads of Departments. The position is different in Northern Ireland where functions have been delegated to Departments since the *Government of Ireland Act 1920*. The response to the Joint Committee stated:

189. We can assure the Committee that these powers do not alter the current position in that the power to appoint and to dismiss individual civil servants will, as now, continue to be delegated to the Heads of the Civil Service and the permanent Heads of departments and do not signal a change in Ministerial involvement in individual appointments. The power to appoint is constrained by the subsequent clauses requiring recruitment into the civil service to be on merit following fair and open

²⁷ Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill*, 31 July 2008, HL 166-I and HC 551-I 2007-08, para 250

²⁸ Cm 7690, paras 172-4; Cm 7688, para 14

²⁹ Public Administration Select Committee, *Constitutional Renewal: Draft Bill and White Paper*, 4 June 2008, HC 499 2007-08, para 22

³⁰ Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill*, 31 July 2008, HL 166-I and HC 551-I 2007-08, para 267

³¹ *Ibid*, para 271

³² Cm 7690 para 195

competition regulated by the independent Civil Service Commissioners in accordance with their Recruitment Principles.³³

Clauses 30-33 (the Civil Service Code)

PASC pointed out that the Government's draft Bill was much less prescriptive on the requirements of the Civil Service Code than previous versions of the bill. They stated:

Any code which failed to uphold the core values of the civil service as set out in the draft bill would be open to legal challenge. We would therefore insist on providing for parliamentary approval of the Civil Service Codes only if primary legislation failed to encapsulate these core values adequately. There is one area in which the draft bill is at best ambiguous in this respect. We are not convinced that the definition of "impartiality" is sufficiently clear on the face of the draft bill. We recommend that the need for civil servants to be able to work effectively for governments of different political persuasions should be set out explicitly in primary legislation...³⁴

The Joint Committee disagreed with PASC about the need to clarify the requirement for civil servants to be impartial. In their view, the Code made it expressly clear that impartiality includes politically impartiality.³⁵

Clause 34 (Exemptions from appointment on merit)

The Draft Bill would allow certain appointments to the civil service to be made other than on merit. PASC stated that "Appointment on merit is central to ensuring an impartial and capable civil service. Any exceptions from this principle need to have an unimpeachable justification".³⁶

PASC said that civil service appointments made by the Crown include the Head of the Civil Service, ambassadorial appointments and governorships of Overseas Territories; and certain other statutory appointments, such as HM Commissioners of Revenue and Customs, the Forestry Commissioners and the Crown Estate Commissioners. The Committee stated that:

...Whoever is formally responsible for making civil service appointments, it strikes us as wrong that the Commissioners for Revenue and Customs (to take one example) should be appointment other than on merit. We invite the Joint Committee to explore this issue in more depth.³⁷

PASC also questioned why any senior diplomatic appointments should not be made on the grounds of merit following a fair and open competition.³⁸

In her evidence to PASC, the First Civil Service Commissioner explained how they would see their proposed ability to "except" certain appointments from the merit and fair and open competition requirements:

What we see is there are sometimes short-term business needs, short-term projects of several months for example, sometimes secondments of up to two years, and we do also have to have measures in place to help the long-term unemployed or those with

³³ Cm 7690 para 189

³⁴ Public Administration Select Committee, *Constitutional Renewal: Draft Bill and White Paper*, 4 June 2008, HC 499 2007-08, para 28

³⁵ Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill*, 31 July 2008, HL 166-I and HC 551-I 2007-08, para 278

³⁶ Public Administration Select Committee, *Constitutional Renewal: Draft Bill and White Paper*, 4 June 2008, HC 499 2007-08, para 30

³⁷ *Ibid*, para 32

³⁸ *Ibid*, para 35

disabilities. We have a responsibility as an employer to make sure that we do not put in place procedures that are so rigid that we cannot allow, from time to time, appropriate alternatives. It is something we monitor quite carefully through our auditing departments, through our compliance monitoring regime, and one of the things that departments have to report to us is how they have used exceptions in the more junior posts.³⁹

PASC stated that they saw merit in this provision, but would expect that such exceptions would be used sparingly.⁴⁰

The Joint Committee suggested that the Draft Bill be amended not to except appointments made directly by Her Majesty, but appointments made to the Royal Household, from the requirement to be on the basis of merit.⁴¹ The exception for senior diplomatic appointments should be limited to “exceptional circumstances”.⁴² The Government response to the Joint Committee cited the PASC position that appointments to the Royal Household would not normally be considered to fall within the definition of the civil service. The response noted that the bill had been redrafted, since it had not found any justification for the exception given in the draft bill for direct appointments by the Crown to the civil service, so had removed it from the current Bill.⁴³

The Government response to PASC noted that the Commissioners for Revenue and Customs were appointed by Her Majesty, but only by virtue of the positions they hold as senior civil servants at the Department for Revenue and Customs, which were already covered by the Recruitment Principles. The response also stated that the exception for senior diplomatic appointments would be used, as now, very sparingly.⁴⁴ The response to the Joint Committee noted that such appointments should require the direct approval of the Prime Minister.⁴⁵

One of the main concerns which PASC heard from the First Civil Service Commissioner was that lack of inclusion of the principle of promotion on merit, as well as appointment on merit. The Commissioner told PASC that:

This is one of the issues that civil servants talk to us about quite often. The Civil Service Management Code is quite clear, it says that departments and agencies must ensure that “all promotions and lateral transfers follow from a considered decision as to the fitness of individuals, on merit, to undertake the duties concerned”. An opportunity will be missed, we think, if the principle of promotion on merit and its regulation were not included in the Bill.⁴⁶

PASC agreed, recommending that:

³⁹ *Ibid*, para 36

⁴⁰ *Ibid*

⁴¹ Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill*, 31 July 2008, HL 166-I and HC 551-I 2007-08, para 283

⁴² *Ibid*, para 288

⁴³ Cm 7690, paras 205-206

⁴⁴ Cm 7688 para 26

⁴⁵ Cm 7690, para 208

⁴⁶ Public Administration Select Committee, *Constitutional Renewal: Draft Bill and White Paper*, 4 June 2008, HC 499 2007-08, para 59

...The principle of promotion on merit which already exists within the civil service deserves to be placed on a statutory footing as much as the principle of appointment on merit.⁴⁷

The Government response to PASC was to emphasise that the Civil Service Commissioners were already involved in appointments to the very senior civil service (the Top 200) and that the principle of promotion on merit was already a mandatory requirement set out in the Civil Service Management Code. The Government did not consider that it would be a proportionate response to widen the scope of the Commissioners by including promotion on merit within their scope.⁴⁸

Clauses 38 and 39 (Special Advisers)

PASC linked the lack of the cap on numbers of special advisers in the draft bill to the lack of definition about their role. They stated that:

It needs to be absolutely clear in primary legislation that no special advisers should be able to authorise expenditure, or to exercise either management functions or statutory powers. With this added protection, there would be no need for Parliament to control the number of special adviser appointments.⁴⁹

The Joint Committee considered a number of issues about special advisers. They had a different approach to the definition of the role of special advisers, preferring it to be in the Code of Conduct to the face of the Bill:

...We note the intention set out in the Green Paper to clarify the role of special advisers. On balance, we do not support calls for restrictions on advisers' functions to be put on the face of the Draft Bill. However, we recommend that paragraph 7 of the Code of Conduct for Special Advisers should be amended to make it explicit that special advisers may not authorise expenditure; recruit, manage or direct civil servants; or exercise statutory powers. We recommend that a procedure should be included in the appropriate Code for limiting the numbers of special advisers, preferably not by establishing a cap. We suggest this might be done by confining to Cabinet Ministers (or Ministers in charge of departments) the right to appoint special advisers and by limiting the number of special advisers that each Cabinet Minister should be able to appoint.⁵⁰

The Joint Committee recommended also that there should be no formal approval mechanism for the Code of Conduct for Special Advisers, but as with the Ministerial Code and Civil Service Code, it should be subject to scrutiny by PASC.⁵¹

The First Civil Service Commissioner, the Committee on Standards in Public Life and the FDA union had argued before the Joint Committee that the draft bill should clarify what special advisers could and could not do.⁵² A number of witnesses had suggested that special advisers could be funded from the Short Money allocation given to Opposition parties to support their front bench work. PASC had also floated the idea in its 2001 report *Special Advisers: Boon or Bane?*⁵³ There was disagreement among Joint Committee members about

⁴⁷ *Ibid*, para 61

⁴⁸ Cm 7688, para 47

⁴⁹ HC 499 2007-08, para 44

⁵⁰ Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill*, 31 July 2008, HL 166-I and HC 551-I 2007-08, para 296

⁵¹ *Ibid*, para 300

⁵² *Ibid* para 293

⁵³ HC 293 2000-01

the question of a cap on the number of advisers, as is evident from the Minutes of Proceedings. The Joint Committee were also not persuaded that there should be any formal parliamentary approval of the Code of Conduct for Special Advisers (para 300). Nor did they agree that special advisers should be funded from Short Money, as this would remove them from the ambit of the Civil Service Code⁵⁴

The Government response to the Joint Committee welcomed their general approach on special advisers, but did not accept the recommendation that the Code be amended to make explicit the functions that special advisers may not perform. It considered that the most appropriate form of scrutiny remained that provided by select committees.⁵⁵ The response to PASC did not accept their argument that primary legislation should specify the functions that special advisers should not perform, such as management functions or authorisation of expenditure, arguing that the role of special advisers was set out in the Code.⁵⁶

The response to the Joint Committee argued that numbers of advisers were in practice limited by the restrictions in the *Ministerial Code*.⁵⁷

Status and powers of the Civil Service Commissioners

PASC noted three separate concerns about the provisions in the draft Bill relating to the Civil Service Commissioners:

- Would the process for appointing the Civil Service Commissioners ensure their personal independence from the Executive?
- Would the Civil Service Commission as a body have sufficient administrative and financial independence from the Executive?
- Should the Civil Service Commission have the power to undertake investigations into the application of the Civil Service Code other than on the basis of a complaint from a civil servant?⁵⁸

On the first question – the appointment of the Commissioners – PASC had a number of concerns. They stated that the First Civil Service Commissioner should be appointed with the agreement rather than in consultation with the Leader of the Opposition.⁵⁹ The Committee also had concerns about the appointment of the other Commissioners. The Bill stated that “the Minister must not make a recommendation without the agreement of the First Commissioner, unless the Minister is satisfied that it is appropriate to do so”. The Committee concluded:

...We suggest that the Joint Committee may wish to explore with the Government the circumstances under which it might be considered “appropriate” to make an appointment to the Civil Service Commission without the agreement of the First Civil Service Commissioner. Unless there is a strong justification for maintaining an exemption clause, we recommend that the draft bill should be clear that appointments

⁵⁴ *Ibid*

⁵⁵ Cm 7690, para 220

⁵⁶ Cm 7688, para 30

⁵⁷ Cm 7690, para 216

⁵⁸ Public Administration Select Committee, *Constitutional Renewal: Draft Bill and White Paper*, 4 June 2008, HC 499 2007-08, para 47

⁵⁹ *Ibid*, para 48

of Civil Service Commissioners may only ever be made with the agreement of the First Civil Service Commissioner.⁶⁰

PASC also commented favourably on the proposal that appointments should be for five year, non-renewable terms.⁶¹

On the question of administrative and financial independence, PASC heard that this was one of the main concerns of the First Civil Service Commissioner. The Committee concluded that:

...The Civil Service Commission's job is to regulate the Executive to have the power to control not only how much money is made available to the Commission, but also how that money should be spent...

Our concern is to ensure that, whatever model is used, and however that model might need to be modified, the Civil Service Commission should have complete financial and operational independence from the Government. We invite the Joint Committee to consider further how this independence might best be achieved.⁶²

Lastly, on the powers of the Commission to initiate investigations, PASC were not satisfied with the Government's proposal to conduct investigations made to it by civil servants. They recommended that the Civil Service Commission "should have the power to conduct independent investigations into the operation of the Civil Service Codes, other than in response to specific complaints from civil servants, an without the need for Government consent". The Committee recommended that the Joint Committee should consider:

...How the Civil Service Commission might be enabled to conduct independent investigations at its discretion, both in terms of the draft legislation and of any additional resources that the Commission might require.⁶³

More information about recent debates on the models for establishing constitutional bodies is available in the Standard Note *Officers of Parliament: Recent developments*.⁶⁴

The Joint Committee agreed with PASC that the draft Bill should be amended to require the Commissioners to report annually to Parliament on the adequacy of their funding.⁶⁵ The Joint Committee stated that the Minister for the Civil Service should be obliged to consult the First Ministers of Scotland and Wales and the leaders of the main opposition parties about the appointment of the First Civil Service Commissioner, but should not be obliged to seek their agreement.⁶⁶ The Joint Committee further recommended that the draft Bill be amended to ensure that the Commissioners are appointed on merit on the basis of free and open competition, and also to allow for compensation for loss of office to all Commissioners, not just the First Civil Service Commissioner.⁶⁷ Lastly the Joint Committee agreed with PASC that the Commissioners should be able to initiate their own investigations under the Code.⁶⁸

⁶⁰ *Ibid*, para 49

⁶¹ *Ibid*, para 50

⁶² *Ibid*, para 54

⁶³ *Ibid*, para 58

⁶⁴ Library Standard Note, SN/PC/4720, [Officers of Parliament: recent developments](#)

⁶⁵ Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill*, 31 July 2008, HL 166-I and HC 551-I 2007-08, para 254

⁶⁶ *Ibid*, para 257

⁶⁷ *Ibid*, para 258

⁶⁸ *Ibid*, para 263

The Commissioners themselves were ambivalent about the power of initiation, as set out in the evidence of the First Civil Service Commissioner to PASC.⁶⁹

The Government response to the Joint Committee stated its belief that the Non Departmental Public Body model 'was the most suitable model to safeguard the Commission's independence, and that an annual or special report could allow Commissioners to raise concerns on funding. It accepted recommendations that the Commissioners (as well as the First Commissioner) should be appointed on merit on the basis of fair and open competition, and that compensation for loss of office should be extended to all Commissioners. It rejected proposals to give the Commissioners the right to initiate inquiries:

185. The Government has considered this point carefully in light of the First Civil Service Commissioner's evidence and recommendations of both this and the Public Administration Select Committee. We strongly echo the Committee's view that the proposals should not place any additional, undue pressure on the resources of the Commission or risk politicising its role. The Government believes firstly, that such a provision is unnecessary and, secondly, would risk the Commissioners being diverted by politically motivated or vexatious correspondence. This, in turn, would have resource implications, about which the Commissioners themselves have voiced concerns.⁷⁰

In its response to PASC, the Government clarified that appointments to the Commission would only be made with the agreement of the First Civil Service Commissioner.⁷¹

Ministerial obligations

PASC pointed out that the Government's draft bill in 2004 would have required the Civil Service Code to include a provision requiring ministers "not to impede civil servants in their compliance with the code", but that there was no equivalent in this version of the draft bill. Despite hearing evidence from Sir Robin Mountfield that it was 'illogical', the Committee decided not to recommend entrenchment of any principles of the Ministerial Code in the legislation. They stated that:

We suspect it would be possible, despite what the Minister of the Cabinet Office told us, to impose a legal obligation on Ministers without making any of the Ministerial Code justiciable. However, it is certainly arguable that civil servants could use a legal requirement to act impartially as a shield against any requests from ministers that they should act otherwise (so long as this requirement is adequately defined). We agree with the Government that the question of whether a minister is failing to respect the political neutrality of the civil service is better addressed as a political issue than a legal issue. However, this is an issue that the Joint Committee may wish to consider further.⁷²

The Joint Committee recommended that the Ministerial Code should be laid before Parliament, but it should not be subject to any formal Parliamentary approval mechanism. This approach found approval in the Government response.⁷³

⁶⁹ 24 April 2008, printed in HC 499 2007-08

⁷⁰ Cm 7690, para 185

⁷¹ Cm 7688, para 34

⁷² Public Administration Select Committee, *Constitutional Renewal: Draft Bill and White Paper*, 4 June 2008, HC 499 2007-08, para 65

⁷³ Cm 7690, para 192-3

Machinery of Government changes

The Public Administration Select Committee has published three reports in recent years which have recommended that Parliament should have more effective scrutiny of changes to the organisation of government itself.⁷⁴ The Committee recommended in this report that:

The draft Constitutional Renewal Bill should include measures to change fundamentally the way that Government is structured, by giving statutory functions to Government Departments rather than to interchangeable Secretaries of State...⁷⁵

The Joint Committee disagreed with PASC about the mechanisms for machinery of Government changes. They recommended that the power to restructure the machinery of government should remain with the Prime Minister, and that departmental select committees should take a more proactive approach in scrutiny of this area.⁷⁶ The Government responses argued that there had been greater transparency in recent years and that legislation was unnecessary.⁷⁷

Accountability of the Civil Service to Parliament

The Joint Committee considered whether the Civil Service should have a wider duty to Parliament. The Lord Chancellor answered their questions on this by stating that he “would be very interested in the idea” and that he was “concerned to ensure that officials and many other people have a sense of rather broader responsibility, a recognition really of the centrality of Parliament in our constitutional arrangements”. The Joint Committee recommended that the Government find a suitable form of words to achieve this.⁷⁸ This was not an attractive recommendation to the Government; its response considered that the relationship should be structured to ensure the ultimate accountability of the government to the electorate, as set out in the current Civil Service Code and that legislation was not necessary.⁷⁹

Business Appointment Rules

The Joint Committee recommended that the Draft Bill should be amended:

...to require a set of principles governing business appointments for former civil servants to be drawn up which, like the Civil Service Code, should be laid before Parliament and subject to scrutiny by the Public Administration Select Committee.⁸⁰

The Government response considered that the Rules on the Acceptance of Outside Appointments, currently contained in the Civil Service Management Code, were sufficient, although some revision of the current drafting was underway.⁸¹

The *Constitutional Reform and Governance Bill* 2008-09 had its first reading on 20 July 2009. The clauses are discussed in detail in a forthcoming Library Research Paper. However, the overall policy principles behind the draft bill have not been subject to major change.

⁷⁴ See Public Administration Select Committee, *Machinery of Government Changes*, 15 June 2007, HC 672 2007-08; Public Administration Select Committee, *Machinery of Government Changes: A follow-up Report*, 17 December 2007, HC 160 2007-08; and Public Administration Select Committee, *Machinery of Government Changes: Further Report*, 14 May 2008, HC 514 2007-08.

⁷⁵ *Ibid*, para 67

⁷⁶ *Ibid*, para 303

⁷⁷ Cm 7690, para 222; Cm 7688, paras 51-52

⁷⁸ *Ibid*, paras 279-281

⁷⁹ Cm 7690, paras 201-203

⁸⁰ *Ibid*, para 305

⁸¹ Cm 7690, para 224

4 Earlier drafts of civil service legislation

4.1 Public Administration Select Committee draft bill 2003-4

The details of the draft *Constitutional Renewal Bill* are likely to be compared with the PASC bill of 2003-4. The Public Administration Select Committee (PASC) published its report on a draft civil service bill in January 2004.⁸² This report published a draft bill as an Annex, with accompanying commentary on individual clauses. This was an unusual initiative from a departmental select committee, whose role is more commonly to offer pre-legislative scrutiny of a Government bill.

Briefly, the draft bill sought to set out the 'civil service of the State' in **Clause 1** in order to create a framework for the scope of the Act, rather than to offer a comprehensive definition.

The main aspect of the bill was to establish the Civil Service Commission on a statutory basis, in **Clause 2** since at present it operates under prerogative powers exercised by Order in Council. The Bill provides for the appointment of the Commissioners to follow by analogy the procedures for the appointment of the Comptroller and Auditor General (C & AG) and funding of the National Audit Office. These procedures offer a model of parliamentary accountability and independence. Full details of the C & AG model are set out in Research Paper 03/77 *Officers of Parliament- A comparative perspective*. **Schedule 1** gives further details on the status and administration of the Commissioners.

Clause 3 sets out the principal functions of the Commission:

- To maintain the principle of selection on merit on the basis of fair and open competition (with an exception for special advisers, set out in Clause 5)
- To entertain appeals, including the hearing and determination of applications under the Civil Service Code
- To confer a new power on the Commission to conduct inquiries into the operation of codes of conduct under the Act
- To make an annual report to Parliament

Clause 4 permitted the delegation of functions to a Commissioner or officer.

Clause 5 covered special advisers, allowing an exception from appointment on merit, and providing for a ceiling on numbers for advisers in Wales, Scotland and in the United Kingdom administration, this latter figure being set by affirmative resolution

The Civil Service Code was given statutory form in **Clause 6**, with provision for a code for special advisers. The code would have been subject to the negative resolution procedure and could be subject to alteration.

Powers to make orders determining numbers, grades, recruitment and conditions of service were set out in **Clause 7**, reproducing powers in the Civil Service Order in Council and within the scope of the Civil Service Management Code. **Clauses 8 and 9** tidied up nationality requirements, allowing certain posts to be reserved for UK nationals.

⁸² A draft civil service bill: Completing the Reform HC 128 Session 2003-4

The report was not unanimous. Brian White, a Labour member, submitted a minority report recommending against legislation. The text of his draft report is set out in the minutes of the PASC report.

The CSPL welcomed the draft bill and its then chairman, Sir Nigel Wicks, addressed some requests to the Government in his letter, in respect of the Government response to the Committee.⁸³ This mainly concerned the issue of allowing Ministers a constrained choice between candidates. This issue was not addressed in the PASC bill.

4.2 The Bill presented by Oliver Heald as Shadow Leader of the House 2003-04

The then Shadow Leader of the House, Oliver Heald, published a bill on 12 January 2004 identical to the wording of the PASC bill.⁸⁴ The Bill was a presentation bill, and made no further progress. However, the bill featured in the Opposition day debate on 21 January 2004 Kenneth Clarke set out the Conservative position as follows:

The key thing about the Bill is that it will strengthen parliamentary oversight of the whole system, which is what the Government most dislike about the Select Committee's proposals—that Parliament would have a say in what special advisers can and cannot do, and that it would have a say in the protection of the impartiality of the civil service. I am glad to say that the Conservatives are committed to doing that, which is why I am honoured to speak for my party at the Dispatch Box. We shall not do as the Government did—commit ourselves to the measure in opposition and fail to carry it out for our first seven years in government.

We are prepared to subject ourselves to the constraints at this stage. I have the authority of my right hon. and learned Friend the Leader of the Opposition to say that he would legislate to scrap the Order in Council system, that he would reduce the number of special advisers from its present level and that he would not seek to give special advisers executive authority over civil servants.⁸⁵

In response the then Cabinet Office minister, Douglas Alexander, stated:

The Public Administration Committee has wisely and consistently recognised the need to seek to build consensus around such a piece of landmark legislation. That is why its report of 5 January—unlike the express terms of the Opposition motion—recommended that the Government should publish a draft Bill in the current Session of Parliament to allow for appropriate consultation. I am happy to give the Chairman of the Select Committee that undertaking today: the Government will publish a draft Bill in the current session of Parliament. The Government are of course mindful that both Houses will take a close interest in the draft Bill. It is an important constitutional matter and there will be full consultation with both Houses. However, detailed decisions about the form of that consultation have yet to be taken.⁸⁶

4.3 The Executive Powers and Civil Service Bills 2003-4 and 2005-6

This was a private member's bill introduced into the Lords by Lord Lester of Herne Hill which covered similar subject matter. It became the *Civil Service (no 2) Bill* and received a third reading on 20 May 2004 but made no progress in the Commons before the end of the session. Lord Lester outlined the purpose of the Bill on second reading as follows:

⁸³ CSPL Response the Government's consultation on a Draft Civil Service Bill, 24 February 2005, available at www.public-standards.gov.uk

⁸⁴ Bill 37 of Session 2003-4

⁸⁵ HC Deb 21 January 2004 c1341

⁸⁶ HC Deb 21 January 2004 c1343

Lord Lester of Herne Hill: My Lords, I beg to move that this Bill be now read a second time. It is a constitutional measure creating a framework for better parliamentary scrutiny of the executive. Its first purpose is to place under parliamentary authority the executive powers exercised by Ministers by virtue of the Royal prerogative, including treaty-making. Secondly, it puts on a statutory footing the basic principles upon which the Civil Service is based and the ground rules governing the relationships between Ministers, civil servants, special advisers and Parliament. Thirdly, it establishes a procedure for the approval of some key public appointments.⁸⁷

At committee stage the Bill became the *Civil Service (no 2) Bill* and covered only the civil service aspects. It covered much the same territory as the PASC bill, with a power for the Civil Service Commission to undertake investigations, but without an overall cap on the number of special advisers. The Bill fell with the end of the 2003-4 Session. Lord Lester reintroduced the bill in 2005-6 and the second reading was held on 3 March 2006. This bill passed through all its Lords stages but also fell at the end of the session.

4.4 The Government's draft Civil Service Bill 2003-4

This was published on 15 November 2004 in the form of a consultation paper⁸⁸ and fulfilled the commitment made in 2003 that once PASC had published its own proposals, the Government would bring forward its own draft bill.⁸⁹ However, the Government did not commit itself to bringing forward legislation - instead the consultation paper stated: "The Government now wants to consult on whether legislation is a necessary and desirable step to take in support of those values."⁹⁰

The consultation paper stated that any legislation on the civil service should contain the following principles:

1. It should not change the constitutional and practical role of civil servants whose accountability will continue to be to their Ministers who, in their turn, are accountable to Parliament for their stewardship of the Civil Service and their custodianship of its values.
2. It should command cross-party support by ensuring that the Civil Service is capable of serving with equal dedication and commitment future duly elected and constituted governments, whatever their political complexion.
3. It should leave civil servants subject to general employment practices, with very similar statutory employment rights to other employees.
4. It should not diminish the flexibility and responsiveness with which the service can be managed or interfere with the arrangements whereby Departments and devolved administrations are granted delegated responsibility from the centre for the pay, grading and management of their staff.
5. It should not make the Civil Service immune to change, but should provide a framework within which it can continue its 150-year evolution into the era of globalisation.

⁸⁷ HL Deb 5 March 2004 c889

⁸⁸ Cabinet Office Press Notice 15 November 2004 *Government consults on Draft Civil Service Bill* http://www.cabinetoffice.gov.uk/newsroom/news_releases/2004/041115_draftcsbill.asp The consultation paper and the full text of the draft bill can be accessed at http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/~media/assets/www.cabinetoffice.gov.uk/propriety_and_ethics/consultation_bill_cm_6373%20pdf.ashx

⁸⁹ *Government response to the Ninth Report of the Committee on Standards in Public Life* Cm 5964 September 2003

The Government suggested that the principles of legislation should apply in both the Home and the Diplomatic Civil Service, with a comprehensive listing of every part of the Service to which the Bill would apply. MI5 and MI6 would however be excluded, as already covered by relevant legislation.⁹¹ The PASC bill did not attempt such a comprehensive listing, relying on a number of existing statutory references.

The Bill differed in some respects from the PASC version. The main changes were:

- **Civil Service Commission** The Government did not accept the PASC proposal that the Commission should be given an audit power to undertake inquiries into the operation of the Civil Service Code and the Code of Conduct for Special Advisers. The consultation paper considered that this should be the role of the Cabinet Secretary, as other proposals would ‘cut across or interfere with the management line’.⁹² The government draft bill also proposed that only the First Commissioner should be appointed after consultation with the Opposition parties, rather than all Commissioners. It also did not accept that the Commissioners should be funded, as the National Audit Office, from ‘moneys provided by Parliament’, but preferred to fund via the departmental vote.⁹³
- **Special Advisers** The Government developed its position since its response to the Committee on Standards in Public Life in 2000 where it accepted the principle of a cap on numbers. It had already retreated from this commitment in its response to the CSPL Ninth Report in 2003.⁹⁴ The consultation paper argued that what is important is a clear understanding of roles and responsibilities, rather than an upper limit.⁹⁵ Instead an annual report would be made to Parliament giving names, responsibilities, activities and cost. At present these details are disclosed in response to parliamentary questions. Clause 16 of the Government’s draft bill provided that no special advisers could authorise expenditure, exercise line management supervision over permanent civil servants or discharge any statutory power, with the exception of up to two special advisers in the Prime Minister’s office. The PASC bill provided for a cap on special advisers but the number would have been set out in a statutory instrument to be approved by both Houses
- **Civil Service Management** The Government draft bill gave the Minister for the Civil Service the power to determine terms and conditions of staff employed in the civil service, replacing the prerogative powers contained in the 1995 and 1991 Orders in Council,⁹⁶ but leaving in place the *Civil Service (Management Functions) Act 1992* which allow extensive delegation of powers over salaries and terms and conditions. The PASC bill provided for statutory instruments to be used to set out these powers, but the consultation paper noted: “This would interpose a third party in matters that are properly handled as part of the employer-employee relationship”.

⁹⁰ Cm 6373 para 11

⁹¹ GCHQ staff would however be included

⁹² Cm 6373 para 32

⁹³ HC 128-II 2003-4 Q293. For background see Library Research Paper 03/77 *Officers of Parliament- A Comparative Perspective*

⁹⁴ *Ninth Report – Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service*, Cm 5775 2003. Government response Cm 5964 September 2003

⁹⁵ Cm 6373 para 41-42

⁹⁶ *Civil Service (Amendment) Order in Council 1991, Civil Service Order in Council 1995*

- **Nationality requirements** The Government draft bill did not contain the proposals in Part II of the PASC bill to remove existing nationality requirements, reasoning that this was the subject of a Private Member's Bill, the *Crown Employment Nationality Bill*.⁹⁷

The consultation paper invited responses by 28 February 2005. The Chairman of PASC, Tony Wright, welcomed the appearance of the Bill and praised the five principles it set out in respect of considering civil service reform. He went on:

"Now the ball is firmly in Parliament's court. At the heart of the Bill is the principle that Parliament should be established and recognised as the guarantor of the values of the Civil Service. I believe that there is therefore a responsibility on both Houses to examine this Bill promptly and thoroughly. A joint committee of both Houses is one possibility, though there are others which might be explored.

"I will be asking my Committee to consider in what way it could assist this process, notably by pre-legislative scrutiny of the Government's draft in the near future. I am sure that PASC will warmly welcome a number of parts of the new Bill, including statutory backing for the Civil Service Commissioners and the Civil Service Code, and the greater clarity which is promised with respect to the functions of special advisers."⁹⁸

"Other parts of the Government's policy are less satisfactory, and I am sure the Committee will be seeking to clarify a number of these issues in the course of its work. The Government's Bill appears, for instance, to be less explicit than PASC's as to the exact nature of Parliamentary scrutiny of the Civil Service Code. The Government also sees a somewhat more restricted role for the Civil Service Commissioners.

"In addition, the Government has reversed its policy on the control of the number of special advisers. Whereas it told the Committee on Standards in Public Life in 2000 that it would include in Civil Service legislation "an overall limit on the number of special advisers", the consultation paper makes it clear that the Government now believes that no such no limit is appropriate. Indeed it suggests that the current limits on the numbers of special advisers to ministers in the Scottish Parliament and the Welsh Assembly should be removed.

The Committee on Standards in Public Life did not make an immediate response to the draft bill. The Civil Service Commission also did not make an immediate response. Both bodies have set out their views in evidence to PASC.⁹⁹ Very little then happened, and no summary of responses was made available, despite requests from PASC. In March 2007 the Conservative Party Democracy Task Force, chaired by Kenneth Clarke, called for legislation on the civil service to restore its objectivity.

We believe that a Civil Service Act, to regularise the relations between ministers, civil servants and special advisers, is essential. In particular, it should clarify and give a Parliamentary basis to the impartiality of the service and the protection of personnel decisions from political interference.

There are very useable models to hand in the draft Bill prepared by the Public Administration Select Committee – provisions of which include putting the Civil Service Commission on a statutory basis, and giving it powers to investigate possible

⁹⁷ See separate Standard Note SN/PC 3044 *Crown Employment (Nationality) Bill* at <http://www.parliament.uk/commons/lib/research/briefings/snpc-03044.pdf> The Bill was introduced by Andrew Dismore, but was not enacted in 2003-4

⁹⁸ PASC Press Notice 15 November 2004 "PASC Chairman welcomes progress and calls in Parliament to act quickly"

⁹⁹ *A Draft Civil Service Bill: Completing the Reform Volume II* HC 128-II

infringements of its Code – and in the relevant sections of Lord Lester’s bill on the Royal Prerogative.¹⁰⁰

PASC called for the summary of responses to the draft civil service bill to be published on several occasions during evidence sessions with the Cabinet Secretary and with ministers with responsibility for the civil service, as well as in its report *Politics and Administration: Ministers and Civil Servants* in 2007.¹⁰¹

As part of the White Paper, *The Governance of Britain*, an analysis of the consultation responses was finally published.¹⁰² 51 responses were received, 27 from serving or retired civil servants. There was majority support for the principle of legislation and differences of opinion on the treatment of the civil service in devolved parts of the UK, and the proposed definition of a civil servant. PASC, CSPL, the Council of Civil Service Unions and the Civil Service Commissioners called for a right to initiate inquiries by the Commission on the operation of the Civil Service Code and the Special Advisers Code. There were a variety of views on the role and purpose of special advisers.

¹⁰⁰ *An end to sofa government* http://www.conservatives.com/pdf/DTF_Sofa_Government.pdf

¹⁰¹ Public Administration Select Committee, *Politics and Administration: Ministers and Civil Servants*, 26 March 2007, HC 122 2006-07

¹⁰² *The Governance of Britain- Analysis of Consultations* Ministry of Justice March 2008 Cm 7342-III