

A new statutory role for the civil service

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About this report

The civil service is central to government in the UK. But it lacks a clear identity, defined responsibilities and a system of oversight and accountability. This report proposes a new statutory role for the civil service to reflect its permanence, values, objectives and how it should be run and held to account.

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Summary

The civil service is central to government in the UK. Civil servants advise ministers, implement the government's policies and run many of its services. The civil service has evolved continually since its establishment, in semi-recognisable form, in the 1850s, but without a single clear statement of its role, definition, purpose, remit, leadership, governance or accountability.

This lack of a clear identity, or defined responsibilities, is one of the obstacles to the UK government becoming more effective. Nobody, including the prime minister or the head of the civil service, has the necessary authority and available time required to lead and manage the civil service. Instead, often conflicting responsibilities are distributed between ministers, senior civil servants at the centre of government and departmental permanent secretaries. Policy co-ordination and implementation suffer because of inconsistencies between departments. The Cabinet Office and Treasury cannot accurately track the delivery of key priorities. The long-term capability and resources of the state are not well managed and the constitution is poorly interpreted. Risk management is poor with personal responsibilities for owning risks too diffuse. And ill-defined accountability within the civil service, and between ministers and officials, leads to unnecessary mistakes followed by blame games, preventing important lessons from being learned.

This paper proposes a new statutory role for the civil service to address these problems. It would act as a statement of the civil service's permanence, its values, its objectives and how – at the highest level – it should be run and held to account. It would define the civil service's position in government and its operation and set out a governance structure that improves accountability while at the same time reinforcing and strengthening its legitimacy.

A new role set out in statute would not address every problem in UK government and our proposals are not comprehensive or the final word on the subject. But by setting out for the first time the operational sphere of responsibility of the civil service and how it should work, the partnership between ministers and civil servants – upon which government depends – can be strengthened and the long-term standing of the civil service improved.

The core features of a statute would set out:

- The civil service's permanence, impartiality, objectivity and requirement to maintain the highest standards in public life
- A new objective for the civil service to implement government programmes, with additional responsibilities for the head of the civil service and permanent secretaries to maintain the capability of UK governments to meet such an objective
- New accountability and responsibility for the head of the civil service for the administrative work of departmental permanent secretaries, so that he or she can better maintain and enhance the capability of the civil service
- Clearer responsibilities and accountabilities for ministers and civil servants
- Greater parliamentary scrutiny of the civil service, with a formal reporting requirement for the civil service to parliament, and more direct questioning of senior civil servants by parliamentary committees.

This would be an important reform for the civil service and its relationship with ministers and parliament. It would clarify and make more coherent the civil service's role and standing, allowing officials to give their best advice to ministers including during times of political pressure and to maintain the skills, knowledge and experience of departments over time.

It would improve the governance of the civil service, giving its leadership the authority to manage the institution as a whole. This would, in turn, help to improve consistency between departments, clarify the ownership of risks and strengthen the co-ordination of policy implementation.

It would also enhance the accountability of the civil service. Officials would be scrutinised for their work without undermining ministerial accountability to parliament. Permanent secretaries would maintain their close relationships with secretaries of state but also be responsible for implementing government policy in accordance with centrally set benchmarks. And by clarifying the civil service's accountability, blame games would be less necessary and the relationship between ministers and civil servants improved.

Parliamentary scrutiny and engagement with the civil service would also be expanded. Building on its existing powers of scrutiny, parliament would also play a role in holding the service to account through reporting from a stronger Civil Service Board.

It is time for a new statutory role, and a new statute, for the civil service.

Introduction

There is an urgent need to re-establish the purpose, remit, governance and accountability of the UK civil service. The civil service should be the permanent, impartial and objective workforce that advises ministers, helps government implement policies and delivers public services. In its current form the civil service has enormous strengths including its values of honesty and integrity, and its people who are overwhelmingly committed to public service. It has proved adaptable to successive governments, often gaining the confidence of previously sceptical ministers.

But the weaknesses are also clear. Like much of UK government, the civil service has evolved slowly over time. There is no clear articulation of its definition, purpose, remit or standing. Nobody, including the head of the civil service, has the executive authority to directly manage the institution. The central administration of government is too weak, leading to inconsistent service provision, muddled policy making and – perversely – an over-reliance on central control to make change happen. The governance of the civil service itself is thin and internally focused, undermining the confidence and legitimacy of the institution. The precise role and oversight of the civil service in British government has long been fudged, and sometimes deliberately blurred. Responsibilities have been blended, with successes and failures alike being difficult to learn from and analyse. Meanwhile, ill-defined accountability within the service and between ministers and senior officials is damaging the relationship between elected politicians and the administrators who serve them. Each group blames the other for the problems of UK government, ultimately to the detriment of the public.

The Institute for Government is arguing for a new start, set out here in our proposal for a new statutory role for the civil service. In doing so we are conscious that it is difficult to consider the structure and effectiveness of the civil service without entering politically contested territory. Professor Christopher Hood and Ruth Dixon have noted that “the quality of debate about public management and government reform tends to be surprisingly ideological in practice”.¹ Rather than being a question of competence and organisation, reforms tend to be seen through prior political assumptions about the size of the state or the role of markets and competition. As far as possible our recommendations aim to take a non-ideological approach, while recognising that the organisation of the state rightly is ultimately a political question.

Our view is that a new statute for the civil service would benefit governments of any political colour, and lead to more effective decision making and better implementation of programmes of work. It would give the civil service a purpose and remit and describe its accountability to ministers and parliament. It would set out the head of the civil service’s role serving the prime minister and being held to account by a new oversight board, and describe the performance standards set by the Cabinet Office and

Treasury that should apply across the civil service. It would give the head of the civil service and departmental permanent secretaries an explicit mandate to maintain the ability of government to implement programmes and respond to events as directed by ministers – but with an enduring level of performance that is not lost over the course of different administrations.

It would enhance the legitimacy of the civil service but not at the expense of ministerial control, and lead to healthier and more productive relationships at the heart of the British state. This in turn would, we believe, lead to a more effective state that would be to the benefit of the citizens it serves.

The existing constitutional underpinning of the civil service

Reform has been a constant for as long as the civil service has existed. Governments have grappled with its constitutional standing, the relationship between civil servants, ministers and parliament, and how that translates into holding government officials to account. Those discussions have taken place alongside more managerial reforms focusing on the skills of civil servants and the structures of departments.

But there have been few moments of major change. Piecemeal reforms have been introduced through successive reports and reviews. These have modernised and improved the institution, and the civil service of 2022 is far removed from that of even two decades ago in terms of the diversity of its people and the digital, project management and commercial skills they possess. But while the civil servants have changed, the same cannot be said of the underlying organisation as a whole. Reforms have ducked the fundamental question of the statutory and constitutional underpinning of the civil service as well as basic questions of who runs it and who is responsible for its performance.

Accountability and responsibility

Accountability and responsibility are different. Being accountable means being answerable for your actions; being responsible means having the duty to perform an action. In UK government terms, as described below, ministers are currently accountable to parliament for everything that happens in government. Ministers are also responsible for their own decisions. Civil servants are accountable to ministers for the actions for which they are responsible.

Civil service accountability should be strengthened by the creation of a new mechanism, crucially including a statutory responsibility on civil servants for maintaining the capability of the state, overseen by a powerful new Civil Service Board. There should also be more opportunity for parliament to directly scrutinise civil servants, giving a route of direct accountability to parliament.

The constitutional history of civil service accountability

The twin questions of civil service accountability and the civil service's constitutional status have been blurred since the modern civil service was established following the 1854 Northcote-Trevelyan report. That work, still regularly cited today, was commissioned as a review of the civil service by William Gladstone, then chancellor, and authored by the permanent secretary at the Treasury, Sir Charles Trevelyan, and a former civil servant, Sir Stafford Northcote. The report, though not implemented immediately or in full, established the idea of a permanent and impartial civil service with recruitment based on merit rather than jobs handed out to the well-connected. Its discussion of a separation of the executive and administrative aspects of the

civil service, though largely about clerical versus intellectual work, foreshadowed a long-standing approach in which policy and implementation were too often treated separately – a distinction that would influence subsequent reform papers, including the Haldane report of 1918 and the Fulton report of 1968, and which continues to shape the management of government today.

The notion that civil servants were accountable to ministers grew stronger as the convention of ministers' overall accountability to parliament grew, but it was largely based in an institutional culture that looked back 400 years to the words of Elizabeth I to William Cecil: "that you will be faithful to the state and that without respect of my private will, you will give me that counsel which you think best".¹ But the question of the constitutional role of the civil service – whether its duty was to implement the will of government or whether it had its own constitutional personality, of which loyalty and support to the government of the day was only part, along with responsibilities to oversee the constitution or manage the long-term capability of the state – was never fully resolved.

As the work of government continued to expand these questions became more acute, though the system that had evolved over the late 19th and early 20th century remained in place even following the major expansion of the state after the Second World War. The ambiguity at the heart of the civil service's role was exposed in various ways.

The most notable and constitutionally significant was during the 1950s when a scandal emerged over the compulsory purchase of agricultural land, the Criche Down affair as it became known. In 1954 this led to the resignation of a minister, Sir Thomas Dugdale, despite the fault lying with the actions of civil servants. The decision of the minister to resign emphasised the notion that civil servants were ultimately accountable to their ministers, and the minister in turn to parliament, rather than having distinct responsibilities themselves. In the fallout, the home secretary used the affair to identify four ways in which ministerial accountability was applied:²

- A minister must protect a civil servant who has carried out an explicit order by the minister.
- A minister must protect and defend a civil servant who acts properly in accordance with the policy laid down by the minister.
- Where an official makes a mistake or causes some delay, but not on an important issue of policy and not where a claim to individual rights is seriously involved, the minister acknowledges the mistake and accepts the responsibility, although he is not personally involved, and states that he will take appropriate corrective action in the department. The minister would not expose the official to public criticism.

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- Where action has been taken by a civil servant of which the minister disapproves and has no prior knowledge, and the conduct of the official is reprehensible, there is no obligation on the part of the minister to endorse what he believes is wrong or to defend what are clearly shown to be errors of his officials. But the minister remains constitutionally responsible to Parliament for the fact that something has gone wrong, and the minister alone can tell Parliament what has occurred.

These principles guided civil service and ministerial relationships for many years, despite the ambiguities that remained, like over what acting “properly” might mean, which conduct should be considered “reprehensible” or what the consequences for the minister or the civil servant should be under scenario 4.

The question arose again in the aftermath of the leak of documents regarding the sinking of the Argentinian cruiser *General Belgrano* in the Falklands war. Clive Ponting, a senior civil servant, was responsible for leaking the information but was acquitted of breaching the Official Secrets Act despite the judge in the case having ruled that the public interest in the release was as the government had argued. A perceived need to reinforce the public interest defence of official secrets led to the 1985 Armstrong memorandum, which set out how ministers and civil servants should be held accountable. The memorandum has become a foundational part of modern civil service and government orthodoxy. It was authored by the then cabinet secretary Robert (later Lord) Armstrong and details “the duties and responsibilities of civil servants in relation to ministers”. It records that each minister:

“is responsible to Parliament for the conduct of his department” and that “civil servants are responsible to their ministers for their actions and conduct”.³

The Armstrong doctrine on ministerial accountability was reflected in resolutions agreed by both houses of parliament in 1997, which noted that “ministers have a duty to parliament to account, and be held to account, for the policies, decisions and actions of their departments and executive agencies”.

But Armstrong’s assertion also raised questions about the overall constitutional independence or otherwise of the civil service. He stated that:

“Civil servants are servants of the Crown. For all practical purposes the Crown in this context means and is represented by the Government of the Day. The civil service as such has no constitutional personality or responsibility separate from the duly constituted government of the day.”

Taken to its limit, this implied that the civil service did not have a constitutional permanence beyond the government. For some of his colleagues, this was pushing the limits of interpretation. Ian Bancroft, Armstrong’s predecessor as head of the civil service, had put it differently a year earlier saying: “The Service belongs neither to politicians nor to officials but to the Crown and to the nation.”⁴

By the late 2000s, the problem of the civil service's overall constitutional status was being felt more acutely. At the end of Gordon Brown's administration (passed with little notice during the parliamentary 'wash-up' before the 2010 election), the Constitutional Reform and Governance Act for the first time legislated for a statutory underpinning for the civil service. The Act set out a requirement for there to be a civil service code that directed civil servants to carry out their duties with integrity, honesty, objectivity and impartiality. It also put the Civil Service Commission, the body that regulates senior appointments and oversees the code, on a statutory basis.

The 2010 legislation was an important symbolic moment and meant that the civil service was on a firmer footing than before. The strengthened Civil Service Commission in particular has been a positive development. But the objective of the legislation was to entrench pre-existing civil service principles rather than to change structures of governance. As the Institute argued in 2013, the Act "does not make accountability and power clearer than before" and instability continues in the core of the system.⁵

There is an unresolved compromise on the accountability of ministers and civil servants

The Armstrong memorandum describes a logical position. But it does not work in practice and UK government in 2022 illustrates its flaws. One secretary of state, or even a group of half a dozen ministers, cannot fairly be responsible to parliament for all the actions of a sprawling department. That is especially so as the responsibilities and services of government have become more complex, departments have become bigger and the line between policy and implementation is ever more difficult to identify. As civil service responsibilities for managing and leading parts of the state that run things have grown, so too has the need to hold officials to account. But the system of oversight has not kept pace with the evolution of civil servants' roles. Another point of tension is that ministers are – technically at least, given the requirements of impartiality and permanence of the civil service – restricted in holding officials directly to account through hiring and firing decisions, which are mostly the responsibility of civil servants.

We are left with an unresolved compromise between the accountability of ministers and that of civil servants. It remains unresolved partly because it is more comfortable for politicians and officials for their responsibilities to be blurred. That does not mean that people are deliberately evading their responsibilities, but that the system incentivises diffuse accountability for decision making at the expense of more effective government in the long term. Too often the question of accountability for failures is left publicly unanswered and ambiguous. One recent example would be NHS Test and Trace (as it was at the time) and its poor co-ordination with local authorities in the early stages of the pandemic, including the mistaken May 2020 decision to set up a centralised test and trace programme.⁶ Despite numerous parliamentary inquiries into the matter it remains unclear where responsibility should sit between ministers, Baroness Harding, then head of NHS Test and Trace, and permanent civil servants.

The problem must be resolved, but tackled without creating more confusion. Applying a simplistic approach, where political and official spheres are sharply distinct, would be counterproductive because it would weaken the close partnership between ministers and officials on which the UK government relies. A new model to clarify accountability must not undermine trust between ministers and their top civil servants. It is important that it should avoid giving politicians and officials different incentives, to guard against an arrangement in which each side defensively puts down an audit trail to avoid blame, or pull in conflicting directions. And any new model must bring the disciplines of policy making, implementation and service delivery closer together, rather than reinforcing their separation, as civil servants and ministers all have important roles to play at each stage of the process.

There is an urgent case for revisiting the statutory underpinning of the civil service with careful but radical reform. There should be clearer accountability for both ministers and civil servants. The civil service is too weak – unable to manage its own long-term capability or maintain distinct legitimacy in the eyes of ministers and the prime minister. Without a clear statement of its purpose, governance and permanence it lacks a foundation of its own, drawing its authority instead from the fragile confidence that ministers have in individual officials. The civil service is dependent on the government of the day, and so is unable to provide the long-term focus and capability its permanence should enable. At the same time ministers are held to account in parliament for matters over which they cannot reasonably be said to have control.

It is time to end these confusions that damage good government. Civil servants need to be clear about the basis on which they are held to account and within that sphere of accountability to be able to exercise their authority. Ministers also need to be held to account for their policies and the consequences, confident that they can rely on a capable civil service to advise on them and to implement them, within the constraints of finances, time and quality agreed. Doing so will make other reforms easier and more likely to take root, as the respective roles and responsibilities of ministers and civil servants will be clarified, enhancing their authority to make changes happen.

The problems of an ambiguous civil service settlement

The civil service as an institution operating without a coherent remit and system of governance might seem an abstract concern compared with the practical consequences of, for example, its workforce's professional skills, demographic make-up or policy making ability – all areas of past and planned reforms. However, the lack of a fundamental statement of purpose for the civil service is contributing to problems throughout the UK government, from patchy policy co-ordination to opaque accountability. Where problems do arise, this ambiguity makes it harder to learn from mistakes.

By setting out a new statutory role for the civil service, the government can put the civil service on a stronger footing and, in doing so, help address a suite of other problems and make it more capable of serving current and future administrations. This section sets out the problems with the lack of a clear statutory underpinning for the civil service.

Confused accountability between ministers and civil servants makes government less effective

Mistakes are an inevitable part of governing: poor decisions are made, problems are not spotted or policies have unintended consequences. When this happens the government, whether in the form of ministers or officials, should be held accountable. Accountability – within government, to parliament and to the public – is the means through which lessons are learned, helping to ensure that government avoids repeating the same mistakes. It also helps avoid errors in the first place, as those responsible for a policy decision or the operation of a service are incentivised to succeed – and disincentivised to slip up. Accountability depends on those with power having well-defined responsibilities.

Not every poor outcome is the result of a mistake – nor should every error lead to sanction. Governments need to take risks that might not always come off, and misjudgment should not always be punished. Failure to anticipate the future is normal. But a doctrine of accountability means that ministers and civil servants need to be able to explain and justify their decisions, and face up to the consequences.

The practice of accountability in UK government does not match the theory, because the relationship and responsibilities between ministers and civil servants are ambiguous. As the breadth of government activity has grown to include the setting and implementation of policy, and the administration of programmes – as well as the running of often large departments themselves – so it has become harder to unpick who in government is responsible for what.

The Armstrong memorandum holds that it is ministers who are accountable for everything that happens in their department, including for holding civil servants to account for their activity. But that is not how it works in reality or, given powers of ministerial delegation, in law. Secretaries of state delegate to ministers and in some cases officials. Civil servants constantly assess, often without a clear guide and depending on the individual preferences of ministers, which decisions need to be signed off by ministers and which are operational matters and will be of little interest to them. Ministers, parliamentary committees and the civil service itself have already in practice accepted that the Armstrong view of accountability cannot be taken as an absolute rule – made clear by the number of senior civil servants, in addition to or occasionally instead of ministers, summoned to select committees.

In broad terms we can say that ministers are responsible for government policy – because they are the ones who, as elected representatives with a democratic mandate, set the policy direction and make policy decisions. Civil servants are responsible for helping the government to implement these, and so are generally accountable for the administration or the running of government and its policies. This reflects Professor Christopher Hood’s “thermostatic” metaphor of the public sector settlement, in which ministers are responsible for deciding policy outputs, “analogous to the temperature setting on a thermostat”, while officials are responsible for implementing those policy decisions, realising the temperature settings in practice.¹ But even here it is not possible to make a clear distinction. Civil servants are also responsible for advising ministers on policy – so if a policy fails because of bad advice it is unclear who is to be held to account.

For instance, in the early weeks of the pandemic in 2020, the government’s initial policy in determining its response to Covid-19 was heavily influenced by planning for influenza rather than a novel coronavirus. The former UK chief medical officer, Professor Dame Sally Davies (who left government before the pandemic), told the joint Health and Science Committee inquiry into Covid-19 that “we all... as experts and in policy... had a bias to flu, and planning for flu”, and “quite simply, we were in groupthink”.² Decisions on tracing cases, whether to impose movement restrictions and on face masks rested on these assumptions, shared by civil servants and ministers alike.

In hindsight, these decisions were informed by mistaken advice, with the government relying too much on out-of-date assessments of Covid transmission and applying assumptions about influenza to the new disease. But decisions were nevertheless made by ministers. This inevitable blurring of lines means that it is very hard to identify and hold to account those responsible for government failures – as has been seen time and again in the pandemic – and the current system makes it more likely that those failures will occur, and less likely that the right lessons will be learned.

Another example is Universal Credit, one of the more controversial policy reforms of recent years, which hit problems with both the implementation of the scheme (such as an unrealistic timetable based on unjustified ministerial optimism, lack of funding and flawed IT system) and the design of the policy itself (including levels of payments,

waiting times and the sanctions regime).³ Responsibility for Universal Credit's delays and problems – and, it should also be noted, its subsequent successes – has never been publicly clear, partly because it is difficult to identify who should be held accountable for different aspects of the policy.

The existing arrangement means that ministers and officials pass responsibility back and forth, but this all too often means that nobody is held accountable, or the wrong people are unfairly made scapegoats. Accountability becomes less about what any minister or official has actually done – or not done – and more about presentation, relative power in the system, and relationships.

The current system can also be one of extremes: ministers or civil servants may be able to evade responsibility entirely – or end up shouldering all the blame. This arguably happened in August 2020 with the departures of Jonathan Slater and Sally Collier, permanent secretary at the Department for Education and chief regulator at Ofqual respectively, following controversy over the grading of A-level and GCSE pupils in the absence of in-person exams. The decision to use an algorithm was found to disadvantage students at comprehensive schools – a risk that was identified publicly and privately beforehand⁴ – but was one actively taken by the then secretary of state, Gavin Williamson, to prevent grade inflation. The problem lay in the policy itself, rather than its implementation. Yet at the time Williamson remained in post while the two most senior relevant civil servants resigned. Williamson was at least as culpable as his officials.⁵

The current ambiguities in government responsibilities also leave ministers exposed to unreasonable accountability demands. The distinction between a bureaucratic error or the failing of a system and a policy mistake is unclear. As Professor Andrew Blick has argued, "it is unrealistic to hold ministers responsible" and directly accountable "for all that takes place under their theoretical control".⁶ Requiring them to do so without being able to recruit, manage and where necessary dismiss their top team makes it extremely difficult, if not impossible, to achieve.

Different histories and contexts make it difficult to look for simple international comparisons, and our argument here rests more on an analysis of the UK than on answers from elsewhere. But we note that other countries have addressed this tension in different ways. In Germany, we heard that ministers rarely implicitly or explicitly shift the blame for policy failures on to their civil servants. This is in part because they have more freedom to choose or remove their top officials. While most civil servants in the German government have a special legal status and cannot be fired unless they have committed a criminal offence,⁷ the two most senior officials within each ministry are considered 'political civil servants'. Under this category they can be retired at the minister's request without an explanation, for example, if the minister believes they have acted incompetently, and recalled again at any time, while keeping their full pension rights.⁸ It is also permitted for senior civil servants to engage in political activities. German ministers are therefore able to work with politically aligned senior civil servants whom they trust. They may feel better placed to establish a close team and so hold civil servants to account – and in turn, accept their own accountability

for the actions of their ministry as a whole – than their UK counterparts. However, in one 2019 study comparing civil service effectiveness across the world (supported by the Institute for Government), Germany performs notably poorly on crisis and risk management, policy making and procurement, suggesting that its long-term capacity in these areas is not as strong as other countries.⁹

Reflecting on his experience while a minister of state at the Ministry of Justice, the former Labour MP David Hanson recounted that he “ended up being on the front of The Sun because G4S have tagged the wrong leg [the security services company had tagged an individual’s prosthetic leg but the person was subsequently seen in a pub]. Now, what do I do about that? Am I accountable for it? Yes, I am. Am I responsible for it? No, I’m not.”¹⁰ There is nothing inherently wrong with that position, and chief executives of large companies will feel the same pressure to defend actions about which they could have no personal knowledge. But the difference between businesses and the civil service is that a chief executive has the power and responsibility to set the management practices and standards they expect to be followed. In government that responsibility is blurred between ministers and permanent secretaries. The most successful and diligent ministers have the skills, and are in the job long enough, to assert control – but many do not, and even for those who do the system is not well enough designed to support them.

Amber Rudd resigned as home secretary in 2018 in the wake of the Windrush scandal after misleading parliament over whether her department had targets for the removal of migrants. Most immediately, Rudd had been given the wrong information by officials, suggesting the Home Office did not have such operational targets when it did. On a longer perspective, the failure to issue and maintain the right paperwork to new arrivals in the UK was an administrative problem dating back decades. Arguably, although she might have been expected to know that the Home Office had a removal target, Rudd was not personally responsible for any of these failings.

The current arrangement also prevents parliament from effectively scrutinising the work of government. Select committees are often blocked by defensive ministerial answers, by officials unwilling to do so to defend their own advice, or unable to provide detailed information under instruction from ministers.

It is not just ministerial or civil service careers at risk: more importantly, confused accountability leads to worse decisions. If parliament or the public cannot hold the right people to account, then the incentives for government to adequately learn lessons and improve its performance are reduced. This makes it less likely that governments will make good decisions and implement policies effectively. British governments often rely on post-event inquiries to establish facts, learn lessons and allocate blame. But launching such a process is in the hands of the prime minister and an inquiry’s work is undermined from the start if governmental responsibilities are unclear.

The civil service's long-term capability and resources are poorly managed

The lack of leadership and governance of the civil service makes strategic, long-term planning difficult. Despite having the title of minister for the civil service, prime ministers do not have the time alongside their other responsibilities to manage the civil service on a day-to-day basis.

Decisions about workforce capacity and capability are made in the Treasury's spending review and are dominated by short-term political cycles. The capacity of the civil service is influenced principally by considerations of public finance, and entirely legitimate convictions over the ideal size of the state, while an informed, long-term view of the capability necessary for the civil service to administer the government's priorities is too often missing. The head of the civil service has a role to play in shaping the long-term capacity and capability of the civil service but must of course work within the resources allocated by ministers.

At a departmental level permanent secretaries can take a longer-term view of the development of the workforce. But ministers, who rightly have the final say over budgetary allocations, tend to remain in post for a short time relative to the period required to implement permanent change in such large organisations.

This system disincentivises long-term workforce planning. The result is a boom-and-bust cycle of civil service staffing, as seen over the past decade. The civil service shrank by 21% between 2010 and 2016, as part of the Conservative–Liberal Democrat coalition's austerity measures. But since 2016, to meet the new demands of Brexit and more recently Covid, it has grown by 23% (around 88,000),* reversing nearly all of the earlier cuts.

In individual departments this lack of long-term planning has been particularly problematic. The Department for Environment, Food and Rural Affairs (Defra) reduced in size from 2,600 officials in 2010 to 1,600 in 2016. Since then, in response to Brexit, it rapidly grew to number more than 5,500. Similarly, in 2016 the Department of Health and Social Care (DHSC) planned for staff reductions of approximately one third by 2020, with redundancy rounds and voluntary exits taking the department to a low of roughly 1,300 officials in 2017. Since the start of the pandemic the department has more than doubled in size.¹¹ This leads to a loss of expertise, leaves the government more vulnerable to crises and damages morale.¹²

Some fluctuation is natural, and if a government is elected with a policy to reduce the size of the state, including the civil service, then it must be free to do so. But that should happen with public discussion about the consequences for government capacity and capability of such a decision, and with clear accountability for the loss of skills and experience.

* Figure shows full-time equivalent staff numbers.

It is right that ministers decide how the government's budget is allocated to departments, and how departments plan to allocate that money, including the resourcing of the civil service. But as Professor Geoff Mulgan, former director of Tony Blair's Downing Street strategy unit, argued, governments need to safeguard expert resource focusing on "the long-term horizon", beyond the parliamentary cycle.¹³ Improved governance on how the civil service is led, overseen and held to account would help ministers take a long-term view when making decisions about the capability of the service.

There is too much ambiguity over the ownership of risks

The pandemic and its response has demonstrated how important the management of risk is for all modern organisations – perhaps government above all. The civil service maintains a risk register for each department, and the National Risk Register covers the whole of government, but there is a lack of clarity over who is personally responsible for monitoring, addressing and responding to each of the nation's risks – and who takes overall responsibility for assigning these duties. For a pandemic, that responsibility might rest with the prime minister, the secretary of state for health and social care, their permanent secretary, the chief medical officer or somebody else. Being able to identify a defined risk owner is fundamental to good governance.

There are areas of good practice such as the Joint Terrorism Analysis Centre, whose head (albeit a crown appointment, rather than a civil servant) is independently responsible for setting the national threat level and communicating it to the home secretary. The Environment Agency is responsible for flood warning systems, and the chief veterinary officer assumes authority in animal disease outbreaks. But in other risk areas the lack of clarity about responsibilities means that ownership sits uncomfortably between ministers and civil servants, damaging the effectiveness of crisis response.

There is a chronic inability to co-ordinate between government departments

Because the head of the civil service is constrained in how far they can set shared practices across government, there is inconsistency in how departments work and how policy is implemented. Professor Mulgan also reflected that the centre of government is "poor at coordination and alignment of the often sprawling government machine – resulting in duplication, contradiction and waste".¹⁴ One factor causing the poor alignment within government is the lack of consistent governance within the civil service.

Finance and procurement, HR procedures, the use of data and digital services, risk management and project delivery are practices shared across all government departments. There has been considerable progress made since the introduction of a so-called 'functional model' from 2010 where finance, digital and procurement, for example, are more closely centrally managed. But the underlying lack of clarity over who is responsible for setting standards for implementation – departmental permanent secretaries or the head of function – means that departments still follow these practices in markedly different ways and with varying quality.

In recent years the approach of departments to digital transformation and in particular tension between departments and the Cabinet Office has demonstrated the problem of functional inconsistency across government.¹⁵ The Public Accounts Committee found that the Government Digital Service's (GDS) inability to convince, or require, departments to use Gov.uk Verify as a common platform for checking citizens' identities ultimately led to the scheme's failure; a single identify assurance system is still not in place.¹⁶ GDS also sought, unsuccessfully, to restructure procurement of IT systems across departments.¹⁷ More central control would save money and help provide a better service for citizens.

Policy co-ordination is even more difficult to achieve. Inconsistencies are caused by differing departmental priorities, leading to avoidable problems with important policies. The short-lived Green Homes Grant demonstrates this. Targets for achieving net zero carbon emissions and the economic recovery from the pandemic are both high priorities for this government. In this context the Green Homes Grant was earmarked as a stimulus policy in July 2020 with £1.5 billion allocated for distribution to individual homeowners. Officials at the Department for Business, Energy and Industrial Strategy (BEIS) saw this as a useful means to progress energy efficiency and heat decarbonisation, while strengthening key 'green' sectors and creating new jobs in the long-term.

In contrast, officials at the Treasury saw the policy as a 'shovel ready' investment opportunity that could create new, green jobs in the short term. This created contradictions on two levels – in policy analysis and in its purpose – which led to administrative problems with the grant's implementation.¹⁸ The scheme was closed down in April 2021. A more co-ordinated approach to providing policy advice across departments might have identified and addressed this inconsistency before it damaged the policy's implementation.

The Cabinet Office and Treasury cannot adequately monitor the delivery and implementation of top-priority programmes

Successive prime ministers have struggled to track and influence the implementation of their priorities. Tony Blair created the Prime Minister's Delivery Unit (PMDU) in 2001 to enhance the existing mechanisms in the Cabinet Office and Treasury to chase progress, with assurance previously having largely rested on the prime minister's relationships and authority with cabinet colleagues.¹⁹

Over the two decades since the creation of the PMDU, governments have taken different approaches to help with the delivery of their priorities. The PMDU was succeeded by the Implementation Unit (and then a new delivery unit once more). Public service agreements, then single departmental plans and more recently outcome delivery plans have described government priorities and been used to try to hold departments to account for delivering on them. And the government's major projects portfolio, managed by the Infrastructure and Projects Authority, is used to monitor the delivery of key capital projects.

Methods like these can work but they fail to address one of the systemic causes of the difficulty prime ministers face in monitoring the delivery of priority programmes. That is the lack of governance at the top of the civil service, which is compounded by the dispersed nature of cabinet government and the distinct authority of individual secretaries of state. While departmental permanent secretaries are line managed by the head of the civil service or other senior colleagues in the Cabinet Office or Treasury, in practice their more urgent accountability is to successfully deliver their department's priorities to the relevant secretary of state. As a result ongoing, accurate central oversight of departments' work is not always a high priority.

It is right that permanent secretaries account for their progress implementing ministers' priorities to those ministers directly. And short of tearing up the UK's model of cabinet government, departments will always have autonomy and power distinct from that of the prime minister. But government will run more effectively if the centre of government, either the Cabinet Office, the Treasury or a joint unit, has oversight of the progress made by departments. Clearer governance around the leadership of the civil service would help to establish a stronger culture and practice of central performance analysis.

The head of the civil service does not have control of the mechanisms to lead the civil service

The head of the civil service is responsible for leading the civil service, managing senior civil servants, driving reform and representing the service externally.²⁰ But in practice the job holder – currently also the cabinet secretary, Simon Case – is closer to a first among equals. He convenes departmental permanent secretaries and line manages most of them (some are managed by the permanent secretaries at the Treasury and Cabinet Office and the national security adviser, who then report to the cabinet secretary). However, permanent secretaries have their own authority in their departments. And they feel as much or more accountability to their secretaries of state as they do to their manager in the Cabinet Office.

As noted above the federated structure of the civil service is a consequence of cabinet government, as permanent secretary autonomy reflects the constitutional empowerment of secretaries of state in their own departments. But it means that the head of the civil service has only limited influence over departmental practice. Where they do set standards or run programmes that affect the work of departments, it is with the consent of permanent secretaries. As Lord Butler said of his time as cabinet secretary between 1988 and 1999: "I don't think I had any great sense of power because [the permanent secretaries] have their own responsibilities to their secretaries of state. It's not for the cabinet secretary to boss them about. And so you're really leading a team rather than having any great power."²¹ The underlying power structure has changed little since Butler's time in office.

The head of the civil service leads attempts to reform its practices and structure and develop the skills of civil servants. One minister at least felt that senior civil servants view the resulting programmes as "faddish", inconvenient or not right for their department. It is certainly the case that departments can disengage or avoid

participation if they wish. Permanent secretaries can look to the prime minister, their secretary of state, other permanent secretaries and the head of the civil service and play off different supporters to game the system.

This helps explain why pay policy below the senior civil service is delegated to departments, while the Treasury still has its own graduate development programme separate to the Civil Service Fast Stream. The Ministry of Justice has its own Project Delivery Academy separate to the Major Projects Authority.²²

Lord Sedwill, cabinet secretary and head of the civil service from 2018 to 2020, recognised the problem as he promoted a “fusion” of different parts of the civil service to better deal with cross-departmental issues. As noted above, the civil service’s functions, shared across departments, have brought some consistency to shared practices between departments – such as IT, finance and HR. But they are euphemistically described as at different stages of ‘maturity’, which often simply reflects the lack of influence they have over the way departments operate. In practice, this means that standards across government remain too inconsistent, causing problems for the design and implementation of policy.

This is also a reflection of the size the civil service. There are close to half a million civil servants (twice as many staff as HSBC, one of the UK’s largest private sector organisations) working in more than 400 organisations, each with their own cultures, priorities and practices.^{23,24} Leading such a complex institution will always create tensions and a stronger central leadership should not eliminate departmental flexibilities and authority where it is needed. But the civil service is a single entity with its own history and purpose. Civil servants have obligations to their departments, but they also have obligations to the civil service and the government as a whole. As such, the head of the civil service needs to be able to both lead (by setting direction and guidance) and manage (by organising and allocating resources) the entire institution.

There is no consistent definition or role for the ‘centre’ of government

No.10 Downing Street, the Cabinet Office and the Treasury together form the ‘centre’ of government, from which the prime minister and chancellor attempt to orchestrate the delivery of the government’s top priorities with the support of the minister for the Cabinet Office. But the way the centre of government is set up can be unclear to those not deeply embedded in its operation, especially officials – even senior civil servants – in other departments. The centre has consistent tasks, like holding departments to account for implementing policies, co-ordinating work that spans departments and, in the Treasury’s case, running the budget and spending review processes.

However, how these roles are undertaken varies widely between departments and over time. It is sometimes unclear who is responsible for resolving disputes or contested policy, and the centre does not always provide sufficient backing for departments taking the lead on priorities that span multiple departments – as we have argued is the case with the Treasury’s involvement in the government’s approach to net zero.²⁵ The Treasury should have a greater role in co-ordinating and leading

the planning for net zero, in recognition of the whole economy consequences of the policy, to settle conflicts between departments and provide the necessary support to the business department (which leads on the issue and produced the Net Zero Strategy in October 2021).²⁶

Civil servants in departments are responsible for implementing ministers' policy decisions. But the responsibilities of civil servants serving at the centre of government are often less clear, including to their departmental colleagues. Clarifying the role and accountabilities of the civil service could help to put the relationship between the centre and departments on a more solid and sustainable basis.

Civil service impartiality is under strain by ministers frustrated that they cannot appoint their own people

The confused accountability described above leads some ministers to prefer a system where they have more direct control over who is appointed to civil service and other public sector jobs. The secretary of state for levelling up, housing and communities, Michael Gove, has in previous departments appointed policy advisers and non-executive directors to departments to supplement his teams. Francis Maude, minister for the Cabinet Office between 2010 and 2015, pioneered 'extended ministerial offices' to give ministers the option of more scope to make personal appointments. If ministers are not confident in the strength of the oversight of the civil service, or in its capability to implement their priorities, then the momentum behind these personal appointments will increase.

There are plenty of international examples of approaches to public service appointments that differ from the UK's. We noted above German ministers' ability to hire and retire 'political civil servants' in senior roles in their departments; the US model goes further, with thousands of senior officials similarly classed as political appointees.

But while UK ministers may lack the formal ability to simply hire political allies into senior official positions afforded to their German and US counterparts, they do have real, albeit informal, influence over many posts, and hold veto power for others. All appointments at director general level and above (the most senior 200–300 officials) are approved by the prime minister, and it would in recent years be highly unusual for a permanent secretary to be appointed without the agreement of the relevant secretary of state. Civil servants working in key director, deputy director or private office jobs are either formally or informally checked with the relevant ministers. The problem is less that ministers are not in control of appointments, or that personal appointments cannot be made, but more that the system is, like so much else, blurred, not transparent and inconsistently applied.

Weak governance and oversight damages the civil service's legitimacy and discourages confident advice

The fragmented nature of the civil service is compounded by its thin governance and oversight structures. Those governance mechanisms that do exist, like the current Civil Service Board and its associated committees, operate more as groupings to share and agree internal procedures and management approaches, rather than overseeing top civil servants. These structures are mechanisms for the head of the civil service, its chief operating officer and their teams to organise and influence other permanent secretaries. Even in that they are hampered by the weak position of the Cabinet Office as discussed above.

This means that the actual oversight of the civil service operates outside these structures. The head of the civil service's relationship with the prime minister is the real determinant of whether they stay in the job, rather than their effectiveness at running the machinery of government. Boris Johnson's dismissal of Mark Sedwill as cabinet secretary in June 2020, whatever its merits, was more like the sacking of a minister in a reshuffle than a civil service performance assessment.

Of course, at the most senior levels of the civil service officials are rightly in a more exposed position, and a prime minister is entitled to work with a cabinet secretary in whom they have confidence. But the absence of oversight of the civil service damages the civil service's legitimacy in the eyes of ministers and undermines the confidence of civil servants themselves in advising ministers honestly. We should not be surprised that a civil service held to account through informal means and with little independent authority and governance discourages confident and assertive advisers.

A new system of oversight and governance would benefit the civil service itself and, by leading to more effective government, the public. It is notable that the International Civil Service Effectiveness Index in 2019 singled out New Zealand, which even before its 2020 reforms had more separation between ministerial and civil service responsibilities than the UK, for its top marking on integrity in government.²⁷

Enhancing the standing of the UK institution and its ability to manage its own affairs, with permanent secretaries confident in their authority and how they are being held accountable, makes it more likely that the civil service will succeed and grow its reputation with ministers, other politicians and the public.

A new statutory role for the civil service

Radical but precise changes are needed to resolve the confusions, ambiguities and obscurities that damage the civil service and frustrate ministers. Most important is to introduce a new statute that describes a clearer role for the civil service. This would for the first time include enshrining the institution's purpose, remit and responsibilities in legislation. It would preserve ministerial accountability for policy decisions and the ultimate operation of government, and improve the understanding and oversight of those areas where civil servants should be held responsible.

No single document or legal text could be prescriptive about all the civil service's duties. Nor could it reflect the complex interaction between civil service policy advice, ministerial decisions and the implementation of those decisions. However, a statute, including a much strengthened Civil Service Board, would clarify the civil service's responsibilities to maintain state capability and resilience, manage risk and to consider long-term planning. It would build on the existing implicit constitutional duty of the civil service to future governments and reinforce it in important ways, like bolstering the authority of officials to plan for big or potentially destabilising events – something that was largely prevented during the Brexit and Scottish referendum campaigns.

Such a statute would be a statement of the civil service's permanence, its values, its objectives and how – at the highest level – it should be run and held to account. It would be a document that defines the civil service's role and operation and sets out a governance structure that improves accountability, and at the same time reinforces and strengthens its legitimacy. But it must not entrench a 'perma-state' outside political and ministerial control. Civil servants work for ministers and should continue be held to account by them, though with enhanced parliamentary scrutiny. New statutory responsibilities to maintain the capability of the state should be used to facilitate a government's agenda and to expose choices, not to prevent ministers, for example, reducing the size of the state if that is their objective. And of course a government with a parliamentary majority could overturn any statutory obligations introduced by its predecessors.

A statutory underpinning for the civil service

The core statute would be set out in an act of parliament. It would build on the existing provisions in the Constitutional Reform and Governance Act 2010, which already underpin the civil service code.

The new act would record the civil service's permanence and impartiality. It would then describe the accountability arrangements for civil servants and – crucially – the civil service's objective and the responsibilities of the head of the civil service and permanent secretaries. The existence, operation and reporting arrangements of the Civil Service Board, and the powers of the head of the civil service to exercise the

board's authority would all also be required by law – as would board and civil service reporting arrangements to parliament. Having these core tenets of the operation of the civil service set out in legislation would ensure that any government that wanted to make substantial changes to the oversight and administration of the civil service on, for example, its code of impartiality, would need to make the case in parliament.

What follows is a description of the statute the Institute proposes parliament adopt, with explanations of each clause. It describes the intent as precisely as possible, but does not claim to be the specific wording that would be required in law.

The permanence and values of the civil service

- Clause 1** The civil service is a **permanent** institution that serves the elected governments of the United Kingdom, Scotland and Wales. The Northern Ireland Civil Service does the same for the elected administration of Northern Ireland.
- Clause 2** Civil servants must demonstrate **impartiality and objectivity**, while maintaining the highest standards of **ethics**, behaving with integrity, honesty and adhering to the seven principles of public life.

The first two clauses reflect the permanence of the civil service, established in the mid-19th century, its service to the elected national governments of the UK (recognising the separate institutional arrangements in Northern Ireland), its impartiality, and the ethical values of the civil service code. While these values are already set out in the 2010 Act, and part of the culture of the civil service, the statute on how the institution should operate starts from this premise.

It is our view that an impartial and permanent civil service remains the right model for the UK, bringing the benefits of recruitment on merit rather than by political affiliation, permanence and the ability to plan for the longer term, and the development of expertise and strong relationships in relevant areas. But the corollary of permanence and impartiality is better governance and stronger accountability. The civil service will only retain its status and legitimacy as an impartial institution if it demonstrably improves its effectiveness and confidently exposes itself to more rigorous oversight.

The accountability of civil servants

Clause 3 The head of the civil service, departmental and devolved administration permanent secretaries are **accountable to the Civil Service Board** (described in (8)) for the performance of the civil service against its statutory objective (described in (4)), and on the discharging of their responsibility to maintain the capability of the government to meet that objective (described in (5)). Senior civil servants can be called to account to parliament on those areas for which they are responsible.

The third clause sets out that for a sphere of activity concerning the fundamental operation of the civil service, the head of the civil service, and by extension permanent secretaries and civil servants in their departments, should be accountable to a civil service board, which is described later. It also notes that civil servants should be required to account to parliament for aspects of that activity.

As well as improving the oversight of the civil service, with a strong board to hold officials to account for those areas where they are responsible, it recognises that parliament can summon senior civil servants to give evidence and explain their actions. This would extend the existing guidance issued by the government on civil servants giving evidence to select committees (the 'Osmotherly rules', never formally accepted by parliament)¹ so that civil servants would more regularly appear at committees. That should only apply to suitably senior officials to explain their actions on areas for which they are responsible.

Supporting guidance would also require departments to provide up-to-date senior organisation charts and descriptions of areas of responsibility for ministers and the most senior civil servants to the relevant select committee. This is to recognise that departments are differently organised, and to aid scrutiny and allow committees to identify the relevant people to call to give evidence. Parliament would continue to have no role in the performance assessment or discipline of civil servants.

The objective of the civil service and the responsibility of civil servants to maintain government capability

- Clause 4** The civil service’s **objective** is to implement government programmes and to respond to events as directed by ministers.
- Clause 5** The head of the civil service and departmental and devolved administration permanent secretaries have a responsibility to **maintain the capability** of the UK governments to carry out (4) above, including as regards
- standards of policy making and advice to ministers, including advice on the constitutional and administrative responsibilities of the government
 - project management
 - finance and procurement
 - the use and management of data and digital services
 - standards of legal advice
 - risk management and crisis response
 - the retention and recruitment on merit of people qualified to carry out these functions.

The fourth and fifth clauses define the government activity which is to be the responsibility of civil servants by setting a statutory objective for the civil service, and a statutory responsibility for the head of the civil service and permanent secretaries. It is not unusual for a public body to have a statutory objective, aim or function: the Environment Agency, for instance, must “protect or enhance the environment, taken as a whole, as to make [a] contribution towards... sustainable development”. One of the National Audit Office’s statutory functions is to “carry out examinations into the economy, efficiency and effectiveness with which any department, authority or other body... has used its resources in discharging its functions”. The civil service’s objective would necessarily be broader, to “implement government programmes and to respond to events as directed by ministers” in the wording of the statute.

The office of the head of the civil service (and for that matter the cabinet secretary) has no clear description or standing in statute or elsewhere, as noted by the current incumbent in his first appearance before the Public Administration and Constitutional Affairs Committee. These clauses provide such a job description, entrenched in statute. That extends to departmental permanent secretaries, to ensure that they support the head of the civil service exercising that responsibility. We also propose some guidance as to what “maintaining the capability” means – in terms of standards of policy making and constitutional advice, human resources management, risk management and other matters core to the running of the state. This will strengthen the obligations on civil servants to maintain the quality of policy making, reinforce the civil service’s duty to uphold the law and the constitution and improve cross-departmental buy-in to the need to set service benchmark standards consistently across the civil service.

The head of the civil service also continues to have a day-to-day duty to the prime minister and the relevant Cabinet Office minister, as do permanent secretaries to their secretary of state. These responsibilities should not normally conflict with those to maintain the capability of the government. But there will be occasions when departmental ministerial interests do not align with those of the central management of the civil service – those must be escalated to and resolved by the prime minister, with advice from the Civil Service Board.

The head of the Northern Ireland Civil Service is outside the line management chain of the other permanent secretaries, because the civil service in Northern Ireland is a separate institution. Where the “head of the civil service” is referenced in the statute that should be taken to refer to the head of the UK (excluding Northern Ireland) civil service. However, it would be beneficial for there to be a close relationship between the UK and Northern Ireland civil services in their operation. For that reason we propose that the head of the Northern Ireland Civil Service sits on a sub-committee of the board responsible for the operation and management of the civil service (see clause 10).

One of the responsibilities of the head of the civil service and permanent secretaries in departments is to maintain standards of policy making and advice to ministers. This is complex, and in many circumstances it will be extremely difficult to disaggregate the quality of civil service policy advice from the decision made by a minister, and the variety of influences informing that decision. But given its importance, the quality of policy advice needs to be considered as part of the capability of the civil service to carry out government business. The civil service should do more to improve its internal quality assurance on policy advice, and ministers who feel let down by bad advice should have some recourse. So when there is a suggestion, privately or publicly, that poor civil service policy advice is the cause of a problem, the Civil Service Board should have a role in considering what, if anything, went wrong.

Civil servants and ministers

Clause 6 The head of the civil service or the relevant permanent secretary may request a **direction** from a secretary of state on grounds of regularity, propriety, value for money or feasibility with reference to the capability of the government as described in (5).

Clause 6 records that, as now, departmental permanent secretaries can request a ministerial direction from a secretary of state to do something that the permanent secretary considers to be unfeasible, irregular, improper or to represent poor value for money. It links the existing feasibility direction to the capability of the government as described in clause 5. If a minister wants to pursue a policy that the relevant permanent secretary or the head of the civil service considers to be beyond the capacity of the government – that is, unfeasible – a ministerial direction will be required to ensure that the accountability for the decision is clear.

Clause 7 The prime minister and chancellor of the exchequer shall produce guidance on how to approach setting **financial allocations** to support the capability of the government as described in (5) above. The head of the civil service and permanent secretary to the Treasury shall be consulted on such guidance.

Clause 7 recognises that the ability of the head of the civil service and other permanent secretaries to meet their responsibilities is dependent on the provision of sufficient finance. Financial allocations will necessarily be ministerial decisions, but this clause requires the prime minister and chancellor to produce guidance on how these decisions should be reconciled with the civil service's responsibility to maintain the capability of the UK governments. If the head of the civil service does not consider that there are sufficient funds available to maintain the capability of the UK governments then the feasibility direction should be available to record that judgment.

A Civil Service Board

Clause 8 There shall be a **Civil Service Board**, with a remit, through its sub-committees, to

- appoint and performance manage the head of the civil service
- operate and manage the civil service.

The Board may escalate disagreements about the operation and management of the civil service to the prime minister.

Minutes of the board and its sub-committees shall be published within one month of each meeting. Commercial or management-sensitive information may be withheld.

Clause 9 The Civil Service Board's **membership** shall be

- the most senior Cabinet Office minister apart from the prime minister (chair)
- the head of the civil service
- two government-appointed non-executive directors
- a former head of the civil service or permanent secretary.

Clauses 8 and 9 describe a new statutory Civil Service Board. This is needed to meet standards of good governance and to manage the specific aspects of the ministerial-civil service relationship.

The board would have two parts to its remit: to appoint and performance manage the head of the civil service, and to operate and manage the civil service. That second part of the remit would include determining how the capability of the UK governments as described in clause (5) should be maintained. Its minutes would be published in a timely way, with appropriate redactions for sensitive information.

The board's membership would be a combination of ministerial, ex-civil service and non-executive members, as well as the serving head of the civil service, to reflect the nature of the work of the civil service. It needs to be a balanced group, not dominated by any real or perceived interest or representation either of partisan interests or defence of the status quo. Recognising that the civil service works for the democratically elected executive, the board would have as chair the most senior minister in the Cabinet Office, apart from the prime minister. At present that would be the chancellor of the Duchy of Lancaster, Stephen Barclay, though such a responsibility would be hard to reconcile with his new additional role as chief of staff to the prime minister.

There are, of course, different options for the make up of the board. One approach would be for the prime minister to chair. But prime ministers rarely have much interest in, or time to devote to, the management of the civil service. The attraction of discussions about civil service pay, skills or performance will rapidly wane for most holders of the job, though there are some aspects of the board's work – notably senior appointments – that will interest leaders. There is also a potentially difficult tension between a prime minister's immediate interests and the remit of the board to oversee the ongoing capability of the civil service.

Some of the same problems apply to any ministerial chair, notably the political-administrative tensions described. But unless ministers are intrinsically involved the civil service would become too separate from the operation of government and too far removed from the priorities of ministers. The chair also needs to be a sufficiently senior minister so that the board does not lose its status and become sidelined.

There are other models that could work – appointing an independent chair or a former cabinet secretary or head of the civil service, elevating one of the government departmental non-executive directors, or asking the cabinet secretary to chair themselves (or even separating the roles of cabinet secretary and head of the civil service, as has been the case in the past with mixed success). But the arguments for a ministerial chair are strong, and on balance that is our favoured approach.

Those members of the board who do not have *ex officio* status – a former head of the civil service or permanent secretary, and non-executive members – will need terms and selection criteria. All should have a single, lengthy non-renewable term, perhaps of 7–10 years but certainly longer than the length of a parliament. They should be a 'significant appointment' (a subset of jobs that have more oversight) regulated by the Office of the Commissioner for Public Appointments, and should be made through a competitive selection process, perhaps with some modifications reflecting the small

pool of former permanent secretaries. This would be managed by the sub-committee of the board that deals with the appointment and performance management of the head of the civil service as described below.

Clause 10 The **operation and management of the civil service** shall be overseen by a sub-committee of the board, comprised of

- the head of the civil service (chair)
- the two non-executive board members
- three permanent secretaries selected by the head of the civil service
- the heads of the civil services of Scotland, Wales and Northern Ireland

Clause 11 The **appointment and performance management** of the head of the civil service shall be overseen by a sub-committee of the board, comprised of

- the most senior minister in the Cabinet Office (chair)
- the two non-executive directors on the Board
- the former head of the civil service or permanent secretary

This sub-committee shall receive and publish reports on the appointment of civil servants at director general level and above.

There would be two sub-committees of the board. One would be responsible for the operation and management of the civil service, meeting regularly to take decisions about the management of the functions and the service standards that apply across government departments. Its membership would be primarily serving civil servants, alongside the board's two non-executives. It would report to and be held accountable for the operation and management of the civil service by the full board.

The other would deal with the appointment and performance management of the head of the civil service. This would for the first time establish a clear process for performance managing, rewarding, fairly dismissing and recruiting the head of the civil service. The same committee would receive and publish reports on the appointment of the most senior civil servants, making more explicit and transparent the existing influence of ministers on their top officials. It would be chaired by the most senior minister in the Cabinet Office, who would consult with and report back to the prime minister as necessary.

Clause 12 The head of the civil service shall **organise such executive committees** as are needed to exercise the authority of the Civil Service Board and issue such **service benchmarks** as are needed to standardise government capability.

As described above, the head of the civil service currently has limited authority to run the organisation they lead. Clause 12 explicitly records that the head of the civil service, working to the Civil Service Board and its sub-committees, has the authority to set a direction for the civil service and to manage the day-to-day operation of the service through executive committees and service benchmarks. The responsibility of other permanent secretaries to maintain the capability of the civil service in their department means that it is part of their job to support the head of the civil service in this task.

Reporting to parliament

Clause 13 The Civil Service Board shall **report to the UK and devolved parliaments annually, with an update every six months** on the performance of the civil service against its objective and the capability of the civil service to meet it. The relevant committee in the House of Commons or House of Lords will hold an annual hearing on the report from the board and may summon any member of the board to give evidence.

Clause 14 The head of the civil service or the relevant permanent secretary shall **report to the UK or devolved parliaments as necessary** on the implementation of government programmes and the capability of the UK governments as described in (4) and (5).

In addition to the parliamentary representation on the Civil Service Board, clauses 13 and 14 require the board to report to the UK and devolved parliaments every six months. That, and the ability of the relevant parliamentary committees (and their devolved parliament or assembly equivalents) to summon members of the board to give evidence, establishes a vital accountability link between parliament and the civil service. Parliamentary committees would continue to be able to require reports and evidence from the cabinet secretary, head of the civil service and permanent secretaries as now, and particularly on the capability of the UK governments as set out in the statute. The two most relevant House of Commons committees are the Public Accounts Committee and the Public Administration and Constitutional Affairs Committee, though parliament should give serious consideration to setting up a strong new committee to specifically scrutinise the civil service.

Taken as a whole this would be a radical but targeted reform for the civil service and its relationship with ministers and parliament. It would improve the accountability and governance oversight of the civil service, and at the same time build a new legitimacy into the institution, giving civil servants the confidence to speak truth to power, give their best advice to ministers and maintain the capability of government over the long term.

The benefits of a civil service statute

A number of the problems with the UK civil service described in this report would be improved with this statement of the objective and responsibilities of the permanent civil service. The head of the civil service would have a statutory responsibility to maintain the capability of the government to operate, which would strengthen his ability to lead and set standards for the whole of the civil service, in turn improving policy co-ordination and implementation. Officials would be better held to account, and at the same time would have more confidence to take responsibility for matters that are truly administrative.

Civil servants would remain under the control of ministers, and ministers would continue to be held to account by parliament for the operation of government, but when something went wrong it would be easier to identify what happened and why. An authoritative Civil Service Board would improve the oversight and management of the civil service. Ultimately the relationship between ministers and civil servants would be strengthened. Ministers would maintain control over policy decisions and the direction of the civil service, while the responsibility, authority and expertise of the civil service would be clarified.

Civil servants would be held to account for what they do without undermining ministerial accountability to parliament

Ministers are accountable to parliament for what happens in their department. But this fails to recognise the complexity of government and the expertise required to undertake its vast number of services. While parliament will continue to be able to question ministers on everything that happens in government, ministers should be particularly accountable for their policy decisions and the overall direction, culture and leadership of their department. At the same time, civil servants should be accountable for undertaking the specific and sometimes technical functions for which they are responsible.

This problem is not unique to the UK. The same difficulties in identifying accountability occur in New Zealand, such as in response to serious problems with the administration of the country's 2019 census.¹ New Zealand recently passed the Public Service Act 2020, an ambitious package of reforms that established in law the purpose, principles and values of its public service.² One of these principles is to promote the stewardship of the public service's long-term capability.

Under the Act, chief executives (equivalent to permanent secretaries in the UK civil service) remain accountable to the relevant minister for responding to their directives. However, they now also have a responsibility to the independent public service commissioner, who can set minimum standards of integrity and conduct relating to the principles and values established by the legislation. The commissioner acts as the

employer of chief executives and is responsible for reviewing their performance. The commissioner has been able to use their standing to publicly back chief executives where they have met minimum standards, as well as to discipline them where standards have not been met. This has helped make it clearer to parliament and the public when it is ministers and when it is civil servants who are to blame for departmental failures.

One weakness of the recent reforms in New Zealand is that there is no formal mechanism for holding the commissioner themselves to account once appointed, although in practice they are responsive to complaints from ministers. Establishing a Civil Service Board along the lines of our proposal for the UK civil service would rectify this.

A clearly defined objective for the civil service, with specific aligned responsibilities for its head, overseen by a Civil Service Board, would increase the accountability of civil servants for what they do. Under this model, for example, if civil servants failed to properly commission a department's contract with the private sector resulting in fraud and loss of money, it would be easier to ascertain and allocate accountability, making it possible for government to learn lessons more effectively. The relevant minister would still be expected to account for the failure to parliament and outline the department's response. But they would not be held directly accountable for the failure itself. Instead, the Civil Service Board would provide a clear mechanism through which ministers could hold officials to account for their statutory responsibility as relates, in this example, to commercial practice. Parliamentary committees would also have expanded powers to question senior civil servants about what had happened.

There would be a more coherent role for parliament in scrutinising and holding the civil service to account

Parliament's relationship with the civil service is piecemeal and incoherent. Given the civil service's role in supporting the executive, ministers and officials have held out against calls for direct parliamentary involvement until they have become irresistible – and sometimes beyond, like with the government's defence of the Osmotherly rules despite parliament's refusal to accept them.

But that means the civil service's relationship with parliament is characterised by frustration and misunderstanding. The new Civil Service Board would regularly report to parliament about the work of the civil service and its oversight. Its reporting would create opportunities for parliament to understand and, through engagement with civil service leadership and board members, scrutinise the work, leadership and long-term health of the civil service. This would be to the benefit of both parties.

Parliament's oversight of the civil service would also be strengthened by the expanded role of permanent secretaries as accounting officers for their departments. With permanent secretaries clearly responsible for maintaining the capability of the civil service, select committees would have better-defined grounds for their scrutiny. This would further establish the practice of inviting permanent secretaries to give evidence to relevant select committee inquiries.

There would be a role for the civil service in maintaining the long-term capability of the state

Debates about the stewardship role of the civil service, independent of ministers, have been an ongoing part of discussions about civil service reform. Some argue, pointing to Armstrong and his predecessors, that the civil service has no role here, that its legitimacy is drawn entirely from the elected government and that government officials should only act insofar as they are directed by ministers. Others lean on constitutional precedents that suggest the civil service has a duty to future as well as current governments. Current practice largely reflects the former view, but as so often in the UK the reality is ambiguous, with most recent cabinet secretaries, heads of the civil service and permanent secretaries acknowledging some ongoing constitutional role for the civil service – for example, Sir Jeremy Heywood’s (highly constrained) activity preparing for a ‘yes’ vote in the Brexit referendum and the continued assumption of a ‘golden triangle’ of the monarch’s principal private secretary, the prime minister’s principal private secretary and the cabinet secretary in advising the monarch on who to call to be prime minister.

A civil service statute would help resolve this tension, giving the civil service an explicit role in maintaining the capability of UK governments, but under the direction of and accountable to the Civil Service Board. Maintaining the capability of governments to implement programmes and respond to events includes, for example, the ability of the government to manage risks and respond to crises. The head of the civil service and their permanent secretary colleagues would need to take their statutory responsibility seriously. It would inform the policy advice they offer to ministers and the official resource ministers and the Civil Service Board determine is needed to maintain the capability of the state. It would also be an opportunity to clarify risk ownership and assign responsibilities to named officials in the civil service.

Policy advice would be improved

By creating a responsibility to manage the long-term capability of the state and helping to improve co-ordination between departments, statutory underpinning would also help to strengthen the core civil service functions of providing policy advice and working on its implementation.

Alongside this paper we are publishing a report into government policy making that identifies some of the main problems that should be addressed: short-term focus at the expense of long-term strategy; poor understanding of implementation among policy makers; a lack of domain expertise and established relationships in those making policy; poor cross-government co-ordination; and Whitehall parochialism from the expertise held in the rest of the public sector.³

This new statute would not solve all of these problems, and the Institute’s research includes a wide range of recommendations for how ministers and civil servants should address the difficulties of good policy making. But it would give the civil service an explicit responsibility to manage the long-term capability of the state, and it would give the head of the civil service direct authority to co-ordinate and manage the institution across departments. This would create two positive incentives that would

improve policy making in practice. First, the civil service's responsibility to manage capability would encourage officials to consider the long-term implications of policy options. And second, the strengthened role of the head of the civil service in co-ordinating between departments would improve the alignment of policy development and implementation, reducing the likelihood of conflicting or duplicating policy.

The civil service would be more confident and legitimate

An underpinning statutory objective, and strong oversight from a Civil Service Board with government, parliamentary and external lay representation, would improve the legitimacy of the civil service. Senior officials would be more confident of the status of the institution and the advice they give to ministers. With a better definition and wider use of the feasibility direction, there would also be a clearer escalation route for identifying ministerial policy decisions that might undermine the capability of the government, and assign accountability for them. A civil service able to operate more like the armed services, under ministerial control but clear about its operational sphere, would lead to more confident and effective government.

At the same time ministers would know that there was a governance structure holding the head of the civil service to account for maintaining its capability. There would be a route for ministers to raise concerns about the performance of the civil service across the operation of government. If a minister was unable to resolve a problem with their permanent secretary, they could escalate the concern to the prime minister, head of the civil service and the Civil Service Board for consideration and resolution.

The board's non-executive and ministerial membership would reassure commentators inside and outside the government that there was a more effective oversight mechanism and improve transparency about how the government works. Regular reports from the board on the work, oversight and development of the civil service would further improve openness. The existing ministerial influence over appointments would be formalised and made more transparent, and the pressure to politicise the civil service and to widen the scope of ministerial involvement in civil service appointments should reduce.

Civil servants would also be more confident about exercising their authority in areas that are properly for them to determine, and for which they would be more directly accountable. Matthew Rycroft, the Home Office permanent secretary, was accused of "attempting to frustrate the government's anti-woke agenda" when in an internal staff meeting he replied to a question about civil service diversity by reportedly saying that on some issues "it's for us actually within the civil service to be stewards and to think about our own role in terms of the leadership of the organisation of the civil service".⁴ If a permanent secretary is to be able to run a government department, they need to be able to implement management policies that in their view lead to the effective running of that department.

The same would go for policies on returning to offices during the pandemic. The corollary of stronger oversight and more direct accountability is more freedom to take decisions about management. There would of course be edge cases, like the location of government offices and the pay of civil servants – it is these that the Civil Service Board, with ministers and officials working in partnership, would need to resolve. And ultimately ministers, with the power to direct civil servants and usually a majority in parliament, would take the final decisions.

The head of the civil service would be able to set and enforce service benchmarks

We have argued above that the head of the civil service should be given the statutory responsibility to maintain the capability of UK governments to implement their programmes and respond to events by, for example, maintaining high standards in areas such as policy making, project management and finance.

Doing so would resolve the long-standing confusion over the relationship between the centre of government and its departments. With this statutory responsibility, the head of the civil service would have the direct authority to set benchmarks for shared practices across government, and to enforce them where needed, further clarifying the role of the centre. Permanent secretaries in departments would also have a responsibility to maintain the capability of the government, giving them a direct personal interest in the effectiveness and consistency of service benchmarks.

This would build on the existing 'functional model' by requiring the head of the civil service to set out, in clear detail, how departments are expected to undertake these roles. Unlike the existing functional standards, which are largely followed by consent, permanent secretaries would be directly accountable to the head of the civil service, and to the Civil Service Board, for implementing government policy in accordance with the standards. The Cabinet Office and Treasury would still need reforming to improve their ability to develop and enforce standards, but clarifying responsibilities through a new statute is an essential step. It would incentivise permanent secretaries to uphold shared standards, where they might previously have sought to avoid doing so, and it would improve those standards by giving departments a greater stake in their creation, ensuring their relevance across government.

The head of the civil service would be able to exercise authority and broker between departments

Beyond the board structure, the proposed statute states that the head of the civil service will organise other such executive committees as are needed to exercise their authority to lead and manage the civil service. This will allow them to use a set of executive committees to run the civil service and to broker effective collaboration between departmental permanent secretaries and the heads of government functions in the Cabinet Office and the Treasury.

These executive committees should expand beyond mostly permanent secretaries to include senior post-holders from the government functions. Its sub-groupings will enable departments to request and co-ordinate the support and resource they require from the functions, and to resolve concerns they have with centrally mandated service benchmarks. It should also enable functional heads to work with departments to ensure that those benchmarks are upheld. Where differences and disputes arise the head of the civil service can use this committee structure to broker resolutions between departments, and between permanent secretaries and function heads.

Such an executive committee structure was a feature of New Zealand's 2020 public service reforms. It is known as the public service leadership team and comprises the public service commissioner, the chief executive of departments, deputy commissioners, functional chief executives and similar roles.⁵ It also mirrors the practice in individual Whitehall departments, where permanent secretaries use their executive teams of senior officials from across the departments to manage and lead work. The civil service statute we propose would give the head of the civil service the authority to lead and manage the civil service, and allow them to use an expanded executive committee structure to exercise that authority.

This authority would also give the head of the civil service a role in brokering disputes between ministers and senior officials. When ministers are unhappy with the progress departmental officials are making on particular priorities, or when permanent secretaries believe they cannot achieve a priority while maintaining service benchmarks or with the resource available, the relationship between the head of the civil service, the Civil Service Board and, especially, the prime minister or minister for the Cabinet Office will be vital. Through this relationship the head of the civil service can raise concerns with the prime minister and seek a resolution. Ultimately, permanent secretaries and the head of the civil service can seek directions from ministers.

Confusion about the role and status of heads of function would be resolved

For the head of the civil service to establish their authority to run the civil service, the role of heads of government functions should also evolve. Function heads should be dedicated, senior posts at the centre of government (mostly in the Cabinet Office and Treasury). There are 12 cross-government functions, which provide professional services and support departments with common practices undertaken across government, including finance, digital and communications.⁶ The heads of these should not also be departmental permanent secretaries, and should report directly to the chief operating officer of the civil service. They should be members of the head of the civil service's executive committee structure. And their functions should be given long-term funding settlements that are not dependent upon departmental contributions.

More senior, dedicated heads of function would be better able to support the head of the civil service in setting and enforcing service benchmarks to which departments must adhere. They would be better placed to broker work between departments and work in partnership with departmental permanent secretaries.

This would also mean a change to the accountability of individual functional heads in departments. While still responsible for their role in implementing ministers' policies, and accountable to their departmental managers, functional heads in departments should also be responsible for ensuring that policy is implemented in accordance with the shared standards of their function – for this they should all be directly accountable to the relevant head of function in the Cabinet Office or Treasury.

For instance, the head of project delivery at the Department for Work and Pensions (DWP) would be responsible for ensuring that major welfare projects are implemented effectively to ministers' instruction, but they would also be responsible for ensuring they were implemented in accordance with the standards set by the head of the civil service, through the project delivery function. They would be directly accountable to the head of function for that responsibility. Any significant conflicts between these responsibilities would be resolved between the permanent secretary at DWP, the civil service project delivery head, the chief operating officer and, ultimately, the head of the civil service.

This would recognise and make explicit the existing dynamic in which departmental functional heads have responsibilities both to their departments and to their function or profession. It would make it easier for functional heads to identify and escalate conflicts between departments and between departments and the Cabinet Office or Treasury, prompting the relevant functional head and permanent secretary to broker and resolve any disputes. And there would be a structure to resolve such disputes, through the head of the civil service and the Civil Service Board.

Other countries are currently working to strengthen the leadership of cross-governmental functions within their civil services. For instance, the Australian Public Service has recently established professional streams in human resources, digital and data, with the intention of developing further professions in future. Although Australian professional leads retain their previous jobs in government, there has been clear effort made to appoint senior officials with directly relevant roles. For example, the CEO of the Digital Transformation Agency was appointed as head of the digital profession, while the agency head of the Australian Bureau of Statistics was appointed as head of the data profession.

Permanent secretaries would be responsible for implementing government policy in accordance with service standard benchmarks

Our proposed model does not change the core role of departmental permanent secretaries. They should still be responsible for leading and managing their departments, for implementing the policy decisions of ministers and doing so in the way they think most effective for their departments.

However, they would have the same statutory responsibility as the head of the civil service to maintain the capability of the UK governments. Building on the existing functional model, we propose that permanent secretaries be accountable for ensuring their departments uphold the standards set by the head of the civil service across its different functions. If permanent secretaries disagree with these standards in a particular context or feel they do not have the necessary resources or support to uphold them, they would raise this with the head of the civil service directly or through the executive committee structure.

This approach would maintain the critical relationship between the permanent secretary and the secretary of state, as the permanent secretary would still be responsible for delivering their policies. But it would also enable the head of the civil service to build consistency across the civil service, and to develop working practices in ways that benefit the whole government rather than individual departments. If ministerial policy decisions conflict with the standards set by the Cabinet Office and Treasury in such a way that cannot be resolved between the permanent secretary and relevant minister, it is ultimately for the prime minister and head of the civil service to broker a resolution either themselves or via the Civil Service Board.

In New Zealand departmental chief executives have a similar stake in upholding and improving the standards of cross-government practices. Its public service leadership team has a collective responsibility for standards, and chief executives are also directly accountable to the public service commissioner (in some ways the counterpart of the head of the civil service) for upholding the principles of New Zealand's public service.

The civil service statute would also lead to an expansion of permanent secretaries' existing responsibilities as accounting officers for their departments. Permanent secretaries currently account to parliament for their department's spending to four criteria: regularity, propriety, value for money, and feasibility.⁷ Under this model permanent secretaries would also be held to account by the Civil Service Board for their effectiveness in maintaining the capability of government, and they could be questioned on that by parliamentary select committees.

In practice, permanent secretaries are already questioned on their work by relevant select committees. Our proposal would be to formalise and encourage this practice, to increase parliament's scrutiny of the civil service, and to apply some of the rigour of the Public Accounts Committee to other select committee appearances.

Conclusion: a new statutory role for the civil service is urgently needed

A civil service statute would clarify the civil service's purpose, strengthen its standing and enhance its accountability. It would give the head of the civil service the authority to lead, improve consistency across government, create a better relationship between ministers and civil servants, and clarify the way that the centre of government – especially the Cabinet Office and the Treasury – sets standards for and deals with other departments.

It would at the same time improve the oversight of the civil service as well as its confidence and legitimacy. Civil servants would remain under democratic ministerial control but would have an explicit responsibility to maintain the capability of the government, allowing them to work both to the immediate demands of the government of the day and to the long-term interests of the state in managing and responding to risks – the importance of which has been thrown into sharp relief in recent years by the twin shocks of the Brexit vote and pandemic. Problems that had been fudged and worked around in an ad hoc way would be more clearly defined and resolved.

There are risks to any change. Although New Zealand's recent reforms provide a useful comparison, they are too new to have been properly tested, and no one country's institutions can be simply translated across to another's, with different populations, histories and geographies. But government in the UK is not working as well as it should, and part of the answer is to deal with the underlying ambiguities at the heart of the management of the civil service.

That is why we encourage ministers and the leadership of the civil service to seriously consider this proposal. And we ask parliament to review and debate it, to consult with current and former ministers and civil servants and to lead a discussion on how to best adopt its provisions. We believe the reforms outlined in this report would benefit not only the government, parliament and the civil service itself – but also, ultimately, the public they serve.

The civil service statute

- Clause 1** The civil service is a **permanent** institution that serves the elected governments of the United Kingdom, Scotland and Wales. The Northern Ireland Civil Service does the same for the elected administration of Northern Ireland.
- Clause 2** Civil servants must demonstrate **impartiality and objectivity**, while maintaining the highest standards of **ethics**, behaving with integrity, honesty and adhering to the seven principles of public life.
- Clause 3** The head of the civil service, departmental and devolved administration permanent secretaries are **accountable to the Civil Service Board** (described in (8)) for the performance of the civil service against its statutory objective (described in (4)), and on the discharging of their responsibility to maintain the capability of the government to meet that objective (described in (5)). Senior civil servants can be called to account to parliament on those areas for which they are responsible.
- Clause 4** The civil service's **objective** is to implement government programmes and to respond to events as directed by ministers.
- Clause 5** The head of the civil service and departmental and devolved administration permanent secretaries have a responsibility to **maintain the capability** of the UK governments to carry out (4) above, including as regards
- standards of policy making and advice to ministers, including advice on the constitutional and administrative responsibilities of the government
 - project management
 - finance and procurement
 - the use and management of data and digital services
 - standards of legal advice
 - risk management and crisis response
 - the retention and recruitment on merit of people qualified to carry out these functions.
- Clause 6** The head of the civil service or the relevant permanent secretary may request a **direction** from a secretary of state on grounds of regularity, propriety, value for money or feasibility with reference to the capability of the government as described in (5).

Clause 7 The prime minister and chancellor of the exchequer shall produce guidance on how to approach setting **financial allocations** to support the capability of the government as described in (5) above. The head of the civil service and permanent secretary to the Treasury shall be consulted on such guidance.

Clause 8 There shall be a **Civil Service Board**, with a remit, through its sub-committees, to

- appoint and performance manage the head of the civil service
- operate and manage the civil service.

The Board may escalate disagreements about the operation and management of the civil service to the prime minister.

Minutes of the board and its sub-committees shall be published within one month of each meeting. Commercial or management-sensitive information may be withheld.

Clause 9 The Civil Service Board's **membership** shall be

- the most senior Cabinet Office minister apart from the prime minister (chair)
- the head of the civil service
- two government-appointed non-executive directors
- a former head of the civil service or permanent secretary.

Clause 10 The **operation and management of the civil service** shall be overseen by a sub-committee of the board, comprised of

- the head of the civil service (chair)
- the two non-executive board members
- three permanent secretaries selected by the head of the civil service
- the heads of the civil services of Scotland, Wales and Northern Ireland

Clause 11 The **appointment and performance management** of the head of the civil service shall be overseen by a sub-committee of the board, comprised of

- the most senior minister in the Cabinet Office (chair)
- the two non-executive directors on the Board
- the former head of the civil service or permanent secretary

This sub-committee shall receive and publish reports on the appointment of civil servants at director general level and above.

Clause 12 The head of the civil service shall **organise such executive committees** as are needed to exercise the authority of the Civil Service Board and issue such **service benchmarks** as are needed to standardise government capability.

Clause 13 The Civil Service Board shall **report to the UK and devolved parliaments annually, with an update every six months** on the performance of the civil service against its objective and the capability of the civil service to meet it. The relevant committee in the House of Commons or House of Lords will hold an annual hearing on the report from the board and may summon any member of the board to give evidence.

Clause 14 The head of the civil service or the relevant permanent secretary shall **report to the UK or devolved parliaments as necessary** on the implementation of government programmes and the capability of the UK governments as described in (4) and (5).

References

Introduction

- 1 Hood C and Dixon R, *A Government that Worked Better and Cost Less?*, Oxford University Press, 2015, retrieved 4 January 2022, https://recipeforworkforceplanning.hee.nhs.uk/Portals/0/HEWM_LinksAndResources/A%20Government%20that%20worked%20Better%20and%20cost%20less%20-%20June%202015%20-%20Copy%20-%20Copy.pdf?ver=KqxxPWbxvJEopzhfpxeYg%3d%3d

The existing constitutional underpinning of the civil service

- 1 Hennessy P, *Whitehall*, Pimlico, 2001, p. 345.
- 2 House of Lords Select Committee on the Constitution, *The Accountability of Civil Servants: 6th report of session 2012-13* (HL Paper 61), The Stationery Office, 2012, retrieved 4 January 2022, <https://publications.parliament.uk/pa/ld201213/ldselect/ldconst/61/6105.htm>
- 3 Armstrong R, 'The duties and responsibilities of civil servants in relation to ministers, Note by the Head of the Home Civil Service – the "Armstrong Memorandum" 1985, as amended on 17 July 1996', www.civilservant.org.uk/library/1996_Armstrong_Memorandum.pdf
- 4 Hennessy P, *Whitehall*, Pimlico, 2001, p. 346.
- 5 Harris, J, *Legislating for a Civil Service*, Institute for Government, September 2013, retrieved 17 January 2022 www.instituteforgovernment.org.uk/publications/legislating-civil-service
- 6 Thomas A and Clyne R, *Responding to shocks: 10 lessons for government*, Institute for Government, March 2021, retrieved 19 January 2022, www.instituteforgovernment.org.uk/publications/responding-shocks-government

The problems of an ambiguous civil service settlement

- 1 Hood C, 'Control, Bargains, and Cheating: The Politics of Public-Service Reform,' *Journal of Public Administration Research and Theory*, 2002, vol. 12, no. 3, pp. 309–32, retrieved 4 January 2022, www.jstor-org.lonlib.idm.oclc.org/stable/pdf/3525727.pdf?refreqid=excelsior%3A17a936708fa7bbbf1e0548070944c9
- 2 House of Commons Health and Social Care and Science and Technology Committees, *Coronavirus: lessons learned to date: Sixth Report of the Health and Social Care Committee and Third Report of the Science and Technology Committee of Session 2021–22* (HC Paper 92), The Stationery Office, 2021, retrieved 4 January 2022 <https://committees.parliament.uk/publications/7496/documents/78687/default>
- 3 Timmins N, *Universal Credit: Getting it to work better*, Institute for Government, 6 March 2020, retrieved 4 January 2022, www.instituteforgovernment.org.uk/publications/universal-credit-getting-work-better
- 4 Quinn B, 'UK exams debacle: how did this year's results end up in chaos?', *The Guardian*, 17 August 2020, retrieved 4 January 2022, www.theguardian.com/education/2020/aug/17/uk-exams-debacle-how-did-results-end-up-chaos
- 5 Maddox B, 'Gavin Williamson should go too,' blog, Institute for Government, 27 August 2020, retrieved 4 January 2022, www.instituteforgovernment.org.uk/blog/gavin-williamson-should-go-too
- 6 Blick A, 'The controversy over Civil Service accountability is symptomatic of an unstable constitution', blog, LSE British Politics and Policy, 2012, retrieved 4 January 2022, http://eprints.lse.ac.uk/48442/1/blogs.lse.ac.uk-The_controversy_over_Civil_Service_accountability_is_symptomatic_of_an_unstable_constitution.pdf
- 7 Federal Ministry of the Interior, *The Federal Public Service: An attractive and modern employer*, 2014, retrieved 4 January 2022, www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/federal-public-service.pdf?__blob=publicationFile, p. 48.
- 8 Jann W, 'Party time: exploring Germany's system of political civil servants,' *Civil Service World*, 18 August 2021, retrieved 4 January 2022, www.civilserviceworld.com/in-depth/article/party-time-exploring-germanys-system-of-political-civil-servants
- 9 *The International Civil Service Effectiveness (InCiSE) Index, 2019 Results Report*, Blavatnik School of Government, University of Oxford and Institute for Government, (no date), retrieved 4 January 2022, www.bsg.ox.ac.uk/sites/default/files/2019-04/InCiSE%202019%20Results%20Report.pdf

-
- 10 Interview transcript, David Hanson, 25 May 2016, Ministers Reflect archive, Institute for Government, retrieved 4 January 2022, www.instituteforgovernment.org.uk/ministers-reflect/person/david-hanson
 - 11 Clyne R, 'Civil service cuts should be informed by proper workforce planning,' blog, Institute for Government, 28 October 2021, retrieved 4 January 2022, www.instituteforgovernment.org.uk/blog/civil-service-cuts-should-be-informed-proper-workforce-planning
 - 12 Thomas A and Clyne R, *Responding to shocks: 10 lessons for government*, Institute for Government, March 2021, retrieved 19 January 2022, www.instituteforgovernment.org.uk/publications/responding-shocks-government
 - 13 Nesta, *Rewiring the Brain: A rough blueprint for reforming centres of governments*, 2014, <https://media.nesta.org.uk/documents/rewiringthebrain.pdf>
 - 14 *Ibid.*
 - 15 Freeguard G, 'Verify problems highlight four challenges for digital projects', blog, Institute for Government, 10 May 2019, retrieved 4 January 2022, www.instituteforgovernment.org.uk/blog/verify-problems-highlight-four-challenges-digital-projects
 - 16 House of Commons Committee of Public Accounts, *Accessing public services through the Government's Verify digital system: Ninety-fifth report of session 2017–19* (HC 1748), The Stationary Office, 2019, <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/1748/1748.pdf>
 - 17 'The sad tale of Britain's Government Digital Service', *The Economist*, 29 October 2020, retrieved 4 January 2022, www.economist.com/britain/2020/10/29/the-sad-tale-of-britains-government-digital-service
 - 18 Britchfield C, 'The Treasury should not axe the Green Homes Grant', blog, Institute for Government, 26 February 2021, retrieved 13 October 2021, www.instituteforgovernment.org.uk/blog/treasury-should-not-axe-green-homes-grant
 - 19 Harris J and Rutter J, *Centre Forward: Effective Support for the Prime Minister at the Centre of Government*, Institute for Government, 9 July 2014, retrieved 16 December 2021, www.instituteforgovernment.org.uk/publications/centre-forward
 - 20 'Cabinet Secretary', Institute for Government explainer, updated 4 March 2021, retrieved 16 December 2021, www.instituteforgovernment.org.uk/explainers/cabinet-secretary
 - 21 Interview transcript, Lord Butler interview with Anthony Seldon, the Cabinet Secretaries interview project, 16 November 2012, retrieved 16 December 2021, www.cabinetsecretaries.com/_lib/pdf/Former%20Cabinet%20Secretary%20Lord%20Butler%20Interview%20with%20Anthony%20Seldon.pdf
 - 22 Guerin B, Thomas A, Clyne R and Vira S, *Finding the right skills for the civil service*, Institute for Government, 19 April 2021, retrieved 2 September 2021, www.instituteforgovernment.org.uk/publications/civil-service-skills
 - 23 'Civil service staff numbers', Institute for Government explainer, updated 16 December 2021, retrieved 17 December 2021, www.instituteforgovernment.org.uk/explainers/civil-service-staff-numbers
 - 24 Gov.uk, 'Departments, agencies and public bodies', (no date), retrieved 4 January 2022, www.gov.uk/government/organisations
 - 25 Hodgkin R and Rutter J, *Net zero and the tax system*, Institute for Government, 18 October 2021, retrieved 4 January 2022, www.instituteforgovernment.org.uk/publications/net-zero-tax
 - 26 Hodgkin R and Sasse T, *Building a green recovery: How the UK can meet its climate targets as it recovers from Covid-19*, Institute for Government, 6 July 2021, retrieved 4 January 2022, www.instituteforgovernment.org.uk/publications/building-green-recovery
 - 27 *The International Civil Service Effectiveness (InCiSE) Index, 2019 Results Report*, Blavatnik School of Government, University of Oxford and Institute for Government, (no date), retrieved 4 January 2022, p.19, www.bsg.ox.ac.uk/sites/default/files/2019-04/InCiSE%202019%20Results%20Report.pdf

A new statutory role for the civil service

- 1 Cabinet Office, 'Giving evidence to select committees: Guidance for civil servants', October 2014, retrieved 4 January 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/364600/Osmotherly_Rules_October_2014.pdf

The benefits of a civil service statute

- 1 Edwards B, 'Political Roundup: Statistics NZ and a census failure of 'epic proportions'', *The New Zealand Herald*, 16 April 2019, retrieved 4 January 2022, www.nzherald.co.nz/nz/political-roundup-statistics-nz-and-a-census-failure-of-epic-proportions/7ATKW7BPTM2JDORT5MHBQ6RYCQ/
- 2 New Zealand Legislation, 'Public Service Act 2020', reprint as at 1 September 2021, retrieved 4 January 2022, www.legislation.govt.nz/act/public/2020/0040/latest/LMS223288.html?search=ts_act%40bill%40regulation%40deemedreg_public+service+act+2020_resele_25_a&p=1
- 3 Sasse T and Thomas A, *Better policy making*, Institute for Government (March 2022).
- 4 Rayner G, 'Senior civil servant accused of trying to thwart Government's anti-woke agenda', *The Daily Telegraph*, 4 June 2021, retrieved 4 January 2022, www.telegraph.co.uk/news/2021/06/04/senior-civil-servant-accused-trying-thwart-governments-anti/
- 5 House of Commons Committee of Public Accounts, *Assessing public services through the Government's Verify digital system: Ninety-Fifth Report of Session 2017–19* (HC 1748), The Stationary Office, 8 May 2019, retrieved 19 October 2021, <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/1748/1748.pdf>
- 6 Gov.uk, 'About us: Civil Service' (no date), retrieved 19 October 2021, www.gov.uk/government/organisations/civil-service/about#functional-model
- 7 Freeguard G and Davies O, 'Ministerial directions', Institute for Government explainer, updated 19 February 2021, retrieved 4 January 2022, www.instituteforgovernment.org.uk/explainers/ministerial-directions

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