

SPECIAL ADVISERS

Background

6.1 Special advisers have been described by one commentator as “*no ordinary civil servants*”.¹ Technically, they are temporary civil servants, subject to the Civil Service Code. Yet there are key differences between special advisers and other officials. Unlike career civil servants, for whom impartiality and objectivity are key requirements, special advisers are usually politically partial and appointed without open competition to act as the party political ‘voice’ within a department. Their tenure lasts only as long as that of the appointing Minister or Government, giving them significantly less security than career officials.

6.2 The Ministerial Code sets out the role of special advisers in the following terms:

*The employment of Special Advisers on the one hand adds a political dimension to the advice available to Ministers, and on the other provides Ministers with the direct advice of distinguished ‘experts’ in their professional field, while reinforcing the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support.*²

6.3 Some special advisers are appointed for their technical expertise rather than their party political awareness: two current examples are members of the Council of Economic Advisers and the UK Anti-Drugs Co-ordinator. A number of special advisers are employed in briefing the media and in related tasks, while others are mainly engaged in advising ministers on policy matters.

6.4 Despite their (often) political nature, special advisers are paid from public funds. This apparent contradiction is explained in the Model Contract for special advisers published in May 1997:

*they are employed to serve the objectives of the Government and the Department in which they work. It is this which justifies their being paid from public funds and being able to use public resources. The same principle also explains why their participation in party politics is carefully limited.*³

6.5 Special advisers or their equivalent are a long-established phenomenon in British public life, dating back at least to the temporary ministerial advisers appointed by Lloyd George when Prime Minister.⁴ In 1968 the Fulton Report on the Civil Service noted the fact that Ministers had in recent years brought into government:

*professional experts and advisers of their own . . . We welcome this practice as a means of bringing new men and ideas into the service of the State . . . We consider however that this practice should be put on to a regular and clearly understood basis.*⁵

6.6 It was Mr Harold Wilson who as Prime Minister in the 1970s moved to put the practice on such a basis. He laid down many of the parameters of today’s system, authorising the appointment of 30 ‘political advisers’ in 15 departments, including Number 10, in March

¹ Mary Ann Sieghart: “Lay off it girls: stick to real issues”, *The Times*, 11 November 1999.

² Ministerial Code (July 1997) para 48.

³ Model Contract for Special Advisers (1997), Schedule 1 (Part 1).

⁴ Peter Hennessy, *Whitehall* (London: Secker and Warburg, 1989), p 66.

⁵ *The Civil Service*, Cmnd 3638 (1968) vol 1, p 45.

1974. In a 1975 speech to the Heads of Commonwealth Governments, he said: “*the political adviser is an extra pair of hands, ears and eyes and a mind more politically committed and more politically aware than would be available to a Minister from the political neutrals in the established Civil Service*”.⁶

6.7 The number of special advisers did not vary much for about 20 years. At the beginning of 1997, there were 38 in Government. However, the number in December 1999 stood at 74. Taking the position at Number 10 alone, the respective increase has been from eight special advisers to 25 (including one unpaid special adviser).⁷

6.8 The paybill for special advisers has accordingly risen in the last four years, as illustrated below:

Year	Paybill
1996–1997	£1.8 million
1997–1998	£2.6 million
1998–1999	£3.5 million
1999–2000	£3.9 million (estimate) ⁸

The Framework for the Activities of Special Advisers.

6.9 There are four kinds of document that set the framework within which special advisers operate:

- The Ministerial Code
- Orders in Council
- The Model Contract for Special Advisers
- The Civil Service Code

6.10 The present general arrangements for appointing special advisers are set out in the Ministerial Code. Having outlined the thinking behind the appointment of special advisers (see paragraph 6.2 above) the code continues:

Cabinet Ministers may each appoint up to two Special Advisers (‘political’ or ‘expert’). All appointments require the prior written approval of the Prime Minister, and no commitments to make such appointments should be entered into in the absence of such approval. All such appointments should be made, and all Special Advisers should operate, in accordance with the terms and conditions of the Model Contract promulgated by the Prime Minister on 19 May 1997.

6.11 The number of special advisers varies from department to department. On one hand, there are some Cabinet Ministers with only one special adviser but, on the other hand, 25 special advisers have been appointed by the Prime Minister to Number 10. The precise application of the Code to the Prime Minister is not entirely apparent: as the Code is addressed by the Prime Minister to his ministerial colleagues, it is not clear whether it can be

⁶ Harold Wilson, *The Governance of Britain* (London: Weidenfeld and Nicolson and Michael Joseph, 1976), p 203.

⁷ Cabinet Office figures.

⁸ *Ibid.*

used to regulate the number of special advisers appointed to his office. At a recent count five Cabinet Ministers employed more than two special advisers – the Deputy Prime Minister had four, including two who worked part-time; the Chancellor of the Exchequer had four including three members of the Council of Economic Advisers; the Secretary of State for Education and Employment employed four, including two who worked part-time; the Minister for the Cabinet Office had four including the UK Anti-Drugs Co-ordinator and his deputy; and the Secretary of State for Scotland had appointed three, including one who was unpaid and part-time.

6.12 Under an amended Order in Council,⁹ executive powers over civil servants can be given to up to three special advisers, all at Number 10. (In practice this power has been conferred on only two individuals, Mr Alastair Campbell, the Chief Press Secretary, and Mr Jonathan Powell, the Chief of Staff.) We discuss this issue further in paragraphs 6.55–6.57.

6.13 A further amendment in 1999¹⁰ allowed for up to 12 special advisers to be appointed by members of the Scottish Executive and up to four by a Welsh Assembly Secretary. Of these, nine have been appointed in Scotland and four in Wales.

6.14 The Model Contract was established in May 1997 as the basis for the employment of special advisers, superseding the previous system by which special advisers received only letters of appointment.

6.15 The Model Contract is a pro forma, setting out the terms of the contract which is drawn up between the adviser and the department (although it is the appointing Minister whose name is on the face of the contract). Two elements in the contract recognise the particular situation of special advisers: there is no requirement for them to be appointed on merit through competition; and their contracts terminate with the end of the Government or the departure of the appointing Minister. The contract also sets out the requirement for the special adviser to adhere to certain parts of the Civil Service Code.

6.16 Schedule 1(1) to the Model Contract (set out in Appendix VIII) indicates what a special adviser “*may or may not do*”. The Schedule says that “*Special Advisers are appointed to advise the Minister in the development of Government policy and its effective presentation*”. Apart from the three possible posts in Number 10 (see paragraph 6.12 above), special advisers are employed “*for the purpose only of providing advice to any Minister*”, and have no executive powers over civil servants – that is to say they do not have permanent civil servants working directly for them (apart from providing assistance through the Minister’s office).

6.17 Schedule 1(1) also contains a list of duties. The list includes activity which brings the expertise of special advisers to bear on policy development as well as some background work to support the presentation of policy, including “*encouraging presentational activities by the Party which contribute to the Government’s and Department’s objectives*”.

6.18 In many departments where there are two special advisers, one adviser tends to concentrate on policy issues and the other on presentational issues. The role of the latter may include direct briefing of the media as well as advice to the Minister – although there is

⁹ Civil Service (Amendment) Order in Council 1997.

¹⁰ Civil Service (Amendment) Order in Council 1999.

no specific reference to direct media briefing in the Model Contract. In other departments special advisers have little contact with the media. In practice, the pro-forma Model Contract is tailored to individual special advisers, so individual contracts may contain variations. We examine the implications of this below (paragraph 6.60).

6.19 Special advisers must, according to section 14 of the Model Contract, adhere to the Civil Service Code (which is set out in Appendix VII), except for those aspects of it that relate to the impartiality and objectivity of the Civil Service, and a passage that relates to working with a future Administration and future Ministers. Therefore, although in the Civil Service Code it is stated that: *“the constitutional and practical role of the Civil Service is, with integrity, honesty, impartiality and objectivity, to assist the duly constituted Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales”*, special advisers are not required to observe the requirements for impartiality and objectivity (though clearly there is no relaxation as regards the overriding obligation to act with honesty and integrity). Any disciplinary action under this Code would be a matter for the department, and would be the responsibility of the permanent head of the department.

The Committee’s Remit with Regard to Special Advisers

6.20 We considered carefully the nature of this Committee’s remit with regard to special advisers. Firstly, it is clear that advisers are civil servants, paid from the public purse, and as such the Seven Principles of Public Life, as set out by this Committee, apply to them.

6.21 We have examined the evidence in the context of two of the Principles: Objectivity and Accountability. We define the Objectivity principle in the following way: *“In carrying out public business . . . holders of public office should make choices on merit”*.¹¹ As we have set out above, however, special advisers are specifically exempt from the requirement to act with impartiality and objectivity, so that they may make choices based (if necessary) on political considerations.

6.22 We believe that special advisers have a valuable role to play, precisely because they are free to act and advise in a way that a politically impartial civil servant cannot. There is the argument, however, that if the numbers of this type of public servant, and their degree of influence, rise to a point where the influence of the ‘objective’ public servants is outweighed, the effectiveness of the principle of objectivity in public life is diminished. Our examination of this question is thus complementary to our examination in Chapter 5 of whether the role of a strong and impartial Civil Service is, or is perceived to be, in the process of being diminished.

6.23 The other Principle at issue is Accountability. We define this Principle in the following way: *“Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.”*¹² We consider below how the framework regulating special advisers could be improved to promote the accountability of individual special advisers.

6.24 But there is also the question of the Government’s own accountability for the employment of special advisers. It has long been recognised that Parliament has a role in scrutinising the Executive’s use of public money in funding the machinery of government. The

¹¹ See text reproduced at the beginning of this report.

¹² See text reproduced at the beginning of this report.

number of Ministers paid from the public purse is, for example, limited by Parliament through the Ministerial and other Salaries Act 1975.

6.25 Special advisers are directly appointed by Ministers and the principle of linking their numbers to those of Ministers was recognised by the Prime Minister when the ‘two-per-Cabinet-Minister’ formula was promulgated in the Ministerial Code in July 1997 (see para 6.10). The principle of a limit has been further recognised by the Order in Council stipulating the numbers that can be appointed by members of the Scottish Executive and or Assembly Secretaries in Wales (see paragraph 6.13). We consider below, in paragraphs 6.45–6.54, what are the implications of these precedents.

Evidence on Special Advisers

6.26 We now turn to the issues raised by the evidence we received. Almost all witnesses made clear their view that special advisers were valuable components of the machinery of Government. Mr Peter Riddell, Assistant Editor of *The Times*, told us that he was “*strongly in favour of political advisers, because I think that, properly deployed, they can bridge the gap, particularly with the current style of Government, between the civil servant and the Minister*”.¹³

6.27 The Association of First Division Civil Servants (FDA), which represents both special advisers and permanent civil servants, supported the system as being “*in general of benefit to the public service and public administration*”. The FDA said that special advisers “*performing their job effectively and reflecting the views of their Minister can assist greatly in the smooth working of a department in their liaison with civil servants*”.¹⁴

6.28 The Head of Profession of the Government Information and Communication Service (GICS), Mr Mike Granatt, set out the value of a good working relationship between special advisers and Civil Service press officers. He described special advisers as “*an essential part of the system*”, and continued “*I personally welcome a competent special adviser . . . It does actually take a considerable burden off the Head of Information in the sense that otherwise you are asked questions which you cannot answer*”.¹⁵

6.29 Several witnesses, however, sounded warning notes about the number or role of special advisers. Professor Anthony King said:

*There are simply far more of them than before. Secondly, some of them have far more authority or wield far more authority than their predecessors . . . That being so it seems, to use a North American expression, that the neither hog, dog nor mutton status that they have historically enjoyed is no longer appropriate. Whether one is Sir Richard Wilson or a member of the Neill Committee, one needs to think a little bit about what the role of those people ought to be, constitutionally and governmentally; and also about the rules that ought to apply to them.*¹⁶

¹³ Day 1 (pm).

¹⁴ Written evidence (17/17).

¹⁵ Day 3 (pm).

¹⁶ Day 1 (am).

6.30 Mr Riddell said:

*I do not think we should get over-excited about the growth in advisers. We are nothing like the American standard. But I think there is a need for disclosure about their position, role, also the taking on of outside appointments.*¹⁷

6.31 Sir George Young Bt MP, Shadow Leader of the House of Commons, said: *“I think you do reach a point when the numbers of special advisers reach a level where you do begin to change the nature of the debate and the way a Civil Service department operates – if the special advisers became, as it were, the dominant influence on the Minister rather than the civil servants.”*¹⁸

6.32 Other concerns centred on whether the present framework of control, set out in paragraphs 6.9 to 6.19 above, was effective. Because of the dual nature of a special adviser as a personal, political appointee of a Minister but subject also to control by the Permanent Secretary through adherence to the Civil Service Code, the lines of accountability and ownership can appear less than clear. A representative from the FDA, for instance, said:

*It might well be that . . . [the Neill] Committee, a very respected Committee, above the day-to-day political fray, might be able to reach a consensus about what is appropriate and how these issues are tackled. Because at the moment nobody else appears to have any sense of ownership of how the matters are dealt with. I know that Sir Richard Wilson clearly has some role but the decisions are by and large political ones.*¹⁹

6.33 Some commentators have discerned a new approach by the Government, suggesting that special advisers are being used to overcome what is claimed to be the drag in the system created by the Northcote-Trevelyan inheritance. These accounts have emphasised that special advisers were seen as playing a very influential role, because of Ministers’ reliance upon them for ensuring the delivery of Manifesto promises and the effective communication of Government policy.

6.34 The link between an enhanced role for special advisers and the increase in their numbers appeared frequently in the evidence to us. It was suggested, for example, that the substantial increase in their numbers since May 1997, particularly at Number 10, amounts to a politicisation of the process of government and an undesirable reduction in the position of the impartial Civil Service. Professor Peter Hennessy of Queen Mary and Westfield College London said:

*any signs of professional detachment on the part of career civil servants can all too easily be interpreted as ‘not-one-of-usery’ by the evangelists of the Blair project who, not surprisingly, fill the considerable number of special adviser posts in the various parts of the extended Number 10 . . . Two bodies, in particular, need to keep a watch on any potential Blairising of the top reaches of career Whitehall – the House of Commons Select Committee on Public Administration and the Committee on Standards in Public Life.*²⁰

¹⁷ Day 1 (pm).

¹⁸ Day 6 (am).

¹⁹ Day 4 (pm).

²⁰ “The British Civil Service: The condition of Mr Gladstone’s Legacy as the Century Turns”, Founder’s Day Address given at St Deiniol’s Library, Hawarden Castle, 8 July 1999.

6.35 Lord Butler of Brockwell, former Cabinet Secretary, told us that there were sound reasons why Ministers appointed special advisers:

I took the view that it was not reasonable to ask people who had worked extremely closely with some advisers, on whom they relied to a considerable extent reasonably and rightly, to have that support completely removed from them when they came to office. I also comforted myself by the knowledge that in the end, the odds are stacked in favour of the Civil Service.

There comes a time when a special adviser or special advisers want to move on while the Government are in office. By that time, the Minister knows the civil servants but does not know the replacement special adviser. In some senses, it is an initial problem of government. There is always likely to be more concern about it at the beginning of a government than subsequently. I do not feel that the proportion of special advisers presents any permanent threat to the political impartiality of the Civil Service.²¹

6.36 His view was firmly endorsed by the present Cabinet Secretary, Sir Richard Wilson. When asked whether the increase in special advisers amounted to “creeping politicisation”, he said:

The number of advisers in the 1970s was roughly three dozen and is now roughly double that, around 72. It is certainly true that there are more political advisers in this Government than there were in the last Government. The biggest increase is in Number 10 where the Government made it clear before they came office that they would want to have a strong centre. The purpose of setting up the various policy units and the communications unit is to provide just that kind of strong centre.

In departments there is an increase in the number, taking all departments together. Quite a lot of departments though have roughly the same or even in one or two cases fewer political advisers than they had. My short answer to your question on that is that I do not think the Senior Civil Service of 3,700 people is in danger of being swamped by 70 special advisers. That is not what is happening and I do not see it as creeping politicisation.²²

6.37 While it was suggested that we should concentrate on the role, rather than the numbers, of special advisers, the two are in our view inextricably linked. To argue about quantum alone is to miss the point about probity. The critical questions are: What is the role of the special adviser in any given instance? How influential with the Minister is the special adviser? Does he or she effectively control access to the Minister and act as the gate-keeper? Is the voice of the special adviser being given such prominence that the voice of the impartial civil servant is being lost? Sir George Young Bt MP drew the link between role and numbers in his evidence:

If you are a Minister having a meeting with, say, five civil servants and there is one special adviser there, the terms of trade are really between you and the civil servants and the special adviser sits in. The moment you start to create a sort of court around

²¹ Day 5 (am).

²² Day 7 (am).

*you and I think there are signs of that happening in the Treasury, then the terms of trade between the Minister and the civil servants begin to change . . .*²³

6.38 Lord Butler made a similar point: *“What I would worry about is if special advisers took over the Private Office – in other words if they became the ‘cabinet’ and a curtain between the Minister and the Department. That would be bad for the running of the Department and for the Minister. I have always advised against that.”*²⁴

6.39 We turn now to the suggestions that were made for more effective control of the way in which special advisers are appointed and managed.

Payment for Special Advisers out of Party Funds Alone

6.40 The most radical proposal for changing the position of special advisers was that of withdrawing public funding from at least some special advisers and requiring them to be paid from party funds. Mr Andrew Tyrie MP said *“advisers such as Alastair Campbell who are doing a large amount of explicitly party political work, should henceforth be paid from party funds”*.²⁵ Sir Bernard Ingham, who was Chief Press Secretary to Baroness Thatcher when she was Prime Minister, told us:

*A number of special or political advisers, however they may be described, have been and are directly employed on political media management, whereas previously that job was performed by Parliamentary Private Secretaries . . . It is open to argument whether special or political advisers performing that role should be paid by the taxpayer.*²⁶

6.41 There are a number of arguments **in favour of** paying special advisers exclusively out of party funds. Unlike other civil servants, special advisers are not appointed by any form of competition; it could be said to be inappropriate that they, as personal appointments by Ministers, should receive payment from the public purse (though it should also be emphasised that special advisers lack the security of tenure enjoyed by most civil servants). Payment out of party funds would clarify their role it might be said and bring them out of the ‘grey area’ that they allegedly occupy, as temporary civil servants providing advice on party political issues. They would be seen as being in the same category as other outside advisers to Ministers.

6.42 The major argument **against** such a change is the key role such advisers play in providing Ministers and departments with credible advice concerning the political impact of departmental policies, and in lending assistance in ensuring that policies are implemented. To be effective, such work requires access to the staff and facilities of a department, and should make a contribution to the achievement of departmental objectives. By bringing the special adviser into the department, some control is also exerted over their activities, by requiring their adherence to the Model Contract and parts of the Civil Service Code.

6.43 The second argument concerns ‘Short money’, which is the public finance provided for opposition parties to enable them to fulfil their Parliamentary duties more effectively. Were public sector status for these posts to be withdrawn, a party in Government might seek to

²³ Day 6 (am).

²⁴ Day 5 (am).

²⁵ Day 2 (pm).

²⁶ Day 4 (am).

have such work funded through what might be claimed to be the equivalent of 'Short money'. Sir George Young, in arguing against the ending of public funding, said:

*the parties simply have not got the resources to pay for 76 [special advisers]; certainly my party has not. So we would be back to where we started with the Neill Committee looking at Short money to assist them to pay for special advisers . . .*²⁷

6.44 We agree with the arguments for retaining public funding. We believe that advice on the political implications of policy is a necessary and proper component of the service to Ministers and that it is therefore appropriate that special advisers should continue to be paid out of public funds.

Setting a Limit on Numbers

6.45 The general effect of the evidence we heard was not that the present number of special advisers was unacceptable but that there was no mechanism for debating or controlling any further increase. The FDA believed that it was a "pretty reasonable" convention for each Cabinet Minister to have two special advisers. Their representative continued "Whether two is the right number or whether three is the right number – it is debatable. I think if you went for higher numbers that you would be into a 'cabinet' system which would be quite a different way of working which would need debate." It was thought that a consensus could be reached between the parties as to the overall numbers of political special advisers. Once a limit had been agreed, it was suggested that further posts should be filled by open competition. The FDA emphasised that they were not critical of the present number, or of individuals, but were interested in preserving the ethos of open competition: "the point is to raise these things while it is still a small number rather than seeing a continued and unchecked growth . . . At what point do you say 30 is appropriate but not 70, or not a Prime Minister's office of 200 filled by special advisers?"²⁸

6.46 Lord Butler said that concerns about the influence of special advisers on the impartiality of the Civil Service were "in some senses . . . an initial problem of government". We do not agree, as least as far as growth in numbers is concerned. The number of special advisers at Number 10 has continued to increase. Lord Butler was, however, referring to the over-reliance by Ministers on their advisers from Opposition days and we agree that the passage of time should help to establish greater trust between Ministers, special advisers and civil servants. Nevertheless, he did agree that there might indeed come a point where a ceiling on numbers was desirable. He did not feel that that stage had arrived but made an interesting observation on the mechanism that could be used if it did. In answer to the question whether a ceiling on numbers would be a desirable development, he said that it would:

*if one is tending to excess . . . I do not think that we are tending towards excess at the moment. One of the merits of a Civil Service Act is that one could provide protection of that sort, or it could be done by agreement.*²⁹

6.47 As noted in paragraphs 6.10–6.13, there are already controls on numbers, distributed across a range of documents from the Ministerial Code to various Orders in Council. A strict interpretation of these controls would suggest that they are not always observed: for

²⁷ Day 6 (am).

²⁸ Day 4 (pm).

²⁹ Day 5 (am).

example, the Ministerial Code limits each Cabinet Minister (without mentioning any exception) to two special advisers, yet the numbers in several departments exceed that figure, as is apparent from the statistics in paragraph 6.11. For many years, under Governments of both parties, the figure in the Prime Minister's Office has also exceeded two. Thus the Ministerial Code has its limitations as an instrument of control.

6.48 The arguments **against** controls on the overall numbers of special advisers include the following:

- Governments should be allowed the flexibility to appoint the number of special advisers they feel to be appropriate, especially as the task of government becomes more complex and demanding. Future needs and developments cannot be foreseen. This Government in particular has made no secret of its view that a stronger centre is necessary to co-ordinate the activities of all departments, and that outsiders should be brought in to fill some posts. In these rapidly changing circumstances, it might be difficult to see how any specific limit could be placed on the amount of personal and political advice available to Ministers.
- Any numerical restriction could have the effect of encouraging Ministers to dispense with good expert advice. In the reality of the political world, the setting of a quota is likely to encourage any Government to fill that quota largely with political advisers, thereby squeezing out those with a purely expert role.

6.49 The arguments **for** controls on numbers include the following:

- The Government has already set limits through the Ministerial Code and an Order in Council on the numbers of special advisers who can serve the Scottish and Welsh administrations (see paragraph 6.13 above). There are therefore precedents for imposing a ceiling. A precedent for parliamentary scrutiny in a closely related area is to be found in the Ministerial and other Salaries Act 1975, which imposes a limit on the number of Ministers whose salaries can be paid from the public purse.
- Concentration is important. The considerable increase in numbers, particularly at Number 10 where influential roles are played by special advisers (even those without executive powers), raises the question of whether their authority outweighs that of objective advisers.
- Any further growth in numbers would raise questions about a move towards the establishment of a 'cabinet' system within departments.

6.50 A ceiling on overall costs, rather than numbers, of special advisers has also been suggested. But it could lead to a tendency to regrade posts and pay more advisers less – which would not enhance control or quality. We are not attracted to this suggestion.

6.51 The Ministerial Code already sets a limit on the number of special advisers which is being exceeded in some cases. The Code is an important document in making clear to Ministers the rules by which they should work. Although it is not for this committee to say whether the present number of special advisers is correct, or should be higher or lower, we believe the Code should accurately state the present position. We recommend that it should be amended accordingly.

R18. *The Ministerial Code should be amended to reflect the fact that in certain circumstances more than two special advisers per Cabinet Minister may be appointed. The Prime Minister may wish to set out in the Code the criteria which should be applied if the limit is to be exceeded.*

6.52 We believe, however, that additional provisions are needed. We have already noted in paragraph 6.11 that there are uncertainties about the applicability of the Code to the Prime Minister's Office. More importantly, we believe that a degree of Parliamentary scrutiny should be brought into the process. As explained above, there is already the precedent set by the Ministerial and other Salaries Act 1975. Although the Scottish and Welsh limits have been set by Order in Council, this mechanism does not allow for Parliamentary debate.

6.53 We therefore believe that a limit on the numbers of special advisers should be included in the proposed Civil Service Act (see Chapter 5). Any future statutory limit would need to be in a sufficiently flexible form to allow the Government to seek a variation when necessary, subject to approval by affirmative resolution. We emphasise that we are not calling for any particular numerical limit, only that such a limit should be set, and that there should be a mechanism whereby Parliament's role in holding the Executive to account can be exercised.

6.54 Given that the enactment of Civil Service legislation will not come immediately, we suggest that interim arrangements should be made for Parliamentary debate.

R19. *The proposed Civil Service Act should contain a provision limiting the total number of special advisers that can be appointed within Government. Any increase beyond that figure should be made subject to affirmative resolution of both Houses of Parliament.*

R20. *Pending the enactment of the Civil Service Act, the Government should put before both Houses of Parliament for debate a limit on the total number of special advisers that can be appointed within Government.*

Numbers of Special Advisers with Executive Powers

6.55 Some witnesses saw potential difficulties in giving special advisers executive powers over civil servants. In general, however, it was felt that the current situation, where there are three possible posts with these powers in Number 10, was acceptable, although Mr David Davis MP, Chairman of the House of Commons Public Accounts Committee, believed that the power to give directions to career civil servants “*can exert significant influence over access to the Prime Minister . . . Control of access has led to scandals in other countries and the implications of that development need to be looked at carefully*”.³⁰

6.56 Lord Butler explained that the change to the Order in Council which had enabled the three posts at Number 10 to be created was to some extent a technicality: “*The way in*

³⁰ Day 5 (am).

which the Order in Council had been drawn up in the 1980s made us doubtful whether a special adviser could do the things required of a Chief Press Secretary. We wanted to make clear that they were not debarred.’³¹ Witnesses in general were opposed to an increase in the numbers of special advisers with executive powers. The Rt Hon Dr Jack Cunningham MP, then Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster, for example, said ‘I know of no proposal – none at all – that [giving special advisers executive powers] should become a common practice, nor do I think it would be a good idea to propose that it should be a common practice.’³² Sir Michael Bett, the First Civil Service Commissioner, said: ‘If the number went beyond three, I would, of course, be concerned.’ Asked what would be the reason for his concern, he said ‘A creeping change in the nature of the Civil Service in this country’.³³

6.57 Although we had no testimony to the effect that the exercise of executive powers by special advisers at Number 10 was causing problems at the moment (and evidence from the Head of the GICS that it was working well), we are concerned to ensure that any increase is considered by Parliament.

R21. Any increase in the number of special advisers with executive powers should be subject to the same process of Parliamentary scrutiny as set out in recommendations R19 and R20 for the overall number of special advisers.

The Regulatory Framework – A Need for Change

6.58 We now turn to a detailed consideration of the practicalities of the regulatory framework for the activities of special advisers. As noted in paragraph 6.9 above, the main elements of this framework are contained in the published Model Contract and application of certain aspects of the Civil Service Code. This arrangement was put in place by the Government after the May 1997 general election, and represented a useful advance on previous informal arrangements for the employment of special advisers. The question for the Committee is whether these moves towards greater clarity and wider availability of information have gone far enough.

6.59 One of the Committee’s Principles of Public Life is particularly at issue in this case: that of Accountability. This principle would seem to require that there should be a document or documents against which the public, and those who are responsible for maintaining propriety, can measure conduct. MPs have their own code of conduct, as do Ministers and civil servants. These promote accountability by setting out clearly the standards expected of their public office-holders. We considered whether the framework for the activities of special advisers promotes accountability in the same way.

6.60 Although the Model Contract sets out the parameters for the role of special advisers, and Lord Butler told us that it was ‘actually meant to provide a code’, it does not meet in full the requirements for accountability. Special advisers are employed according to individual contracts which are personal to the advisers themselves; only on rare occasions are these

³¹ Day 5 (am).

³² Day 2 (pm).

³³ Day 4 (am).

documents made public. It is understood that there are variations from the Model Contract in the individual contracts of a number of special advisers, but there is no way of confirming whether these variations are minor or substantial. Thus there is no single public point of reference for anyone seeking to hold a special adviser to account.

6.61 In trying to set out (in Schedule 1 (1)) the detailed ways in which special advisers do their work, the Model Contract risks losing credibility. For instance, the list of tasks makes no reference to briefing of the media, which, for a number of special advisers, is an important part of their work. As Sir Richard Wilson told us, “*not just under this Government, but under previous governments in my experience, political advisers have spoken to and briefed the media*”. It could be argued that this omission from the list of possible special advisers’ duties undermines the authority of the Model Contract, and that the position needs to be regularised to prevent any accusation that advisers are engaging in activities which go beyond their contracts.

6.62 As already noted in paragraph 6.19, special advisers are not required to observe the Civil Service Code in respect of the very important elements of impartiality and objectivity. The relevance of the code in this case must be diminished when such central principles are excluded from its application.

6.63 In addition, the usefulness of the present regulatory framework for special advisers is diminished by its complexity; a Model Contract which is a mix of broad principle and lists of specific tasks is supplemented by the application of parts of a code originally intended for career civil servants. On grounds of clarity, a case can be made for these two documents to be replaced by a single code, applicable to all special advisers and encapsulating the main principles of their employment. We discuss below the question whether such a code should be established.

Simplifying the System: A Separate Code for Special Advisers

6.64 Some of the arguments in favour of a special code were put by Professor Peter Hennessy, who advocated a short document that could be attached as a schedule to a Civil Service Act. He said:

*the hosing-down mechanisms around the centre are all rather weak at the moment. That means there is an ever-greater role for Ministerial and Civil Service Codes, and, I would say, a special adviser code. They do not solve the problem but they make people think twice.*³⁴

6.65 The FDA told us that they felt a separate code for special advisers would be helpful and more appropriate than trying to amend the Civil Service Code, while Professor Anthony King remarked that some special advisers:

*are playing roles, especially at Number 10, that special advisers have not played in the past. That being so, it seems to me that it is time to create a new regime, to cover that special category of public servant. In my view, that new regime should cover not merely their pay and rations – their strictly contractual conditions of service – but also their conduct.*³⁵

³⁴ Day 3 (am).

³⁵ Day 1 (am).

6.66 Sir George Young Bt MP supported the use of a separate code:

*I do not think you can go on using the Civil Service Code to cover them. They are appointed in a different way, they do not go through the normal process, their appointment comes to an end in a totally different way from civil servants, and they are allowed to do things that civil servants are not allowed to do . . . I think it would be better to have a code for special advisers that recognised their different role within the Civil Service, which had some arrangements for enforcement.*³⁶

6.67 On the other hand, Dr Jack Cunningham MP was unconvinced of the need for a separate code for special advisers. He judged: *“It is not clear to me why a separate code is necessary, given that their contracts are clear and their roles and responsibilities are clear.”*³⁷

6.68 The arguments **in favour of retaining the present system** include the danger that a new code could create further bureaucracy. There are many codes which relate to the work of departments, and that burden should only be increased for the most convincing of reasons. The current documents also contain many of the main principles for the conduct of public servants: the Model Contract clearly states the important principle that special advisers are civil servants and are covered by all relevant sections of the Civil Service Code for any disciplinary action, and the Civil Service Code itself is a clear summary of what publicly-funded officials should do.

6.69 Arguments **in favour of a single consolidated code** include:

- The current group of special advisers is different in nature from previous ones. An unprecedented range of senior posts are currently held by special advisers; these include the Chief of Staff and Chief Press Secretary to the Prime Minister, as well as the Chief Economic Adviser to the Treasury. We have already noted the numbers employed by other Cabinet Ministers. It could be argued that the development of this strengthened group requires that they be covered by a special code which reflects their new roles and greater concentration in influential posts at the centre of government.
- The Ministerial Code states that one of the beneficial functions of special advisers is *“reinforcing the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support”*. A special code for special advisers could strengthen that reinforcement by setting out the precise and appropriate rules.
- A new, specialised code would put special advisers in the same position as Ministers and civil servants with a clear, credible and explicit set of principles, drafted to guide them in their complex roles.
- Attempting to make the Model Contract act as a code as well as a detailed recital of special advisers’ tasks means that it is not effective as either. It would be simpler to focus on the setting out of principles, leaving the listing of specific tasks to individual contracts.

³⁶ Day 6 (am).

³⁷ Day 2 (pm).

6.70 Having weighed these arguments, we conclude that the Model Contract and the Civil Service Code do not set out with sufficient clarity the specific obligations of special advisers. In the interests of accountability, there needs to be a single code that guides special advisers and sets out for their departments and the wider public the rules that they should observe. We believe that the code should emphasise general principles and replace both the Model Contract and the use of the Civil Service Code. Special advisers would then be given individual contracts that in each case stipulated that they should observe the special advisers' code.

6.71 We emphasise that the code should embody familiar principles for the proper conduct of civil servants, although adapted to the special situation of special advisers. It should be a consolidation of provisions found elsewhere, clearly setting out their application to the work of these advisers. We do not believe it is necessary to create a wide range of new obligations.

6.72 However, one specific omission needs to be corrected when the new code is drawn up. There is no reference, in either the Civil Service Code or the Model Contract, to any duty on special advisers to refrain from asking civil servants to act in ways which threaten the impartiality of those civil servants. Ministers are obliged to refrain from such action under paragraph 56 of the Ministerial Code (see paragraph 5.37 above): special advisers should be required to observe similar restraint.

6.73 In drawing up the new code, the Government should also ensure that attention is given to the need for greater clarity in the relationship between special advisers who brief the press and Civil Service information staff. Note should be taken of the Guidance on the Work of the Government Information Service, published in July 1997, which refers to the role of departmental heads of information and permanent secretaries or their equivalents in ensuring propriety in information work.³⁸

6.74 We also believe that the new code should be given equivalent status to the Civil Service Code by being subject to debate in Parliament. In line with our recommendations in Chapter 5, the special advisers' code should be included in the Civil Service Act in a way that provides sufficient flexibility. Pending the passage of the Civil Service Act, to ensure early Parliamentary scrutiny, a draft of the proposed code should be tabled before both Houses of Parliament for debate.

R22. *There should be a separate code of conduct for special advisers. The special advisers' code should:*

- (a)** *consolidate appropriate elements of the Civil Service Code, the Model Contract and paragraph 56 of the Ministerial Code, which sets out the duty to uphold the political impartiality of the Civil Service and other obligations;*
- (b)** *include a section on the direct media contacts of special advisers, making clear the nature of the role that they play in relation to the work of Civil Service information staff and in particular the role of the departmental head of information, as set out in the Guidance on the Work of the Government Information Service published in July 1997;*
- (c)** *be enforced by permanent heads of department.*

³⁸ Issued by the Cabinet Office.

R23. The Government should include in the contracts of employment of all future special advisers a clause requiring the special adviser to abide by the terms of the special advisers' code, and the Model Contract and the Civil Service Code should not apply to them. The Government should also ensure that existing special advisers abide by the terms of the special advisers' code.

R24. The special advisers' code should be included in the proposed Civil Service Act.

R25. Pending the enactment of the Civil Service Act, a draft of the proposed Code should be tabled in both Houses of Parliament for debate.