

This is an extract from the Governance of Britain Consultation Document which accompanied the publication of the Constitutional Renewal Bill on 25 March 2008.

## Civil Service

*Background: 'The Governance of Britain' Green Paper*

167. *The Governance of Britain* Green Paper set out the Government's commitment to bring forward legislation to enshrine the core principles and values of the Civil Service in law. A central theme of the draft Constitutional Renewal Bill is the removal of Royal prerogative powers, and the intention is that this should be applied in respect of the Civil Service.

168. Over the past 150 years, the Civil Service has been managed under the Royal Prerogative. The Government is of the view that it is now time to put the role, governance and values of the Civil Service on a statutory basis. This will enshrine in legislation the fundamental values of the Civil Service.

169. As the Green Paper recognised the merits of Civil Service legislation have been the subject of considerable debate in recent years. In 2003, the Public Administration Select Committee published a draft Civil Service Bill and a year later, building on this, the Government launched a consultation on its own Bill.

170. The Government welcomes and values the contributions made by the Select Committee and others, including the Committee on Standards in Public Life, on this issue.

171. Comments on the Government's proposals for a Civil Service Bill published in 2004 were received from 51 respondents. A summary of the responses is set out in *The Governance of Britain – Analysis of Consultations* (CM 7342-3).

*The Way Forward*

172. This section sets out how the proposals for Civil Service legislation will be taken forward, taking account of work done by the Public Administration Select Committee, and the responses to consultation on the Government's 2004 draft Bill.

*Scope of the Bill*

173. The draft Constitutional Renewal Bill covers civil servants working in the Civil Service, the Diplomatic Service and the Forestry Commission. Civil servants who support the devolved administrations in Scotland and Wales are members of the Civil Service and therefore within the scope of the Bill. The Diplomatic Service is covered by the legislation but it will continue to be a separate and distinct

constituent of the Civil Service recognising the worldwide mobility obligation on its staff.

174. The draft Bill defines the civil service as the civil service of the State. Rather than listing every part of the civil service which is to be covered by the legislation, it goes on to list specific parts of the Civil Service which are not within its scope. For example, the Northern Ireland Civil Service and the Northern Ireland Court Service are separate Civil Services and for this reason are not included.

175. The Security and Intelligence Agencies (the Secret Intelligence Service, the Security Service and GCHQ) operate within a separate statutory framework which provides structures for Parliamentary oversight and for the investigation of complaints while leaving them the operational freedom they need to carry out their duties. The Government does not propose to alter the existing statutory approach in relation to these Agencies, and hence they are outside the scope of this Bill.

### *Civil Service Commission*

176. The draft Bill will enshrine the historic principle of appointment on merit on the basis of fair and open competition. It will put the Civil Service Commission on a statutory footing, and establishes the Commission as a body corporate. The primary responsibility of the Commission will be to uphold the principle of selection on merit on the basis of fair and open competition. The Commission will be established as an executive non-departmental public body thereby reinforcing its independence from Government.

177. The draft Bill requires the Commission to publish recruitment principles following consultation with the Minister for the Civil Service. The draft Bill sets out the long-standing arrangements for certain categories of appointment to be excepted from the principle of recruitment on merit. It also provides for the Commission to except other appointments through their recruitment principles if, in their view, it is justified by the needs of the Service.

178. In view of the important role of the Commission in upholding the core principle of recruitment on merit which underpins the permanent nature of an impartial Civil Service able to serve any Administration, the draft Bill provides for the First Civil Service Commissioner to be appointed by Her Majesty The Queen upon the recommendation of the Minister for the Civil Service following consultation with the leaders of the main Opposition parties. The current First Civil Service Commissioner was appointed in this way. Placing such a requirement on the face of the legislation will ensure confidence in the postholder to uphold the impartiality of the Civil Service.

179. The leaders of the devolved administrations in Scotland and Wales will also be consulted on the appointment of the First Civil Service Commissioner on the basis that the Commission has a responsibility for civil service appointments in their respective administrations.

180. The draft Bill provides for appointments of the Commissioners for single, nonrenewable terms of up to five years which will also serve to strengthen their independence.

181. The draft Bill also provides for the Commission to audit departments' and agencies' recruitment policies and practices to ensure that their recruitment principles are being followed. It provides for the Commission to publish an annual report about the carrying out of its functions and in exceptional cases to provide for the publication of a special report. The Minister for the Civil Service will lay a copy of the report before Parliament. The First Ministers for Scotland and Wales will be required to lay copies of the report before the Scottish Parliament and the National Assembly for Wales. The Government believes that these arrangements will promote transparency and accountability of processes.

182. The Commission will also continue to hear appeals by civil servants under the Civil Service Code. The draft Bill also provides for the Commission to determine procedures for the making of complaints and for the investigation and consideration of complaints by the Commission, including provision for the Commission to consider taking a complaint direct from a civil servant without having to go through internal complaints procedures. This will follow existing procedures.

183. The Government has considered whether the Civil Service Commission should be given a power to undertake inquiries without a complaint being made by a civil servant. Following consultation with the Civil Service Commissioners, the Government does not believe such a power is necessary or that it should be for the Commission to be responsible for taking this decision alone. If concerns were raised by the Commission which required investigation, the draft Bill provides for such inquiries to be made with the agreement of the Commission and the Government, on the advice of the Head of the Civil Service.

#### *Civil Service values*

184. The Government is committed to a permanent, impartial Civil Service governed by the key principles of impartiality, integrity, honesty and objectivity. Enshrining these values in statute will protect the Civil Service against the risk of some future Government making changes to these core values without proper parliamentary debate and scrutiny.

185. The draft Bill places a responsibility on the Minister for the Civil Service and the Foreign Secretary to publish, and lay before Parliament, a Civil Service Code and a Diplomatic Service Code. The core values of the Civil Service – integrity, impartiality, objectivity and honesty – are set out on the face of the legislation.

186. The draft Bill also requires the Minister for the Civil Service to publish separate codes of conduct for civil servants who serve the Scottish Executive or the Welsh Assembly Government.

187. The Government believes that this approach will ensure that Parliament and the public can have confidence that an impartial Civil Service able to serve any Administration will be maintained for the future.

### *Special Advisers*

188. Special Advisers have a valuable role to play in advising and assisting Ministers on Government policy. They add an important dimension to the advice and assistance available to Ministers while reinforcing the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support.

189. Special Advisers are not new; the first appointments were made in the early 1970s. Their employment is governed by clear terms and conditions set out in a Model Contract for Special Advisers and there is a specific Code of Conduct for Special Advisers. Both the Code and Model Contract were introduced by this Government in 1997 and both are public documents.

190. Special Advisers are temporary civil servants and funded by the taxpayer, reflecting the work they do on Government business. Special adviser appointments are personal appointments made by the Minister and in view of the personal and temporary nature of their role they are exempt from the principle of recruitment on merit through fair and open competition. The Government continues to believe this is the right approach. There is a specific provision on the face of the draft Bill exempting them from the provisions on impartiality and objectivity under the civil service code, thus recognising their political allegiance is to the Governing party and that they are not expected to retain the confidence of future governments of a different complexion.

191. The draft Bill therefore provides for Special Advisers to be appointed on this basis. The draft Bill also provides for transparency on Special Adviser numbers and their cost by way of an annual report on Special Advisers to Parliament and the publishing of the Code of Conduct for Special Advisers.

192. The draft Bill provides for similar appointment and reporting arrangements in respect of Special Adviser appointments made by the First Ministers in Scotland and Wales. Under this approach, the Government does not believe that it is necessary to continue with the arrangement whereby a cap on numbers is specified for appointments in Scotland and Wales. Transparency and accountability are ensured through the publication of the annual statement and adherence to the Code of Conduct for Special Advisers.

193. The draft 2004 Civil Service Bill proposed that up to two special advisers in No10 should have executive powers. A number of respondents argued that no special advisers in No10 should have such powers. In June 2007, on taking up office, the Prime Minister's first act was to revoke the provision in the Civil Service Order in Council which enabled special advisers to be appointed with executive powers. The draft Bill reaffirms this approach.

#### *Civil Service Management*

194. The draft Bill provides the Minister for the Civil Service with a power to manage the Civil Service. The Foreign Secretary will be given a similar power to manage the Diplomatic Service. In practice, the Minister for the Civil Service will manage the Civil Service through the Civil Service Management Code. This power will continue to be capable of delegation to other Ministers and other relevant bodies. This essentially reflects existing practice.

#### *Security vetting*

195. The only area where it is planned that prerogative powers should be retained in relation to the Civil Service is in the area of security vetting. To place vetting for civil servants on a statutory footing would mean that a parallel system under the prerogative would still be required to cover vetting for those working in the intelligence agencies and those outside the Civil Service, for example, the Police and contractors. The Government does not believe it would be sensible to operate two different systems, and therefore a saving provision for the retention of the prerogative in this area is on the face of the draft Bill.

196. The approach outlined in this section on Civil Service legislation is reflected in the clauses of the draft Constitutional Renewal Bill (CM 7342-2).