



House of Commons  
Public Administration  
Select Committee

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# **A Draft Civil Service Bill: Completing the Reform**

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**First Report of Session 2003–04**

*Volume I*





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Public Administration  
Select Committee

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# **A Draft Civil Service Bill: Completing the Reform**

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**First Report of Session 2003–04**

*Volume I*

*Report, together with formal minutes*

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## The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and the committee shall consist of eleven members.

### Current membership

Tony Wright MP (*Labour, Cannock Chase*) (Chairman)  
Mr Kevin Brennan MP (*Labour, Cardiff West*)  
Annette Brooke MP (*Liberal Democrat, Mid Dorset and Poole North*)  
Sir Sydney Chapman MP (*Conservative, Chipping Barnet*)  
Mr David Heyes MP (*Labour, Ashton under Lyne*)  
Mr Kelvin Hopkins MP (*Labour, Luton North*)  
Mr Ian Liddell-Grainger MP (*Conservative, Bridgwater*)  
Mr John Lyons MP (*Labour, Strathkelvin and Bearsden*)  
Mr Gordon Prentice MP (*Labour, Pendle*)  
Hon Michael Trend, CBE MP (*Conservative, Windsor*)  
Mr Brian White MP (*Labour, Milton Keynes North East*)

The following members were also members of the committee during the parliament.

Mr Anthony Steen MP (*Conservative, Totnes*)  
Mr Anthony D Wright MP (*Labour, Great Yarmouth*)

### Powers

The committee is one of the select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/parliamentary\\_committees/public\\_administration\\_select\\_committee.cfm](http://www.parliament.uk/parliamentary_committees/public_administration_select_committee.cfm). A list of Reports of the Committee in the present Parliament is at the back of this volume.

### Committee staff

The current staff of the Committee are Philip Aylett (Clerk), Clive Porro (Second Clerk), Chris Carrington (Committee Specialist), Jackie Recardo (Committee Assistant) and Jenny Pickard (Committee Secretary).

### Contacts

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# Report

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1. It is 150 years since Northcote and Trevelyan, in a justly famous report, laid the foundations for a professional and politically neutral civil service. Since 1854 that service has become firmly established. However, one of the Report's most important recommendations is still outstanding. This is the preparation of a short Bill—no more than “a few clauses” to enshrine key principles and structures to safeguard them in statute.<sup>1</sup>

2. The Committee believes that such legislation is long overdue. In an era of rapid, fundamental and often controversial change in Whitehall and beyond, there is better reason than ever for the principles first laid down by Northcote and Trevelyan to be secured, as they intended, by Parliament.

3. Despite regular promises both to ourselves and to the Committee on Standards in Public Life, the Government has not yet found the time even to consult on civil service legislation. In the light of this, and in a break with the tradition that legislation is dominated by Government, we decided last year to develop our own draft Bill. We published an issues and questions paper, held four evidence sessions and a seminar, and received eleven submissions. We thank all those who provided us with evidence.

4. The evidence we received was overwhelmingly in favour of legislation, with the proviso that it should be brief and should avoid anything which would hamper necessary reform or interfere in the proper management of government business. Mr Peter Browning, who described himself as “a member of the public who is interested in the relationships and processes of central government”, said that it was “amazing that the civil service is based on the royal prerogative rather than parliamentary statute”.<sup>2</sup> Sir Robin Mountfield, a former Permanent Secretary at the Cabinet Office, advocated a Bill to support the impartiality of the service.<sup>3</sup> One former Cabinet Secretary, Lord Butler of Brockwell, told us that he had not originally been in favour of a Bill, but had now come around to the idea, on the understanding that party consensus on legislation could be achieved.<sup>4</sup>

5. The Civil Service Commissioners said that the “core values” of the service should not be left vulnerable to change “at the whim of any Government without prior Parliamentary debate and scrutiny”.<sup>5</sup> However, they believed that the Bill should be brief and should avoid superfluous matters. The Council of Civil Service Unions urged us to ensure that the Bill is “of relevance to all civil servants whether they be in Whitehall or a small local office”.<sup>6</sup> Mr David Walker also cautioned against too exclusive a concentration on the centre, and pointed to the substantial apparatus that already exists to deal with problems of propriety and conduct in the civil service.<sup>7</sup>

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<sup>1</sup> Stafford Northcote and C E Trevelyan: *The Organisation of the Permanent Civil Service*. Parliamentary Papers Volume XXVII, p1 1854

<sup>2</sup> CSA 03

<sup>3</sup> CSA 07

<sup>4</sup> Q21

<sup>5</sup> CSA 02

<sup>6</sup> CSA 01

<sup>7</sup> Q230

6. We have tried in our inquiry to take account of the range of views expressed. We now publish our own draft of a Bill (Annex A), in the preparation of which we have been greatly assisted by the House of Commons Legal Services Office and Public Bill Office.

7. Our draft provides a clear framework which would enable Parliament to ensure that public service principles are upheld and that civil servants and others are carrying out their jobs with propriety. It is firmly based on existing codes and institutions, while giving Parliament greater powers of oversight and strengthening accountability. The Bill is not intended to shield civil servants from change or make them a protected species. In fact, it would make their duties and obligations clearer than ever. Neither would it affect the right of ministers to run their departments, make policy and deliver programmes. What it would do, for the first time, is to anchor some of the key operating principles of our system of government in Parliament.

8. Now that special advisers have become an established part of the system, there is also a need, recognised by the Government, for more clarity about their status and role. The draft Bill therefore contains provision for this.

9. The draft in addition includes, in Part 2, clauses which would clarify the position on the employment of people of a variety of nationalities in civil service posts. This would be a much-needed reform and one that has long been called for. It may well be convenient for these measures to be taken forward as part of the legislation. However, the other elements of the Bill are not dependent on Part 2.

10. We believe that the Bill should form an important element in the Government's public service reforms. In the public as in the private sector, agreed principles of governance can help to provide a firm basis for more effective delivery. Like Northcote and Trevelyan, we have twin aspirations: to regulate conduct and to support the development of better public services.

11. One Member of the Committee has drawn attention to the need to explore the wider context of civil service reform. We fully accept that discussion of this Bill should not divert attention from the need to modernise the Service and improve its management, efficiency and delivery. We will therefore undertake an inquiry into a number of issues in civil service reform.

12. We have shown that a civil service Bill, attracting widespread support across party lines, is not only possible but essential. We are pleased that the Government has promised to respond with its own draft Bill once ours is published. We hope that the principles of our Bill will be fully reflected in its own, and that the process we have now started will be brought to a speedy and constructive conclusion. **We see no reason why the Government's draft Bill should not be published in the current Session of Parliament, and we so recommend.**



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## Draft Civil Service Bill

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Schedule 1 – The Civil Service Commission  
Schedule 2 – Repeals and Revocations

A  
**B I L L**

TO

Make provision with regard to the Civil Service; to establish a Civil Service Commission; [to make provision for and in connection with the removal of general restrictions as to nationality which apply to persons employed or holding office in any civil capacity under the Crown;] and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

CIVIL SERVICE COMMISSION

**1 Civil service of the State**

- (1) The civil service of the State (“the civil service”) shall continue to consist of every person who serves the Crown in a civil capacity, other than a holder of judicial or political office, and whose remuneration is paid wholly and directly out of moneys provided by Parliament. 5
- (2) The Minister for the Civil Service may provide by order made by statutory instrument that a member of any prescribed body or the holder of any prescribed office (not being a judicial or political office) shall be included in the civil service for the purposes of this Act, and any such order shall be subject to annulment in pursuance of a resolution by either House of Parliament. 10
- (3) The Minister for the Civil Service may provide by order made by statutory instrument that a person, or persons of a class or description falling within subsection (1) or (2) above shall not be included in the civil service for the purposes of this Act, but such an order shall not be made unless a draft of the instrument has been approved by each House of Parliament. 15

**2 Civil Service Commission**

- (1) There shall be a body of Commissioners to be known as the Civil Service Commission (“the Commission”) to exercise the functions conferred upon it by this Act.
- (2) The Commission shall consist of no fewer than [seven] Commissioners appointed by Her Majesty on an address presented by the House of Commons, and no motion shall be made for such an address except by the Prime Minister acting with the agreement of the Leader of Her Majesty’s Opposition. 5
- (3) Subject to the provisions of this section, the expenses of the Commission shall be defrayed out of moneys provided by Parliament. 10
- (4) *The Commission shall for the financial year ending on 31st March 2005 and for each subsequent financial year prepare an estimate of the use by it of resources (within the meaning of the Government Resources and Accounts Act 2000 (c. 20)) and the Public Accounts Commission shall examine that estimate and lay it before the House of Commons with such modifications, if any, as the Public Accounts Commission thinks fit.* 15
- (5) *Schedule 1 has effect in respect of the Commission.*
- (6) In this section, “Leader of Her Majesty’s Opposition” has the same meaning as in the Ministerial and Other Salaries Act 1975 (c. 27).

**3 Principal functions of the Commission**

20

- (1) Subject to section 5 below, the Commission shall maintain the principle of selection on merit on the basis of fair and open competition in relation to appointments to the civil service and for this purpose the Commission—
- (a) shall oversee and monitor recruitment procedures to the civil service, and publish such codes on recruitment for observance by appointing authorities as it thinks fit; 25
- (b) shall require that every appointment to the Senior Civil Service be approved by it in writing, except where such appointment is for a period of less than twelve months;
- (c) may except an appointment from the principle of selection on merit on the basis of fair and open competition, either individually or by cases of a class or description; and 30
- (d) may take such other steps as it thinks fit.
- (2) The Commission may hear and determine applications or appeals to it by a member of the civil service under the Civil Service Code and for this purpose may— 35
- (a) determine its own procedure;
- (b) require the parties to an application or appeal to provide such information and other assistance as the Commission shall think necessary or appropriate; and 40
- (c) make recommendations
- (3) The Commission may undertake such inquiries as it thinks fit into the recruitment of the civil service and the operation of any code of conduct made under this Act.
- (4) The Commission— 45

- 
- (a) shall lay annually before each House of Parliament a general report on the performance of its functions under this Act; and
- (b) may from time to time lay before each House of Parliament such other reports with respect to those functions as it thinks fit.
- (5) In this section, “the Senior Civil Service” means that part of the civil service the members of which are classified by the Minister for the Civil Service as members of the Senior Civil Service. 5
- 4 Exercise of functions by Commission**
- (1) Any function of the Commission under this Act may be exercised by a single Commissioner or any officer of the Commission who is authorised for that purpose by the Commission. 10
- (2) The Commission may from time to time and to such extent as it thinks fit authorise any person to perform—
- (a) any function under section 3 (1)(a);
- (b) any of its functions relating to the selection and recruitment of persons prior to the exercise by it of its power under section 3(1)(b) to give written approval to an appointment; or 15
- (c) any of its functions under section 3(1)(b) and (c) where it has approved the arrangements for selection for particular appointments.
- 5 Exemption from selection on merit** 20
- (1) The principle of selection on merit on the basis of fair and open competition under section 3 of this Act shall not apply to any situation—
- (a) where the holder is appointed directly by the Crown; or
- (b) where the holder is appointed directly by a Minister of the Crown, a member of the Scottish Executive, the Assembly First Secretary of the National Assembly for Wales or an Assembly Secretary with the approval of the Minister for the Civil Service and on terms incorporating conditions approved by him. 25
- (2) A situation under subsection (1)(b) above may not be held other than for the purpose of assisting the Minister, member of the Scottish Executive or Assembly Secretary who made the appointment, or for a period which extends beyond his term of office. 30
- (3) The holder of a situation under subsection above (1)(b) may not—
- (a) authorise any expenditure of public funds;
- (b) exercise any management function in respect of the civil service; or 35
- (c) exercise any statutory power;
- but this shall not apply in the case of up to two situations in the Prime Minister's Office which may be designated by him.
- (4) The number of situations that may be held at any time by persons appointed by virtue of this section shall not exceed— 40
- (a) twelve in the case of persons appointed by members of the Scottish Executive;
- (b) six in the case of persons appointed by an Assembly Secretary; and

- (c) in the case of appointments by Ministers of the Crown a number that shall be subject to approval by a resolution of each House of Parliament.

## 6 The Civil Service Code

- (1) The Minister for the Civil Service shall publish a code of conduct, to be known as “The Civil Service Code” (“the Code”). 5
- (2) The Code shall regulate the conduct of the civil service by prescribing the values which its members are expected to uphold, and shall include, in particular—
- (a) a duty to serve the duly constituted Government with integrity, honesty and political impartiality; 10
- (b) a duty to discharge public functions reasonably and according to law;
- (c) a duty to deal with the affairs of the public sympathetically, efficiently, promptly and without bias or maladministration; and
- (d) a duty to act without fear or favour and with political impartiality in the provision of advice and the performance of public functions. 15
- (3) The Code shall provide a mechanism for an appeal by any civil servant who believes that he is being required to act in a way that is unlawful, improper, unethical or otherwise in breach of the Code, and shall also provide for an application direct to the Commission in any case where the civil servant reasonably believes he will be subjected to a detriment if he makes an appeal. 20
- (4) The Code may make other such provision as the Minister thinks fit.
- (5) The Minister for the Civil Service may make such supplementary codes to make special provision for the holders of situations under section 5(1)(b) of this Act as he thinks fit. 25
- (6) The Minister for the Civil Service shall lay before each House of Parliament a draft of any code or revised code made under this section and if either House of Parliament passes a resolution requiring the code or any alteration in it to be withdrawn the Minister for the Civil Service shall withdraw the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn. 30
- (7) In this section “government” includes the Crown in right of Her Majesty’s Government in the United Kingdom, the Scottish Executive and the National Assembly for Wales.

## 7 Power to make orders

- (1) The Minister for the Civil Service may by order made by statutory instrument make provision— 35
- (a) prescribing the number, grading and classification of posts in the civil service;
- (b) *determining the conditions of service of all persons employed in the civil service, including remuneration, expenses and allowances, holidays, hours of work, part-time and other working arrangements, retirement, redundancy and redeployment;* 40
- (c) regulating the conduct of the civil service, other than the Civil Service Code or other codes under section 6 above; and 45

- (d) regulating recruitment of persons to situations in the civil service, including qualifications relating to age, knowledge, ability, professional attainment, aptitude and potential.
- (2) An order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament. 5

## PART 2

### NATIONALITY REQUIREMENTS

#### 8 Removal of existing nationality requirements

- (1) Section 3 of the Act of Settlement 1700 (c. 2) (which, subject to exceptions, prevents persons born outside the United Kingdom from holding certain offices) shall not prevent any person from being employed or holding office in a civil capacity under the Crown. 10
- (2) In the Aliens Restriction (Amendment) Act 1919 (c. 92), section 6 (which, subject to exceptions, prevents the appointment of aliens to posts in the Civil Service) is omitted. 15
- (3) The Aliens' Employment Act 1955 (c. 18) is hereby repealed.
- (4) The European Communities (Employment in the Civil Service) Order 1991 (S.I., 1991, No. 1221) is hereby revoked.

#### 9 Power to impose new nationality requirements

- (1) Rules may be made imposing requirements as to nationality which must be satisfied by a person employed or holding office in a civil capacity under the Crown specified in the rules. 20
- (2) The rules may also impose requirements as to nationality which must be satisfied by persons of a description specified in the rules who are related to, or living with, such a person. 25
- (3) The rules may be made –
- (a) by a Minister of the Crown; or
  - (b) by any other officer of the Crown to whom that power has been delegated by a Minister of the Crown.
- (4) The rules may include provision – 30
- (a) exempting persons of a description specified in the rules (and persons related to, or living with, them) who were first employed, or first held office, in the capacity in question before a specified date; and
  - (b) allowing any Minister or other officer of the Crown to grant exemptions in cases in which the Minister or officer considers it appropriate. 35
- (5) The reference in section 75(5)(b) of the Race Relations Act 1976 (c. 74) (rules relating to nationality etc. of persons employed in service of Crown) to the implementation of rules includes the grant of (or refusal to grant) exemptions under subsection (4)(b).

#### 10 Repeals and revocation

Schedule 2 (repeals and revocation) has effect. 40

**PART 3**

## MISCELLANEOUS

**11 Transitional, transitory and saving provisions**

- (1) The Minister for the Civil Service may by order made by statutory instrument make any transitory, transitional or saving provision which he considers expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act. 5
- (2) An order under this section shall not be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament. 10

**12 Expenses**

*There shall be paid out of money provided by Parliament –*

- (a) *any expenditure incurred by the Minister for the Civil Service under or by virtue of this Act; and*
- (b) *any increase attributable to the provisions of this Act in the sums which under any other enactment are paid out of moneys so provided.* 15

**13 Short title, commencement and extent**

- (1) This Act may be cited as the Civil Service Act 2004.
- (2) This Act shall come into force on 1st April 2005.
- (3) This Act (except sections 2, 3, 4, 5, 6 and 7) shall extend to Northern Ireland. 20

## SCHEDULES

## SCHEDULE 1

Section 2

## THE CIVIL SERVICE COMMISSION

*Status*

- 1 The Commission shall be a body corporate. 5

*Members*

- 2 (1) The Commission shall consist of a chairman (to be known as the First Civil Service Commissioner) and [six] other members who may appoint one of their number to be deputy chairman.
- (2) The members of the Commission shall hold and vacate office in accordance with such terms as may be prescribed by or under regulations made by the Minister of the Civil Service and, on vacating office, shall be eligible for reappointment. 10
- (3) Regulations under sub-paragraph (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (4) A member of the Commission may at any time by notice in writing to the Minister resign his office.
- 3 *The Commission –*
- (a) *shall pay to its members such remuneration and allowances (if any) as the Minister may determine; and* 20
- (b) *as regards any member in whose case the Minister may so determine, shall pay such pension to or in respect of him, or make such payments towards the provision of such pension as the Minister may determine.*
- 4 *If a person ceases to be a member of the Commission, and it appears to the Minister that there are special circumstances which make it right that he should receive compensation, the Minister may require the Commission to pay to that person a sum of such amount as the Minister may determine.* 25

*Procedure*

- 5 The procedure (including the quorum) of the Commission shall be such as it may determine. 30
- 6 The validity of any proceeding of the Commission shall not be affected by any vacancy among its membership or by any defect in the appointment of any member of it.
- 7 The Commission shall appoint – 35



8

Draft Civil Service Bill  
Schedule 1 – The Civil Service Commission

- 
- (a) with the approval of the Minister, a chief officer; and  
(b) such number of other employees as it may determine.
- 8 *The Commission shall pay to its employees such remuneration and allowances as it may determine.*
- 9 (1) *The Commission shall in the case of its employees –* 5  
(a) *pay such pension to or in respect of them;*  
(b) *make such payments towards the provision of such pensions; or*  
(c) *provide and maintain such schemes (whether contributory or not) for the payment of such pensions,*  
*as it may determine.* 10
- (2) *In this paragraph any reference to the payment of pensions to or in respect of the Commission's employees includes a reference to the payment of pensions by way of compensation to or in respect of any of the Commission's employees who suffer loss of office or employment or loss or diminution of emoluments.*
- Accounts and reports* 15
- 10 (1) The Commission shall keep proper accounts and other records, and shall prepare for each financial year a statement of account in such form as the Minister with the approval of the Treasury may direct and submit those statements of account to the Minister at such time as he may with the approval of the Treasury direct. 20
- (2) The Minister shall, as respects each financial year, send the Commission's statement of accounts to the Comptroller and Auditor General not later than the end of November following the financial year.
- (3) The Comptroller and Auditor General shall examine, certify and report on the statement of accounts and lay copies of it, together with his report, before each House of Parliament. 25
- Land*
- 11 The Commission, for the purpose of providing itself with office or other accommodation in connection with the exercise of any of its functions, may acquire land, erect and maintain buildings or other structures thereon, and, when the land is no longer required for such purpose, dispose of it. 30
- 12 Any land occupied by the Commission shall, for the purpose of any rate on property, be treated as if it were property occupied by or on behalf of the Crown for public purposes.
- Interpretation* 35
- 13 In this Schedule –  
“the Commission” means the Civil Service Commission;  
“financial year” means the period commencing with the appointed day and ending with 31st March following that day, and each successive period of twelve months; 40  
“the Minister” means the Minister for the Civil Service;  
“pension” includes allowance or gratuity.

## SCHEDULE 2

Section 8

## REPEALS AND REVOCATIONS

<i>Title and reference</i>	<i>Extent of repeal or revocation</i>	
Aliens Restriction (Amendment) Act 1919 (c. 92)	Section 6.	5
Aliens' Employment Act 1955 (4 & 5 Eliz. 2 c. 18)	The whole Act.	
European Communities (Employment in the Civil Service) Order 1991 (S.I., 1991, No. 1221)	The whole Order.	10

# Draft Civil Service Bill

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## B I L L

To make provision with regard to the Civil Service; to establish a Civil Service Commission; [to make provision for and in connection with the removal of general restrictions as to nationality which apply to persons employed or holding office in any civil capacity under the Crown;] and for connected purposes.

*Presented by  
The Public Administration Committee*

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## Annex B

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### A draft civil service bill—commentary on clauses

#### *Clause 1—‘the civil service of the State’*

1. Clause 1 provides that ‘the civil service of the State’ shall continue to consist of every person who serves the Crown in a civil capacity, other than a holder of judicial or political office, and whose remuneration is paid wholly and directly out of moneys provided by Parliament. The suggested definition of ‘the civil service of the State’ is based on that produced by the Fulton Committee which reported on the civil service in 1968.

2. The expression ‘civil service of the State’ is drawn from a number of existing statutory references where the civil service is deliberately defined in the widest manner, so as to include, for example, the Home Civil Service, the Diplomatic Service, the Northern Ireland Civil Service (and the Northern Ireland Court Service) and the Forestry Commission. The expression ‘civil service of the State’ is found in the Aliens Restriction (Amendment) Act 1919, paragraph 2(4)(a) of Schedule 2 to the Ordnance Factories and Military Services Act 1984, section 2 of the Property Services and Crown Suppliers Act 1990, Schedule 5 to the Scotland Act 1998.

3. The purpose of referring to the ‘civil service of the State’ is to provide a framework for the application of the Act. It is not intended to provide for the constitution of the civil service, still less to create it as an institution. The basis for the creation of the civil service remains the power of the Crown to enter into arrangements in the nature of a contract for the employment of its servants. The exclusion of holders of judicial or political office is intended to exclude such servants and officers of the Crown as judges and Ministers. The reference to ‘remuneration paid wholly and directly out of moneys provided by Parliament’ is thought to be wide enough to include civil servants who work in departments whose operations are funded by a trading fund. In such cases, the moneys are provided by Parliament since the funding and operations of a trading fund require Parliamentary approval under the Government Trading Funds Act 1973.

4. In order to deal with any anomalous cases, clause 1(2) and (3) provides for a power exercisable by the Minister for the Civil Service by statutory instrument to include persons within the definition of the civil service in clause 1(1), or to exclude them. In the latter case, it is proposed that the affirmative procedure should apply, because the effect of such an order would take Crown servants outside the scope of such instruments as the Civil Service Code.

#### *Clause 2—Civil Service Commission*

5. Clause 2 provides for the appointment of the Civil Service Commission on a statutory basis. (At present, the Commission is appointed under prerogative powers exercised by Order in Council). Appointment would be by Her Majesty consequent upon an address by the House of Commons. The suggested arrangement for obtaining the agreement of the Leader of the Opposition is similar to that which is provided for in relation to the Comptroller and Auditor General under s.1(1) National Audit Act 1983.

6. By virtue of clause 2(4) the resources required by the Commission would no longer fall on the Cabinet Office vote, but would be provided under estimates laid by the Public Accounts Commission. The provision is modelled on s.4 of the National Audit Act 1983.

7. Schedule 1 makes further provision in relation to the status and administration of the Commission as a statutory body.

### ***Clause 3—principal functions of the Commission***

8. The functions of the Commission are expressed in similar terms to those used in Article 4 of the Civil Service Order in Council 1995. The Commission accordingly has a duty to maintain the principle of selection on merit on the basis of fair and open competition. This duty is subject to the exceptions made in clause 5 (e.g. in relation to special advisers).

9. The function of entertaining appeals (which is presently conferred by Article 4(5) of the Civil Service Order in Council 1995) is expanded to include the hearing and determination of applications under the Civil Service Code. The purpose of this expansion is to permit the Commission to hear a complaint relating to the application of the Code in circumstances where a civil servant reasonably believes he will be subjected to detriment if he were to make an appeal on such a matter within his own department. The provision is linked to the provisions of clause 6(3) which will require the Code to contain a mechanism allowing a civil servant to apply to the Commission without first making an appeal.

10. Clause 3(3) confers a new power on the Commission to conduct such inquiries as it thinks fit into the operation of any code of conduct made under the Act. The power is intended to be wide enough to permit the Commission to undertake an inquiry entirely of its own motion or on receipt of representations by third parties. The power to conduct inquiries into recruitment of the civil service is similar to (but wider than) the existing power under Article 4(3) of the Civil Service Order in Council to audit recruitment policies and practices. Neither power is intended to involve the Commission in the day to day management of the civil service.

11. Clause 3(4) requires the Commission to report annually to Parliament and confers a power to lay such other reports as it thinks fit.

### ***Clause 4—exercise of functions by the Commission***

12. Clause 4 permits the Commission to delegate its functions to a single Commissioner or any officer. Clause 4(2) permits the delegation of recruitment functions along the lines of what is now permitted under Article 9 of the Civil Service Order in Council 1995. In particular, it allows the Commission to delegate to any person its functions under clause 3(2)(b) and (c) where it has already approved the arrangements for selection for particular appointments. This would allow the continuation of present practice whereby arrangements for selection for appointment are approved by the Commission.

### ***Clause 5—exceptions from selection on merit***

13. Clause 5 sets out the exceptions from the principle of selection on merit on the basis of fair and open competition. These correspond to the exemptions presently made under

Article 3 of the Civil Service Order in Council. These exceptions would not prevent appointments being made on merit, but they would not be subject to oversight by the Commission under section 3. The situations under Clause 5(1)(b) are in practice those held by special advisers. Such persons are (as now) civil servants, but not subject to selection on merit on the basis of fair and open competition.

14. The holders of such situations are subject to the limitations set out in clause 5(2) and (3), except for the holders of up to two situations in the Prime Minister's Office which may be designated by him. The provision corresponds to that presently made by Article 3 of the Civil Service Order in Council. The limitations are not expressed in terms of 'giving advice', but in terms of the express prohibitions in clause 5(3) relating to authorising expenditure, exercising any management function or exercising any statutory power. A special adviser could not, therefore, execute any instrument required by statute (such as a Statutory Instrument or order) on behalf of a Minister.

15. Clause 5(4) limits the number of holders of such situations in the devolved administrations (as is currently provided for in Article 3(4) and (5) of the Civil Service Order in Council 1995). Clause 5(4) also provides a mechanism for the approval by each House of Parliament of a maximum number of appointments by Ministers of the Crown.

### ***Clause 6—Civil Service Code***

16. Clause 6 provides for the making by the Minister for the Civil Service of a Civil Service Code. Clauses 6(2) and (3) provide for the minimum content of such a code. The provisions of Clause 6(2) are based on the existing provision made in the Civil Service Code. Clause 6(5) provides for the making of supplementary codes for special advisers. Any code made under this clause is subject to Parliamentary approval in accordance with the procedure in clause 6(6). This would allow amendments to be required by either House as a condition of approval. Clause 6(7) is a definitional provision to cater for the existence of devolved administrations.

### ***Clause 7—power to make orders***

17. Clause 7 provides the Minister for the Civil Service with a power to make orders for the management of the civil service, corresponding to the provision which is now made under Article 10 of the Civil Service Order in Council, and under which such instruments as the Civil Service Management Code are now made. Unlike that power (which does not involve any Parliamentary procedure), exercise of the statutory power would be by statutory instrument subject to the annulment procedure.

## **Part 2—nationality requirements**

18. Part 2 of the draft Bill incorporates the provisions of the Bill introduced in 2002 by Mr Andrew Dismore MP, which addresses the problems caused by the Aliens Restriction (Employment) Act 1919.

## Background

19. The Act of Settlement of 1700 provides, in section 3, that no person born out of the kingdoms of England, Scotland or Ireland or the dominions thereto belonging should be capable of enjoying any office or place of trust, either civil or military, under the Crown. This prohibition does not apply to Commonwealth citizens or citizens of the Irish Republic (see section 52(6) of, and Schedule 7 to, the British Nationality Act 1981) or to British protected persons employed in a civil capacity (see section 1(1) of the Aliens' Employment Act 1955).

20. Section 6 of the Aliens Restriction (Amendment) Act 1919 provides that no alien shall be appointed to any office or place in the civil service of the State. An alien is now defined in section 51(4) of the British Nationality Act 1981 as a person who is neither a Commonwealth citizen nor a British protected person nor a citizen of the Republic of Ireland.

21. Under the Aliens' Employment Act 1955 the prohibitions were relaxed so that aliens could be employed if they were either:

- a) appointed in a country outside the UK, the Channel Islands and the Isle of Man in a capacity appearing to the Minister to be appropriate for aliens; or
- b) employed in accordance with a certificate issued by a Minister with the consent of the Minister for the Civil Service (this was originally with the consent of the Treasury but the function was transferred to the Minister for the Civil Service by the Transfer of Functions (Treasury and Minister for the Civil Service) Order 1995 (SI 1995/269)). In this connection either there must be no suitably qualified UK nationals available to do the work or the alien must possess exceptional qualifications or experience to do the job. Certificates last for 5 years and must then be renewed.

22. A list of the certificates issued under the 1955 Act and a statement of the number of persons employed under the certificates must be laid before Parliament by the Treasury. For the year 2001–2002 the number of certificates and persons employed under those certificates was 45.

23. The European Communities (Employment in the Civil Service) Order 1991 (SI 1991/1221) amended the 1955 Act so as to allow nationals of member states of the European Communities (and their spouses and certain children) to take up civil employment under the Crown apart from “public service” posts within the meaning of the EC Treaty (see Article 48(4) of the EEC Treaty, now Article 39(4) of the EC Treaty, which excludes from the freedom of movement of workers posts in the “public service”).

24. The rights of nationals of member states of the European Communities were extended to nationals of member states of the European Economic Area by section 2(1) of the European Economic Area Act 1993.

25. In 1996 an amendment to the Civil Service Management Code was made to restrict Commonwealth and Irish nationals (who are not subject to the prohibitions in the Act of Settlement or the 1919 Act) from being employed in posts which were reserved for UK



nationals. This put Commonwealth citizens and Irish nationals in the same position as nationals of other member states of the European Economic Area.

26. The effect of the existing rules, therefore, is that foreign nationals may be employed **abroad** in any civil post under the Crown (which includes the Diplomatic Service) if the Minister considers it appropriate. As regards civil employment, or the holding of office, under the Crown **within the UK**, Commonwealth Citizens, British protected persons and nationals of member states of the European Economic Area may be employed in posts other than reserved ones. Nationals of other countries may be employed in UK non-reserved posts only if a certificate is in force.

27. The exceptions made by the 1991 Order were made under secondary legislation (s.2(2) European Communities Act 1972). The limited scope of that power meant that the basic prohibition in the 1919 Act could not be entirely removed, but only amended to the extent necessary to comply with EC obligations. The EC Treaty (Article 39 EC) abolishes discrimination in employment on grounds of nationality, except in relation to ‘employment in the public service’ (Article 39(4)EC). There is therefore no obligation on Member States to admit other EU nationals to ‘employment in the public service’. As far as the EC Treaty is concerned, Member States can employ EU nationals in such posts, but are not obliged to admit them. The 1991 Order could only reflect the UK’s obligations under the EC Treaty, and could not amend the 1919 Act to any greater extent that was strictly required for that purpose.

28. This has given rise to a number of difficulties. As a matter of UK law, EU nationals can be admitted to civil service posts, but they cannot be admitted to ones which the European Court regards as ‘employment in the public service’. Although the European Court interprets ‘employment in the public service’ narrowly, it nevertheless has taken the view that officials concerned e.g. in the collection of taxes are employed ‘in the public service’. This has the result that, as a matter of the law of the UK, a national of an EU Member State could not generally be employed in the Inland Revenue, because this is a post which constitutes ‘employment in the public service’ within the meaning of Article 39(4)EC and therefore the exception from the 1919 Act does not apply, and a criminal offence is committed if he is so employed.

### **Commentary on part 2 clauses**

#### **Clause 8: Removal of restrictions as to nationality applying to civil employment or offices under the Crown**

29. *Subsection (1)* provides that the general prohibition on the employment of certain aliens in section 3 of the Act of Settlement 1700 does not apply to employment, or the holding of office, in a civil capacity under the Crown.

30. *Subsection (2)* repeals section 6 of the Aliens Restriction (Amendment) Act 1919 (which, subject to exceptions, prevents the appointment of aliens to posts in the Civil Service).

#### **Clause 9: Power to impose requirements as to nationality in relation to certain Crown appointments**



31. *Subsection (1)* of clause 2 allows rules to be made reserving specified posts for certain specified nationalities. This would allow certain posts to be reserved for UK nationals where it was thought right that they should be carried out by UK nationals. Any rules made under this power would have to comply with the requirements both of the European Communities and of the European Convention on Human Rights.

32. *Subsection (2)* allows the rules to impose requirements as to nationality of persons who are related to, or living with, the person employed or holding office.

33. *Subsection (3)* provides that the rules be made by a Minister of the Crown or by such other officer of the Crown to whom the power has been delegated by a Minister.

34. *Subsection (4)* allows the rules to exempt persons who were first employed or held office before a specified date and allows the granting of exemptions to the rules in appropriate cases.

35. *Subsection (5)* provides that the granting of, or refusal to grant, exemptions shall not be subject to challenge under the Race Relations Act 1976.

#### **Clause 10: Repeals and revocation**

36. This clause brings the Schedule into effect. The Schedule repeals the Aliens' Employment Act 1955 as there is no need for it (or for the provisions amending it) once section 6 of the 1919 Act has been repealed and the scope of the Act of Settlement has been restricted by the Bill. The European Communities (Employment in the Civil Service) Order 1991 is therefore revoked.

37. Reference should be made to the Explanatory Notes accompanying that Bill.

# Formal minutes

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**Thursday 11 December 2003**

Members present:

Tony Wright, in the Chair

Mr Kevin Brennan	Mr Ian Liddell-Grainger
Annette Brooke	Mr Gordon Prentice
Sir Sydney Chapman	Hon Michael Trend
Mr David Heyes	Mr Brian White
Mr Kelvin Hopkins	

The Committee deliberated.

Draft Report (A Draft Civil Service Bill: Completing the Reform), proposed by the Chairman, brought up and read.

Draft Report (A Civil Service Act?), proposed by Mr Brian White, brought up and read, as follows:

## Introduction

1. Since the publication of the Northcote Trevelyan Report ‘Organisation of the Permanent Civil Service’<sup>8</sup> in 1854 there have been repeated calls for the Government of the day to enact Civil Service legislation.
2. The Northcote Trevelyan report divided civil service posts into ‘mechanical’ posts and ‘intellectual’ posts. This distinction, rephrased into ‘industrial’ and ‘non-industrial’ appointments, still exists today.
3. Other preconceptions from days past are no longer relevant. The caricature of Sir Humphrey-style ‘yes’ men is a longstanding generalisation which has never fitted the wide range of employees, undertaking a variety of roles, differing greatly in seniority and application, that constitutes the civil service. From a clerk in the Inland Revenue to Permanent Secretaries, the civil service is diverse and responsive to change. Successive governments are demanding a ‘can do’ attitude increasingly focussed on the delivery of public services as opposed to policy options.
4. A fundamental change in the workings and organisation of the civil service came in the shape of the Next Steps Programme, introduced 15 years ago. The programme recommended that to the greatest extent practicable, functions of the government—as opposed to policy advice—should be carried out by executive agencies, clearly designated within departments. The aim was to improve the efficiency and quality of services within the public sector and improve the accountability of public organisations to their users. This

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<sup>8</sup> ‘Organisation of the Permanent Civil Service’ 1854, Parliamentary Papers Volume XXVII

of course had great effect on the direct lines of accountability for civil servants to departments, and on the range and scope of Ministerial executive powers.

5. Demands for a Civil Service Act have resurfaced recently, with the perception that the current Government has an increased reliance on special advisers, and concerns regarding their authority over civil servants. There are fears that the civil service has been increasingly politicised and that the fundamental nature of the civil service is changing too rapidly: that with increased employment from ‘outside’ and internal promotions no longer necessarily the norm, there will be a loss of the core ethos or set of values proponents of an Act say are particular to the civil service.

6. This report considers these fears as well as the reasons for their resurgence, and concludes, as have previous Public Administration Select Committee reports, such fears are not justified. Going further, this report also considers that should such a bleak picture ever materialise, a Civil Service Act would do little to rectify the situation for the better.

7. While touching on some specific elements contained in the draft Bill, the main focus of this minority report is to consider initial propositions for justifying legislation. This report concludes that referring to recommendations put forward almost 150 years ago as a basis for legislating in a complex and ever-changing area is not sufficient, and that due consideration was not given to the threats and disadvantages a Civil Service Act may be guilty of creating, albeit inadvertently.

## Definition of a Civil Servant

8. Individual witnesses were asked to put forward a definition of ‘Civil Servant’, though none were able to provide a succinct answer. Charles Cochrane, of the Council of Civil Service Unions (CCSU), said “we are talking about a Civil Service Act but we cannot define a civil servant and there are a number of bodies which are called the “Civil Service something”,<sup>9</sup> some of which are part of the Civil Service and some of which are not”.

**9. The definition of a Civil Servant, to whom the Act applies, is of fundamental importance in determining the scope and relevance of a Civil Service Act.**

10. The Public and Commercial Services Union (PCS) argued that it was important a draft Bill be seen to apply to all and “if there is to be a Civil Service Act it should be one that covers the whole of the Civil Service”:<sup>10</sup> not just special advisers, Civil Service Commissioners and/ or senior civil servants.

11. No specific lists of skills and or expectations of behaviour particular to a ‘civil servant’ setting them aside from other public sector employees were put forward. That there is no such set of skills is a proposition given weight when we consider the effect outsourcing and privatisation has on the ‘civil service’ title. As roles previously thought to be part of the civil service are increasingly contracted out to private sector companies, one time civil servants are finding themselves no longer afforded such a label. Few would say their role or responsibilities had changed and many would no doubt resent the assumption that their

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<sup>9</sup> Q168

<sup>10</sup> Q112

exemption from the class ‘civil servant’ meant the values put forward by Baroness Prashar of “integrity, honesty, objectivity and so on”<sup>11</sup> no longer applied to their work.

12. Due to a change in status such as that which occurs with outsourcing or privatisation, entirely similar roles, e.g. working on tax policy whether employed by EDS or the Inland Revenue, are classified as fundamentally different yet there remains an expectation that positions at the opposite ends of the employment spectrum—Immigration official to Permanent Secretary, for example—share some commonality separate from other industries, and other public sector employees.

13. This is unrealistic and it raises questions as to whether the divide between civil servants and public sector employees is necessary, or whether it has grown arbitrarily with the civil service, but without consideration of its relevance today.

14. The definition of a civil servant is of importance not just to this Act but also in terms of the eligibility to receive a civil service pension. Assuming legislation goes ahead, it is important that any definition contained in a Civil Service Act matches the definition of those entitled to receive the pension. To overlook this link would be to create even greater complexity in this area, as would relying on such generalisations as provided by the Fulton Report in the 1960s.

15. The debate about the Civil Service is often characterised between the impartial or ideal British Civil Service and the politicised or inferior US model. In reality there are a number of different models, including those used in the EU and throughout Europe. **Systematic analysis of the benefits of different international models of civil service administrations should be undertaken as a pre-requisite to any draft legislation.**

16. **Since no definition of a civil servant, nor of their ‘core values’ as separate from those shared by public sector workers could be found, this report concludes the case for an Act has not yet been proven and its introduction as draft legislation is inappropriate or at the very least premature.**

## **Purpose of a Civil Service Act**

17. Even if a definition of a civil servant could be agreed, we must still ask what purpose a Civil Service Act would achieve.

18. There are numerous codes of conduct which provide guidance on the expected behaviour of civil servants, special advisers and ministers. Before introducing legislation, we should first consider whether these codes are working effectively, and whether statutory provisions are needed.

## **Impartiality of the Civil Service**

19. It is often claimed an Act would confirm the impartiality of the civil service: the assumption of impartiality giving rise to a scenario in which civil servants maintain the balance between the extreme policies of the left and right, where officials are given the

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<sup>11</sup> Q266

“right to define and defend what they see as the centre ground”<sup>12</sup> and thus deny their claim to political neutrality. Some may argue that this leads to undue emphasis on maintaining the status quo rather than improving delivery.

20. Does this impartiality exist in the first place? Through the course of the evidence sessions the expectation of impartiality changed to the expectation that civil servants should be ‘partial to the government of the day’: akin to saying an employee should not work against the aims and objectives of an organisation. An instruction that exists in the majority of employee contracts, regardless of whether they relate to workers in the private or public sector, or civil service.

21. Being partial to the government of the day would suggest an ability to work one day on a project which may be central to a government’s manifesto commitments and political aims, and the next be ready to dismantle it should there be a change in government with altered aims and policies.

22. This is the expectation of the civil service but is it realistic? Certainly at senior level it appears problematic. In his article ‘Fair Game’,<sup>13</sup> Guardian journalist David Walker identified the Social Exclusion Unit as ‘a social democratic invention and as such highly likely to be wound up by an incoming Tory government’. He goes on to state that the position of head of the Unit could hardly be seen as an impartial appointment, not one which would exist as ‘partial to the government of the day’. Without sympathy for the policies and aims of the organisation, and a commitment to the social democratic ideals contained therein, could anyone really be said to have the qualities necessary to do this particular job?

23. A threat to the supposed impartiality of the civil service is often seen to come from ministerial input in the appointment of senior civil servants. The fear stems from the assumption that faced with a decision on an appointment; the Minister will suddenly lose all sense, disregard efficiency and the need to get the job done, and appoint someone incapable and unfit for the position. Of course, we would not expect the head of a private company to have no say in senior appointments. In any senior role the chemistry of the team is vital to the success of the organisation.

24. Ministerial powers have been increasingly changed and constricted by the way the relationship between government and businesses has altered over the last two decades. People who joined the civil service to work for the GPO are now private sector managers regulated by a public sector body independent of Government—a permanent agency which is unlikely to change with a new Government or Cabinet reshuffle. The role of independent regulators and their interaction with the civil service has not been addressed in the Bill. Neither have the rising complexities of civil service relationships which have come with evolving devolved administrations. In the international context we now have civil servants working in Brussels, and with globalisation they also work with international bodies such as the UN and NATO. In addition there is the increased flow of secondments and short-term contracts into and out of the civil service both within the UK and globally.

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<sup>12</sup> Sir John Hoskyns, ‘An Outsider’s View: Whitehall and Westminster’ Oct 1982

<sup>13</sup> David Walker, ‘Fair Game’ the Guardian 9<sup>th</sup> July 2003

**25. Legislation defining and protecting the civil service will only serve to protect vested interests and stall reform. The draft Bill has not considered the complexities which have emerged with the changing structure of the civil service and which have impacted on the exercise of ministerial executive powers, and thus reduced the need for an Act.**

26. The civil service has undergone long periods of reform. The draft Bill makes little provision for future proofing and indeed it would be difficult to include such scope within primary legislation. **It is this report's recommendation that conditions relating to the integrity, honesty and commitment of the Civil Service remain within a non-statutory Civil Service Code and outside of formal legislative structures.**

### ***Powers of Civil Service Commissioners***

27. In evidence to the Committee, Baroness Prashar, First Civil Service Commissioner, declared the “Act should set out the core values of the Civil Service and the role of the Civil Service Commission to act as a custodian of those core values”.<sup>14</sup>

28. However, she also argued that legislation “should not necessarily prescribe how the Commission should undertake its functions”.<sup>15</sup>

29. On recommendation of the First Civil Service Commissioner, the Act would set out duties of the Civil Service Commissioners while the precise determinations of these duties, and the methods by which they are carried out would be for interpretation by the Civil Service Commissioners.

30. One of the functions of the Civil Service Commissioners is to investigate third party complaints, where the Commissioner feels the need arises. Again, the Civil Service Commissioners are left with much flexibility to determine whether investigation is necessary, and to decide the process and focus the investigation should take.

31. Evidence from civil service unions repeatedly stressed the importance of a Civil Service Act applying to all employees across the civil service spectrum. Mark Serwotka, General Secretary of PCS, hoped that “any Act would be equally relevant to the most junior civil servants delivering benefits in a city as... to the special adviser or the senior civil servant”<sup>16</sup> and held concerns that “if anything happens that essentially reinforces the belief that the Civil Service is just 10,000 people at the top, [then] that would have a negative consequence”.<sup>17</sup>

32. Both Mr Serwotka and Mr Cochrane (CCSU) drew attention to the importance of employment issues, and the translation of ‘core values’ into practice. Mr Serwotka raised the case of the recent dismissal of 500 casual workers by the Department for Work and Pensions.<sup>18</sup> The department was able to dismiss the employees without adequate notice because they were at 51 weeks of employment, and therefore considered ‘casual workers’

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<sup>14</sup> Q258

<sup>15</sup> Q258

<sup>16</sup> Q112

<sup>17</sup> Q132

<sup>18</sup> Q120

outside of the civil service. Such a case led Mr Cochrane to declare that the CCSU would like to see the Civil Service Commissioners “getting much further down in departments [to] look at what is going on about recruitment, promotion and fair and open competition”:<sup>19</sup> important if the preconception of the civil service constituting only the most senior employees is not to be cultivated.

33. In contrast to the unions, Baroness Prashar told the Committee such cases are “something the unions can take up”,<sup>20</sup> and as such are matters beneath the Civil Service Commissioners’ consideration. Their role, in the First Civil Service Commissioner’s view, should be to remain custodians of the Civil Service’s ‘core ethos and values’ while remaining removed from everyday employment matters.

34. The draft Bill fits almost precisely with the Commissioner’s views. Clause 3 (3) confers upon the Civil Service Commission the power to conduct investigations into the operation of any Codes existing under the Act as it sees fit. The Civil Service Commission has no actual requirement to do so.

35. The First Civil Service Commissioner wishes to focus on abstract notions, such as ‘core values’, without being placed under any duty to monitor how such notions are applied in practice.

36. This reluctance to get involved in practicalities is worrying. In their Annual Report 2002–2003, the Civil Service Commissioners admit the Civil Service Code, which enshrines the values—honesty, integrity etc.—of the Civil Service is “neither well known nor promoted”, and assert “Departments have much to do to turn it into a living document”,<sup>21</sup> and accept the Wicks Committee’s recommendation<sup>22</sup> that the role of the Commissioners should be enhanced to monitor the promotion of the Civil Service Code.

**37. This report finds the opposing views of the unions and the Civil Service Commissioners bring to the fore the contradictions that the draft Bill is in danger of cementing in legislation.**

38. The Commissioners’ concerns that the ‘core values’ of the service are vulnerable to change “at the whim of any Government without prior Parliamentary debate and scrutiny”<sup>23</sup> is ironic considering their interpretation of the ‘core values’ and their concept of ‘appointment on merit’, which they claim as fundamental to the very nature of the service, is itself offered no prior scrutiny. Rather they would allow Parliamentary debate and inquiry *following* action in reviewing the Civil Service Commissioners’ Annual Report: “how we do it [interpret the appointment on merit principle] is something that is left to the Commissioners, and we can then be questioned about it which gives the flexibility”.<sup>24</sup>

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<sup>19</sup> Q121

<sup>20</sup> Q264

<sup>21</sup> “Report of the Civil Service Commissioners to Her Majesty the Queen for the period 1 April – 31 March 2003”

<sup>22</sup> Ninth Report of the Committee on Standards in Public Life, ‘Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service’ Cm 5775

<sup>23</sup> ‘Civil Service Legislation. Written response by the Civil Service Commissioners to the Public Administration Select Committee’, para 16, 10<sup>th</sup> July 2003

<sup>24</sup> Q270



39. **In the first place, this report recommends the Civil Service Commissioners focus on implementing the recommendations of the Wicks report and in doing so, serve the whole of the Civil Service. This report also recommends the Civil Service Commissioners take on board comments from the unions, and pay attention to how departments interpret ideas of ‘core values and ethos’ in practice.**

### ***Limit Numbers and Powers of Special Advisers (Clause 5 of the Draft Bill)***

40. Recently there has been great concern, fuelled in part by the media and opposition, about the apparent wide-reaching powers of special advisers. Special advisers giving directions and instructions to civil servants have again raised claims of the politicisation of the civil service.

41. But special advisers are not new. They have been used continually to provide technical or political advice and they have become well-established over the last 30 years. Successive governments have seen their employment as an effective way to attract high-level private sector employees with relevant knowledge and experience to the Senior Civil Service.

42. But, the argument goes, there are now too many special advisers. However, the ratio of special advisers to civil servants remains very low: the civil service could hardly be said to be over-run with them.

43. As previous reports from the Public Administration Select Committee and the Wicks Committee have shown, there is a valuable role for a limited number of special advisers and for up to three to have the power to give instructions to civil servants. In fact in many cases the use of special advisers protects civil servants from being drawn into party politics. In order for the three-way relationship between ministers, special advisers and civil servants to work, it must retain some level of flexibility which would be difficult to define in primary legislation without reducing its effectiveness.

44. The Phillis Review of Government Communications has reported its initial findings<sup>25</sup> and made a number of recommendations that the government has begun to act upon. It is yet to publish its final conclusions, but is likely to provide further recommendations for improving and increasing the clarity of the role of special adviser with regard to the media. **Before introducing legislation in this area, we should wait for the outcomes of the Phillis Review of Government Communications which is likely to make further recommendations.**

45. Fears of politicisation of the civil service at the hands of special advisers often stem from the image of civil servants meekly accepting whatever instructions come their way. To counter this, civil servants need to be more aware of their rights, their duties and both the Civil Service Code and Code of Conduct for Special Advisers.

46. One of the dangers of enshrining current special adviser procedures in statute is that it will give special advisers rights in employment law which, being mere appendages of their minister, they don't currently have.

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<sup>25</sup> Government Communications Review Group Interim Report, 27 Aug 2003



47. Sir Andrew Turnbull recently announced his intention to see the end of the tradition of ‘gifted amateurism’ in Whitehall, and instead promote to top management roles people with the relevant professional qualifications in finance, personnel, management and IT. This has obvious advantages not only in terms of improving the efficiency of departments but also the introduction of senior staff with more professional management qualifications.

**48. In line with the Ninth Report from the Wicks Committee, it is recommended that the Civil Service Code be more effectively promoted and we welcome the recent proposals for more effective management training announced by Sir Andrew Turnbull which will help to maintain the Civil Service as an effective work force.**

49. If we are going to legislate about special advisers then there are questions concerning Opposition special advisers who are paid out of public funds via Short Money. In particular, there are issues about how these people are treated in the transition when there is a change of Government which have not been addressed either in the draft Bill or in the Special Advisers’ Code.

### ***Incorporate Existing Codes of Conduct into Law***

50. The recent reforms announced by Sir Andrew Turnbull clearly have great repercussions for the ‘recruitment on merit’ principle overseen by the Civil Service Commissioners and detailed in the Recruitment Code. Should this and other codes be incorporated into primary legislation, the obstacles Sir Andrew currently faces in his attempts to modernise the Civil Service would be increased and the process of reform slowed considerably. There is a need for flexibility in the codes which would not be available if set in statute.

51. The Annual Report of the Civil Service Commissioners and the Ninth Report from the Wicks Committee on Standards in Public Life both acknowledged that awareness of the Civil Service Code was low and much needs to be done to promote it as a “living document” amongst departments. There has been little time to action the recommendations, let alone monitor what improvements have been made in this short space of time. Incorporating the Code into primary legislation should not be seen as a way to promote its existence: it does nothing to turn it into a “living document”. If the problem is one of recognition within the Service, it will remain whether the Code is set out in law or as guidance.

**52. It would be much better for the Civil Service Code to retain the flexibility allowed as a non-statutory code of practice, and for the Commissioners to seek to increase awareness of it and its provisions amongst all ranks and responsibilities of the service.**

53. One of the great criticisms of the British Civil Service is that we gold plate regulation. This draft Bill does nothing to address such concerns. At the very least **the Government should adopt the Principles of Good Regulation set out by the Better Regulation Task Force<sup>26</sup> as a code of practice.**

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<sup>26</sup> The Better Regulation Task Force, ‘Principles of Good Regulation’ ISBN: 0 7115 0438 5

## Nationality Requirements

54. The draft Bill put forward by the Committee incorporates the provisions of Andrew Dismore's 2002 Bill which sought to address the anomalies caused by membership of the EU with that of the Aliens Restriction (Employment) Act 1919.

55. Part II of the draft Bill seeks to amend these requirements such that the appointment of aliens to posts in the civil service is permitted while retaining the power to impose requirements as to nationality in relation to certain Crown appointments.

**56. These sections of the Bill are to be welcomed and such provisions should be included in primary legislation to be introduced when Parliamentary time allows.**

## Conclusions

**57. Proponents of a draft Civil Service Bill argue that Parliament needs to reassert itself against an over-powerful Executive. However, nothing in the draft Bill alters the relationship between the Executive's administrative tool and the legislature. The fact that this Committee has taken that unusual step of proposing its own draft Bill is to be welcomed, but the evidence is that the existing minimalist version will not achieve the ambitions of its advocates.**

58. There are a number of details which have arisen during the course of the inquiry which require further thought and analysis. In particular, to whom shall the Bill apply and how the Modernising Government agenda should be taken forward. Therefore the case for a draft Bill has not been made. There has been no systematic analysis of different options presented to the Committee, only an assumption that the current system must be enshrined in statute. Evidence was gathered from those who stand to benefit from legislation and no attempt was made to look at the consequences of any Act.

**59. The Government should not bring forward a draft Civil Service Bill without substantial further analysis and definition of the actual problem the Bill is designed to rectify followed by a proper public debate of these issues.**

## Recommendations

### *Definition of a Civil Servant*

1. The definition of a Civil Servant, to whom the Act applies, is of fundamental importance in determining the scope and relevance of a Civil Service Act. (Paragraph 9)
2. Systematic analysis of the benefits of different international models of civil service administrations should be undertaken as a pre-requisite to any draft legislation. (Paragraph 15)
3. Since no definition of a civil servant, nor of their 'core values' as separate from those shared by public sector workers could be found, this report concludes the case for an Act has not yet been proven and its introduction as draft legislation is inappropriate or at the very least premature. (Paragraph 16)

### ***Impartiality of the Civil Service***

4. Legislation defining and protecting the civil service will only serve to protect vested interests and stall reform. The draft Bill has not considered the complexities which have emerged with the changing structure of the civil service and which have impacted on the exercise of ministerial executive powers, and thus reduced the need for an Act. (Paragraph 25)
5. Conditions relating to the integrity, honesty and commitment of the Civil Service remain within a non-statutory Civil Service Code and outside of formal legislative structures. (Paragraph 26)

### ***Powers of Civil Service Commissioners***

6. The opposing views of the Unions and the Civil Service Commissioners bring to the fore the contradictions that the draft Bill is in danger of cementing in legislation. (Paragraph 37)
7. We recommend the Civil Service Commissioners focus on implementing the recommendations of the Wicks report and in doing so, serve the whole of the Civil Service. This report also recommends the Civil Service Commissioners take on board comments from the unions, and pay attention to how departments interpret ideas of 'core values and ethos' in practice. (Paragraph 39)

### ***Limit Numbers and Powers of Special Advisers (Clause 5 of the Draft Bill)***

8. Before providing legislation on the role of Special Advisers, we should wait for the outcomes of the Phillis Review of Government Communications which is likely to make further recommendations in this area. (Paragraph 44)
9. In line with the Ninth Report from the Wicks Committee, it is recommended that the Civil Service Code be more effectively promoted and we welcome the recent proposals for more effective management training announced by Sir Andrew Turnbull which will help to maintain the Civil Service as an effective work force. (Paragraph 48)

### ***Incorporate Existing Codes of Conduct into Law***

10. The Civil Service Code should retain the flexibility allowed as a non-statutory code of practice and that the Commissioners seek to increase awareness of it and its provisions amongst all ranks and responsibilities of the service. (Paragraph 52)
11. The Government should adopt the Principles of Good Regulation set out by the Better Regulation Task Force as a Code of Practice. (Paragraph 53)

### ***Nationality Requirements***

12. Clauses relating to the employment of aliens in the Civil Service are to be welcomed and such provisions should be included in primary legislation to be introduced when Parliamentary time allows. (Paragraph 56)

### Conclusions

13. Proponents of a draft Civil Service Bill argue that Parliament needs to reassert itself against an over-powerful Executive. However, nothing in the draft Bill alters the relationship between the Executive’s administrative tool and the legislature. The fact that this Committee has taken that unusual step of proposing its own draft Bill is to be welcomed, but the evidence is that the existing minimalist version will not achieve the ambitions of its advocates. (Paragraph 57)
14. The Government should not bring forward a draft Civil Service Bill without substantial further analysis and definition of the actual problem the Bill is designed to rectify followed by a proper public debate of these issues. (Paragraph 59)

Motion made and Question proposed, That the Chairman’s draft Report be read a second time, paragraph by paragraph.—(*The Chairman.*)

Amendment proposed, to leave out the words ‘Chairman’s draft Report’ and insert the words ‘draft Report proposed by Mr Brian White’, instead thereof.—(*Mr Brian White.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1

Noes, 8

Mr Brian White

Mr Kevin Brennan  
Annette Brooke  
Sir Sydney Chapman  
Mr David Heyes  
Mr Kelvin Hopkins  
Mr Ian Liddell-Grainger  
Mr Gordon Prentice  
Hon Michael Trend

Main Question put and agreed to.

Paragraphs 1 to 12 agreed to.

Annexes agreed to.

Motion made, and Question put, That the Report be the First Report of the Committee to the House.

The Committee divided.

Ayes, 7

Noes, 1

Annette Brooke  
Sir Sydney Chapman  
Mr David Heyes  
Mr Kelvin Hopkins

Mr Brian White

Mr Ian Liddell-Grainger  
Mr Gordon Prentice  
Hon Michael Trend

*Ordered*, That the Chairman do make the Report to the House.

*Ordered*, That the provisions of Standing Order No. 134 (Select Committee (Reports)) be applied to the Report.

Several Papers were ordered to be appended to the Report.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Thursday 15 January at 9.15am

# Witnesses

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## Thursday 19 June 2003

*Page*

**Lord Armstrong of Iminster, GCB CVO**

Ev 1

**Lord Butler of Brockwell, GCB CVO**

Ev 1

**Lord Wilson of Dinton, GCB**

Ev 1

## Thursday 6 November 2003

**Charles Cochrane**, Council of Civil Service Unions

Ev 19

**Mark Serwotka**, Council of Civil Service Unions and Public and Commercial Services Union

Ev 19

## Thursday 13 November 2003

**Jonathan Baume**, FDA Union

Ev 34

**David Walker**, The Guardian

Ev 44

## Tuesday 18 November 2003

**Baroness Prashar, CBE**, First Civil Service Commissioner

Ev 52

**Sir Nigel Wicks, GCB CVO CBE** and **Robert Behrens**, Committee on Standards in Public Life

Ev 60

## List of written evidence

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1	Council of Civil Service Unions (CSA 1)	Ev 67
2	Civil Service Commissioners (CSA 2)	Ev 68
3	Mr Peter Browning (CSA 3)	Ev 73
4	Jonathan Baume, FDA Union (CSA 4)	Ev 75
5	D A Bratton (CSA 5)	Ev 81
6	Sir Robin Mountfield (CSA 7)	Ev 88
7	Paul Tyler CBE MP (CSA 8)	Ev 89
8	Sir Christopher Foster (CSA 9)	Ev 90
9	Lord Lipsey (CSA 10)	Ev 97
10	Committee on Standards in Public Life (CSA 11)	Ev 98

## List of unprinted written evidence

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Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons library where they may be inspected by members. Other copies are in the Record Office, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1. (Tel 020 7219 3074) hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

Michael English



# Reports from the Public Administration Select Committee since 2001

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## Session 2003–04

First Report                      A Draft Civil Service Bill: Completing the Reform                      HC 128–I

## Session 2002–03

First Special Report              The Public Service Ethos: Government’s Response to the Committee’s Seventh Report of Session 2001–02              HC 61

First Report                      Ministerial Accountability and Parliamentary Questions: The Government Response to the Ninth Report from the Committee (Session 2001–02)                      HC 136

Second Report                      The Work of the Committee in 2002                      HC 447

Third Report                      Ombudsman Issues                      HC 448 (*Cm 5890*)

Fourth Report                      Government By Appointment: Opening up the Patronage State                      HC 165–I

Fifth Report                      On Target? Government By Measurement                      HC 62–I (*HC 1264*)

Sixth Report                      On Target? Government By Measurement: the Government’s Response to the Committee’s Fifth Report                      HC 1264

## Session 2001–02

First Report                      Public Participation: Issues and Innovations: The Government Response to the Committee’s Sixth Report of Session 2000–01                      HC 334

Second Report                      The Ministerial Code: Improving the Rule Book: The Government Response to the Committee’s Third Report of Session 2000–01                      HC 439

Third Report                      Special Advisers: Boon or Bane: The Government Response to the Committee’s Fourth Report of Session 2000–01                      HC 463

Fourth Report                      Ministerial Accountability and Parliamentary Questions: The Government Response to the Committee’s Second Report of Session 2000–01                      HC 464

Fifth Report                      The Second Chamber: Continuing the Reform                      HC 494–I (*HC 794*)

Sixth Report                      The Second Chamber: Continuing the Reform: The Government Response to the Committee’s Fifth Report                      HC 794

Seventh Report                      The Public Service Ethos                      HC 263–I (*HC 61*)

Eighth Report                      “These Unfortunate Events”: Lessons of Recent Events at the Former DTLR                      HC 303–I (*Cm 5756*)

Ninth Report                      Ministerial Accountability and Parliamentary Questions                      HC 1086 (*HC 136*)

The response to the report is printed in brackets after the HC printing number.