



The Governance of Britain – Draft Constitutional Renewal Bill





The Governance of Britain – Draft Constitutional Renewal Bill

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty the Queen

March 2008

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A

B I L L

TO

Repeal sections 132 to 138 of the Serious Organised Crime and Police Act 2005; to make provision relating to the Attorney General and prosecutions; to make provision relating to judges and similar office-holders; to make provision relating to the ratification of treaties; to make provision relating to the civil service.

BE 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

DEMONSTRATIONS IN THE VICINITY OF PARLIAMENT

1 Repeal of sections 132 to 138 of Serious Organised Crime and Police Act 2005

- (1) Omit sections 132 to 138 of the Serious Organised Crime and Police Act 2005 (c. 15) (which regulate demonstrations in the vicinity of Parliament). 5
- (2) In the Table in section 175(3) of that Act (transitional provision relating to offences) omit the entries relating to section 136.
- (3) In paragraph 1(1) of Schedule 2 to the Noise and Statutory Nuisance Act 1993 (c. 40) (which is about consents for the operation of loudspeakers) omit “or of section 137(1) of the Serious Organised Crime and Police Act 2005”. 10
- (4) Omit paragraph 64 of Schedule 6 to the Serious Crime Act 2007 (c. 27).

PART 2

THE ATTORNEY GENERAL AND PROSECUTIONS

Ground rules for Attorney’s superintendence of Directors

2 Ban on directions in individual cases 15

- (1) The Attorney General’s function of superintendence of the Directors does not include power to give a direction in relation to an individual case.

-
- (2) Subsection (1) is subject to section 12 (power to intervene to safeguard national security).
- (3) In this section and section 3 “the Directors” means –
- (a) the Director of Public Prosecutions (see section 4),
 - (b) the Director of the Serious Fraud Office (see section 5), and 5
 - (c) the Director of Revenue and Customs Prosecutions (see section 6).
- (4) Nothing in subsection (1) affects the operation of any enactment or provision of subordinate legislation under which the Attorney General has a prosecution consent function.
- 3 Protocol for running of prosecution services 10**
- (1) The Attorney General must, in consultation with the Directors, prepare a statement (a “protocol”) of how the Attorney General and the Directors are to exercise their functions in relation to each other.
- (2) The protocol may in particular include provision as to –
- (a) the general responsibilities of the Attorney General and each of the Directors; 15
 - (b) the arrangements for ensuring that the Attorney General is properly advised on matters relating to the strategic direction of the prosecution services and on matters affecting more than one prosecution service;
 - (c) the circumstances in which the Attorney General is to be consulted or provided with information; 20
 - (d) the objectives of the prosecution services;
 - (e) the way in which the objectives are set and the means by which their achievement or otherwise is reviewed;
 - (f) the roles of the Attorney General and the Directors in relation to criminal justice policy; 25
 - (g) the way in which matters relating to the accountability of the Attorney General to Parliament for the prosecution services are to be handled;
 - (h) the roles of the Attorney General and the Directors in relation to dealings with representatives of the press and other media; 30
 - (i) procedures for dealing with complaints relating to the prosecution services.
- (3) The Attorney General must lay the protocol before Parliament.
- (4) The Attorney General must from time to time review the protocol and may, in consultation with the Directors, revise it. 35
- (5) If the protocol is revised, the Attorney General must lay it before Parliament.
- (6) The Attorney General and the Directors must have regard to any relevant provision of the protocol when carrying out their functions.
- (7) “The prosecution services” means the Crown Prosecution Service, the Serious Fraud Office and the Revenue and Customs Prosecutions Office. 40

New provisions about tenure of office of Directors

4 Director of Public Prosecutions

- (1) The Director of Public Prosecutions –
 - (a) is appointed by the Attorney General, and
 - (b) subject to what follows, holds office in accordance with the terms of the appointment. 5
- (2) The Director must have a 10 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41).
- (3) Service as the Director is service in the civil service of the State.
- (4) There is to be paid to the Director such remuneration as the Attorney General may, with the approval of the Minister for the Civil Service, determine. 10
- (5) Any appointment under subsection (1) must be for a term of 5 years.
- (6) The Director may at any time resign by notice in writing to the Attorney General.
- (7) The Attorney General may remove the Director from office only if satisfied that the Director is unable, unfit or unwilling to carry out the functions of the office. 15
- (8) The factors which the Attorney General may take into account in determining whether the Director is unfit to carry out the functions of the office include, in particular –
 - (a) failure by the Director to comply with section 3(6) (duty to have regard to relevant provisions of protocol), and 20
 - (b) failure by the Director to perform the functions of the office efficiently and effectively.

5 Director of the Serious Fraud Office

- (1) The Director of the Serious Fraud Office –
 - (a) is appointed by the Attorney General, and
 - (b) subject to what follows, holds office in accordance with the terms of the appointment. 25
- (2) Service as the Director is service in the civil service of the State.
- (3) There is to be paid to the Director such remuneration as the Attorney General may, with the approval of the Minister for the Civil Service, determine. 30
- (4) Any appointment under subsection (1) must be for a term of 5 years.
- (5) The Director may at any time resign by notice in writing to the Attorney General.
- (6) The Attorney General may remove the Director from office only if satisfied that the Director is unable, unfit or unwilling to carry out the functions of the office. 35
- (7) The factors which the Attorney General may take into account in determining whether the Director is unfit to carry out the functions of the office include, in particular –
 - (a) failure by the Director to comply with section 3(6) (duty to have regard to relevant provisions of protocol), and 40

- (b) failure by the Director to perform the functions of the office efficiently and effectively.

6 Director of Revenue and Customs Prosecutions

- (1) The Director of Revenue and Customs Prosecutions –
 - (a) is appointed by the Attorney General, and 5
 - (b) subject to what follows, holds office in accordance with the terms of the appointment.
- (2) The Director must have a 10 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41).
- (3) Service as the Director is service in the civil service of the State. 10
- (4) There is to be paid to the Director such remuneration as the Attorney General may, with the approval of the Minister for the Civil Service, determine.
- (5) Any appointment under subsection (1) must be for a term of 5 years.
- (6) The Director may at any time resign by notice in writing to the Attorney General. 15
- (7) The Attorney General may remove the Director from office only if satisfied that the Director is unable, unfit or unwilling to carry out the functions of the office.
- (8) The factors which the Attorney General may take into account in determining whether the Director is unfit to carry out the functions of the office include, in particular – 20
 - (a) failure by the Director to comply with section 3(6) (duty to have regard to relevant provisions of protocol), and
 - (b) failure by the Director to perform the functions of the office efficiently and effectively.

Attenuation of Attorney's prosecution consent functions 25

7 Ending of certain prosecution consent functions of Attorney

Schedule 1 (which amends certain enactments under which the Attorney General has prosecution consent functions) has effect.

8 Power to end other prosecution consent functions of Attorney

- (1) The Attorney General may by order amend any existing enactment or existing provision of subordinate legislation under which the Attorney General has a prosecution consent function. 30
- (2) An order under this section may, in particular, make provision under which the Attorney General's prosecution consent function – 35
 - (a) becomes the function of one of the Directors or, in the absence of that Director, a person authorised by that Director;
 - (b) becomes the function of one of the Directors but is a function to which the relevant delegation provision applies;
 - (c) is removed.

- (3) In this section and section 9 “the Directors” has the same meaning as in sections 2 and 3, except that it also includes the Director of Service Prosecutions.

9 Effect of provisions conferring functions on Director or authorised person

- (1) This section applies in relation to any enactment or provision of subordinate legislation under which a function is that of one of the Directors or, in the absence of that Director, a person authorised by that Director. 5
- (2) The relevant delegation provision does not apply to the function.
- (3) The Director’s authorisation –
- (a) may relate to a specified person or to persons of a specified description, and 10
 - (b) may be general or relate to a specified function or specified circumstances.

10 Sections 8 and 9: supplementary

- (1) In sections 8(2)(b) and 9(2) “the relevant delegation provision” means –
- (a) in relation to the Director of Public Prosecutions, section 1(7) of the Prosecution of Offences Act 1985 (c. 23); 15
 - (b) in relation to the Director of the Serious Fraud Office, section 1(8A) of the Criminal Justice Act 1987 (c. 38);
 - (c) in relation to the Director of Revenue and Customs Prosecutions, section 37(4) of the Commissioners for Revenue and Customs Act 2005 (c. 11); 20
 - (d) in relation to the Director of Service Prosecutions, section 365(4A) of the Armed Forces Act 2006 (c. 52).
- (2) In section 8(1) –
- (a) “existing enactment” means an enactment contained in an Act passed on or before the last day of the Session in which this Act is passed; 25
 - (b) “existing provision of subordinate legislation” means a provision of subordinate legislation made on or before that day;
 - (c) “amend” includes repeal or revoke.
- (3) An order under section 8 may make consequential, incidental, supplementary, transitional or saving provision. 30
- (4) The power to make an order under section 8 is exercisable by statutory instrument.
- (5) No order may be made under section 8 unless a draft of the order has been laid before and approved by a resolution of each House of Parliament. 35

Abolition of nolle prosequi

11 Abolition of nolle prosequi

The power of the Attorney General to enter a nolle prosequi is abolished in relation to proceedings in England and Wales.

*Safeguarding of national security***12 Power to intervene to safeguard national security**

- (1) The Attorney General may, if satisfied that it is necessary to do so for the purpose of safeguarding national security –
- (a) give a direction to the Director of the Serious Fraud Office that no investigation of specified matters is to take place in England and Wales; 5
 - (b) give a direction to any prosecutor, in relation to an investigation of specified matters, that no proceedings for an offence are to be instituted in England and Wales in respect of those matters;
 - (c) give a direction to any prosecutor that proceedings for a specified offence which are being conducted in England and Wales against a specified person are not to be continued. 10
- (2) The Attorney General may withdraw a direction given under subsection (1).
- (3) “Prosecutor”, in relation to an offence, means any person who –
- (a) has the conduct of proceedings for the offence, or 15
 - (b) has the function of or is determining whether proceedings for the offence should be instituted.

13 Effect of certain directions under section 12 etc.

- (1) Where the Attorney General has given a direction under section 12(1)(b), no proceedings for an offence are to be instituted in respect of the matters which are the subject of the investigation. 20
- (2) Subsection (1) does not prevent the institution of proceedings for an offence in respect of those matters if the direction is withdrawn.
- (3) Where the Attorney General has given a direction under section 12(1)(c), the prosecutor must take such steps as are appropriate to ensure that the proceedings which are the subject of the direction are brought to an end as soon as is practicable. 25
- (4) If the prosecutor fails to comply with subsection (3), any court before which the proceedings are being conducted may make an order –
- (a) bringing the proceedings to an end, and 30
 - (b) making such other provision as appears to the court appropriate (including provision as to the effect of the order on the bringing of fresh proceedings in respect of the same offence).
- (5) If in any proceedings any question arises whether a direction under section 12(1) is or was necessary for the purpose of safeguarding national security –
- (a) a certificate signed by a Minister of the Crown certifying that the direction is or was necessary for that purpose is conclusive evidence of that fact, and 35
 - (b) a document purporting to be a certificate under paragraph (a) is to be received in evidence and, unless the contrary is proved, is to be treated as being such a certificate. 40
- (6) “Prosecutor” has the same meaning as in section 12.

14 Reports on directions under section 12

- (1) This section applies where the Attorney General has –
 - (a) given a direction under section 12(1), or
 - (b) withdrawn a direction under section 12(2).
- (2) The Attorney General must prepare and lay before Parliament a report on the giving or withdrawal of the direction –
 - (a) as soon as is practicable after the giving or withdrawal of the direction, or
 - (b) if the Attorney General is satisfied that delay is necessary for the purpose of safeguarding national security, as soon as the Attorney General is satisfied that further delay is not necessary for that purpose.
- (3) Nothing in subsection (2) requires information to be included in a report if the Attorney General is satisfied that –
 - (a) a claim to legal professional privilege (or, in Scotland, confidentiality of communications) could be maintained in respect of the information in legal proceedings,
 - (b) the inclusion of the information would prejudice national security or would seriously prejudice international relations, or
 - (c) the inclusion of the information would prejudice the investigation of a suspected offence or proceedings before any court.

15 Power to require information for purposes of section 12

- (1) Subsection (3) applies if –
 - (a) the Attorney is considering whether to give a direction under section 12(1), and
 - (b) it appears to the Attorney General that the person to whom the direction would be given may possess information which could assist the Attorney General in determining whether to give such a direction.
- (2) Subsection (3) also applies if –
 - (a) the Attorney General has given a direction under section 12(1), and
 - (b) it appears to the Attorney General that the person to whom the direction was given may possess information which could assist the Attorney General –
 - (i) in determining whether to withdraw the direction (under section 12(2)), or
 - (ii) in preparing a report (under section 14(2)).
- (3) The Attorney General may require the person to provide, within a specified period –
 - (a) specified information, or
 - (b) information of a specified description.
- (4) A person who without reasonable excuse fails to comply with a requirement under subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Miscellaneous and supplementary

- 16 Annual report on exercise of Attorney’s functions**
- (1) As soon as is practicable after 4 April in any year the Attorney General must prepare and lay before Parliament a report on the exercise of the functions of the Attorney General during the year ending with that date. 5
- (2) Nothing in subsection (1) requires information to be included in a report if the Attorney General is satisfied that—
- (a) a claim to legal professional privilege (or, in Scotland, confidentiality of communications) could be maintained in respect of the information in legal proceedings, 10
 - (b) the inclusion of the information would prejudice national security or would seriously prejudice international relations, or
 - (c) the inclusion of the information would prejudice the investigation of a suspected offence or proceedings before any court.
- 17 Interpretation** 15
- (1) For the purposes of this Part the Attorney General has a prosecution consent function under an enactment if under that enactment—
- (a) proceedings for an offence may not be instituted except by, or with the consent of, the Attorney General (or by, or with the consent of, the Attorney General or one or more other persons), or 20
 - (b) the Attorney General (or the Attorney General or one or more other persons) has a function of giving a consent to the taking of any other step in connection with proceedings for an offence.
- (2) In subsection (1) and sections 12 and 13, “offence” includes a service offence as defined by section 50 of the Armed Forces Act 2006 (c. 52) (and the reference in section 13(4) to a court includes a reference to a service court within the meaning of section 324(4) of the 2006 Act). 25
- (3) For the purposes of sections 14(3) and 16(2), international relations are prejudiced if any of the following are prejudiced—
- (a) relations between the United Kingdom and any other State; 30
 - (b) relations between the United Kingdom and any international organisation or international court;
 - (c) the interests of the United Kingdom abroad;
 - (d) the promotion or protection by the United Kingdom of its interests abroad. 35
- (4) In this Part, “subordinate legislation” has the same meaning as it has in the Interpretation Act 1978 (c. 30).
- 18 Amendments consequential on this Part**
- Schedule 2 (which contains amendments consequential on this Part) has effect.

PART 3

COURTS AND TRIBUNALS

19 Judicial appointments etc

Schedule 3 (which makes provision about judicial appointments etc) has effect.

20 Salary protection for members of tribunals

5

(1) This section applies if, in accordance with the terms of a person's appointment, the person is to be paid a salary (as opposed to fees) under any of the following provisions.

(2) The provisions are –

(a) section 5(1)(a), (b) or (c) of the Employment Tribunals Act 1996 (c. 17); 10

(b) paragraph 10(a) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 (c. 41);

(c) paragraph 10 of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007 (c. 15);

(d) paragraph 5(2) of Schedule 2 to that Act; 15

(e) paragraph 5(2) of Schedule 3 to that Act;

(f) paragraph 3(2), 5(10) or 6(6) of Schedule 4 to that Act.

(3) The Secretary of State (with the consent of the Treasury as required) or the Lord Chancellor (as the case may be) –

(a) must, under the provision in question, determine the amount of the salary to be paid to the person and pay it accordingly; 20

(b) may, under the provision in question, determine increases, but not reductions, in the salary.

PART 4

RATIFICATION OF TREATIES

25

21 Treaties to be laid before Parliament before ratification

(1) A treaty is not to be ratified unless conditions 1 to 3 or conditions 1 to 4 (as the case may be) are met.

(2) Condition 1 is that the Secretary of State has laid before Parliament a copy of the treaty. 30

(3) Condition 2 is that the treaty has been published in a way that the Secretary of State thinks appropriate.

(4) Condition 3 is that –

(a) the period of 21 sitting days, beginning with the first sitting day after the date on which condition 1 is met, has expired without either House having resolved that the treaty should not be ratified, or 35

(b) if either House resolves, within that period, that the treaty should not be ratified, condition 4 has been met.

(5) Condition 4 is that –

- (a) the Secretary of State has laid before Parliament a statement indicating that the Secretary of State is of the opinion that the treaty should nevertheless be ratified and explaining why, and
 - (b) if the House of Commons resolved as mentioned in subsection (4)(b) (whether or not the House of Lords also did so), the period of 21 sitting days, beginning with the first sitting day after the date on which the statement is laid, has expired without the House of Commons having resolved, within that period, that the treaty should not be ratified. 5
- (6) The Secretary of State may lay a statement under subsection (5) on more than one occasion. 10
- (7) “Sitting day” means a day on which either House of Parliament sits.

22 Section 21 not to apply in exceptional cases

- (1) Section 21 does not apply to a treaty if the Secretary of State is of the opinion that, exceptionally, the treaty should be ratified without the conditions in that section having been met. 15
- (2) But a treaty may not be ratified by virtue of subsection (1) after either House has resolved, in accordance with section 21(4), that the treaty should not be ratified.
- (3) If a treaty is ratified by virtue of subsection (1), the Secretary of State must, either before or as soon as practicable after the treaty is ratified – 20
- (a) lay before Parliament a copy of the treaty,
 - (b) lay before Parliament a statement indicating that the Secretary of State is of that opinion and explaining why, and
 - (c) arrange for the treaty to be published in a way that the Secretary of State thinks appropriate. 25

23 Section 21 not to apply to certain descriptions of treaties

- (1) Section 21 does not apply to –
- (a) a treaty covered by section 12 of the European Parliamentary Elections Act 2002 (c. 24) (treaty providing for increase in European Parliament’s powers not to be ratified unless approved by Act of Parliament); 30
 - (b) a treaty covered by section 5 of the European Union (Amendment) Act 2008 (treaty amending founding Treaties not to be ratified unless approved by Act of Parliament).
- (2) Section 21 does not apply to a treaty in relation to which an Order in Council may be made under one or more of the following – 35
- (a) section 158 of the Inheritance Tax Act 1984 (c. 51) (double taxation conventions);
 - (b) section 788 of the Income and Corporation Taxes Act 1988 (c. 1) (double taxation arrangements);
 - (c) section 173 of the Finance Act 2006 (c. 25) (international tax enforcement arrangements). 40

24 Meaning of “treaty” and “ratification”

- (1) In this Part “treaty” means an agreement in writing –
- (a) between States or between States and international organisations, and

- (b) binding under international law.
- (2) In this Part a reference to ratification of a treaty is a reference to an act of a kind specified in subsection (3) which establishes as a matter of international law the United Kingdom’s consent to be bound by the treaty.
- (3) The acts are – 5
 - (a) deposit or delivery of an instrument of ratification, accession, approval or acceptance;
 - (b) deposit or delivery of a notification of completion of domestic procedures.

PART 5 10

THE CIVIL SERVICE

Application

25 Application of Part

- (1) This Part applies to the civil service of the State excluding the parts listed in subsection (2). 15
- (2) The parts excluded are –
 - (a) the Secret Intelligence Service;
 - (b) the Security Service;
 - (c) the Government Communications Headquarters;
 - (d) the Northern Ireland Civil Service; 20
 - (e) the Northern Ireland Court Service.
- (3) References to the civil service and civil servants are to be read accordingly.

Civil Service Commission

26 Establishment of the Civil Service Commission

- (1) There is to be a body corporate called the Civil Service Commission. 25
- (2) Schedule 4 (which is about the Commission) has effect.
- (3) The Commission has the role in relation to selections for appointments to the civil service set out in sections 35 to 37.
- (4) See also –
 - (a) section 32(6) to (8) (which provides for the making of complaints to the Commission under civil service codes of conduct); 30
 - (b) section 40 (under which the Commission may be given additional functions).

*Power to manage the civil service***27 Management of the civil service**

- (1) The Minister for the Civil Service has the power to manage the civil service (excluding the diplomatic service).
- (2) The Secretary of State has the power to manage the diplomatic service. 5
- (3) Subsections (1) and (2) cover, among other things, appointment and dismissal and the imposition of rules on civil servants.
- (4) Subsections (1) and (2) do not cover national security vetting (and accordingly do not affect any power relating to national security vetting).
- (5) The agreement of the Minister for the Civil Service is required for any exercise of the power in subsection (2) in relation to – 10
 - (a) remuneration of civil servants (including compensation payable on leaving the civil service), or
 - (b) the conditions on which a civil servant may retire.

28 Civil service management functions

15

- (1) The Civil Service (Management Functions) Act 1992 (c. 61) is amended as follows.
- (2) For the italic cross-heading before section 1 substitute “*Civil service (excluding the diplomatic service)*”.
- (3) In section 1 (delegation of functions) for subsections (1) and (2) substitute – 20
 - “(1) This section applies to the functions conferred on the Minister for the Civil Service by section 27 of the Constitutional Renewal Act 2008 (management of the civil service, excluding the diplomatic service).
 - (2) The Minister for the Civil Service may, to such extent and subject to such conditions as the Minister thinks fit, delegate a function to which this section applies to any other servant of the Crown.” 25
- (4) Omit section 1(5) (meaning of “transfer of functions Order”).
- (5) In section 2 (power to authorise exercise of functions without approval etc) in subsection (1)(a) for “Her Majesty’s Home Civil Service” substitute “the civil service (excluding the diplomatic service) within the meaning of Part 5 of the Constitutional Renewal Act 2008”. 30

29 Management of the civil service: supplementary

- (1) Any statutory power relating to the management of any part of the civil service has effect subject to section 27.
- (2) “Statutory power” means a power conferred by any other Act (whenever passed) or an instrument under any other Act (whenever made). 35
- (3) Subsection (4) applies to a person (“P”) who –
 - (a) is a civil servant immediately before section 27 comes into force, and
 - (b) was appointed under powers that cease to be exercisable on that section coming into force. 40

- (4) From the time that section 27 comes into force, P’s appointment continues but as if made –
- (a) if P is a member of the diplomatic service immediately before that time, under subsection (2) of that section, and
 - (b) otherwise, under subsection (1) of that section.
- 5

Codes of conduct

30 Civil service code

- (1) The Minister for the Civil Service must publish a code of conduct for the civil service (excluding the diplomatic service).
- (2) For this purpose, the Minister may publish separate codes of conduct covering civil servants who serve the Scottish Executive or the Welsh Assembly Government. 10
- (3) In this Part “civil service code” means a code of conduct published under this section as it is in force for the time being.
- (4) The Minister must lay any civil service code before Parliament. 15
- (5) A civil service code forms part of the terms and conditions of service of any civil servant covered by the code.

31 Diplomatic service code

- (1) The Secretary of State must publish a code of conduct for the diplomatic service. 20
- (2) In this Part “diplomatic service code” means the code of conduct published under this section as it is in force for the time being.
- (3) The Secretary of State must lay the diplomatic service code before Parliament.
- (4) The diplomatic service code forms part of the terms and conditions of service of any civil servant covered by the code. 25

32 Minimum requirements for civil service and diplomatic service codes

- (1) This section sets out the provision that must be included in a civil service code or the diplomatic service code in relation to the civil servants covered by the code.
(The code may include other provision as well.) 30
- (2) The code must require civil servants who serve an administration mentioned in subsection (3) to carry out their duties for the assistance of the administration as it is duly constituted for the time being, whatever its political complexion.
- (3) The administrations are – 35
- (a) Her Majesty’s Government in the United Kingdom;
 - (b) the Scottish Executive;
 - (c) the Welsh Assembly Government.
- (4) The code must require civil servants to carry out their duties –

-
- (a) with integrity and honesty, and
 - (b) with objectivity and impartiality.
- (5) But the code need not –
- (a) require special advisers (see section 38) to carry out their duties with objectivity or impartiality, or 5
 - (b) include provision about special advisers that is included in the special advisers code (see section 33).
- (6) The code must allow a civil servant to complain to the Civil Service Commission if the civil servant believes –
- (a) that the civil servant is being required to act in a way that conflicts with the code, or 10
 - (b) that another civil servant has acted in a way that conflicts with the code.
- (7) The code may include provision about steps that must be taken by a civil servant before making a complaint.
- (8) The Commission – 15
- (a) must determine procedures for the making of complaints and for the investigation and consideration of complaints by the Commission;
 - (b) must consider a complaint if the complaint is made in accordance with those procedures;
 - (c) after considering a complaint, may make recommendations about how the complaint should be resolved. 20
- 33 Special advisers code**
- (1) The Minister for the Civil Service must publish a code of conduct for special advisers (see section 38).
- (2) In this Part “special advisers code” means the code of conduct published under this section as it is in force for the time being. 25
- (3) The Minister must lay the special advisers code before Parliament.
- (4) The special advisers code forms part of the terms and conditions of service of special advisers.
- Appointment* 30
- 34 Selections for appointments to the civil service**
- (1) This section is about how persons who are not civil servants are to be selected for appointment to the civil service.
- (2) A person’s selection must be on merit on the basis of fair and open competition.
- (3) The following selections are excepted from this requirement – 35
- (a) selection for an appointment if the appointment is to be made directly by Her Majesty;
 - (b) selection for an appointment to the diplomatic service as head of mission or as Governor of an overseas territory;
 - (c) selection for an appointment as special adviser (see section 38); 40

- (d) a selection excepted by the recruitment principles (see section 36(1)(b) and (c)).
- (4) In determining for the purposes of subsection (1) whether or not a person is a civil servant, ignore any appointment for which the person was selected in reliance on subsection (3)(a), (b) or (c). 5

35 Recruitment principles

- (1) The Civil Service Commission must publish a set of principles to be applied for the purposes of the requirement in section 34(2).
- (2) Before publishing the set of principles (or a modification of the set of principles), the Commission must consult the Minister for the Civil Service about what the Commission proposes to publish. 10
- (3) In this Part “recruitment principles” means the set of principles published under this section as it is in force for the time being.
- (4) Appointing authorities must comply with the recruitment principles.
- (5) In this Part “appointing authority” means a person with power to make appointments in the civil service. 15

36 Approvals for selections and exceptions

- (1) The recruitment principles may include provision –
 - (a) requiring the approval of the Civil Service Commission to be obtained for a selection which is subject to the requirement in section 34(2); 20
 - (b) excepting a selection from the requirement in section 34(2) for the purposes of section 34(3)(d);
 - (c) specifying terms and conditions which must be included in the terms and conditions of an appointment resulting from a selection made in reliance on section 34(3)(d). 25
- (2) The Commission may participate in the process for a selection for which its approval is required by provision within subsection (1)(a).
- (3) It is up to the Commission to decide how it will participate.
- (4) Provision within subsection (1)(b) may be included only if the Commission is satisfied that the provision is justified by the needs of the civil service. 30
- (5) Provision within subsection (1)(a) to (c) may be made in any way, including by reference to –
 - (a) particular appointments or descriptions of appointments;
 - (b) the circumstances in which a selection is made;
 - (c) the circumstances of the person to be selected. 35
- (6) Provision within subsection (1)(a) to (c) may confer a discretion on the Commission.

37 Monitoring by the Commission

- (1) The Civil Service Commission must carry out whatever reviews of recruitment policies and practices it thinks are necessary to establish whether the requirement in section 34(2) is being complied with. 40

- (2) For this purpose, the Commission may require an appointing authority to provide it with information about—
- (a) selections which the authority has made, and
 - (b) the way in which those selections were made.

Special advisers

5

38 Definition of “special adviser”

- (1) In this Part “special adviser” means a civil servant appointed—
- (a) by a minister directly,
 - (b) to assist that minister, and
 - (c) in accordance with subsections (2) and (3). 10
- (2) The appointment must be approved—
- (a) if the appointing minister is a Minister of the Crown, by the Prime Minister, or
 - (b) if the appointing minister is a Scottish Minister or a Welsh Minister, by the First Minister for Scotland or Wales (as the case may be). 15
- (3) The appointment must be on terms that—
- (a) are approved by the Minister for the Civil Service, and
 - (b) provide for the appointment to end not later than the time when the appointing minister’s term of office ends (see subsections (4) and (5)).
- (4) An appointing minister’s term of office ends— 20
- (a) when the minister ceases to hold the ministerial office in relation to which the special adviser was appointed to assist the minister, or
 - (b) if earlier, at the end of the day after the relevant election day.
- (5) The relevant election day is—
- (a) in relation to a person appointed by a Minister of the Crown, the day of the poll at the first parliamentary general election following the appointment; 25
 - (b) in relation to a person appointed by a Scottish Minister or a Welsh Minister, the day of the poll at the first ordinary or extraordinary general election for Scotland or Wales (as the case may be) following the appointment. 30

39 Annual reports about special advisers

- (1) The Minister for the Civil Service must—
- (a) prepare an annual report about special advisers appointed by Ministers of the Crown, and 35
 - (b) lay the report before Parliament.
- (2) The First Minister for Scotland must—
- (a) prepare an annual report about special advisers appointed by Scottish Ministers, and
 - (b) lay the report before the Scottish Parliament. 40
- (3) The First Minister for Wales must—

- (a) prepare an annual report about special advisers appointed by Welsh Ministers, and
 - (b) lay the report before the National Assembly for Wales.
- (4) A report under this section must contain information about the number and cost of the special advisers appointed by the ministers in question. 5

Additional functions of the Commission

40 Arrangements for Civil Service Commission to carry out additional functions

- (1) The Minister for the Civil Service and the Civil Service Commission may make arrangements for the Commission to carry out functions in relation to the civil service in addition to those conferred on it under the other provisions of this Part. 10
- (2) The Commission is to carry out those additional functions accordingly.

Definitions

41 List of definitions

- In this Part— 15
- “appointing authority” is defined in section 35(5);
 - “civil servant” is read as stated in section 25(3);
 - “civil service” is read as stated in section 25(3);
 - “civil service code” is defined in section 30(3);
 - “diplomatic service” means Her Majesty’s diplomatic service; 20
 - “diplomatic service code” is defined in section 31(2);
 - “minister” means a Minister of the Crown, a Scottish Minister or a Welsh Minister;
 - “recruitment principles” is defined in section 35(3);
 - “special adviser” is defined in section 38; 25
 - “special advisers code” is defined in section 33(2).

PART 6

FINAL PROVISIONS

42 Meaning of “Minister of the Crown”

- In this Act “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26). 30

43 Power to make consequential provision

- (1) A Minister of the Crown, or two or more Ministers of the Crown acting jointly, may by order make such provision as the Minister or Ministers consider appropriate in consequence of this Act. 35
- (2) An order under subsection (1) may —
- (a) amend, repeal or revoke any provision made by or under an Act;

-
- (b) include transitional, transitory or saving provision.
- (3) An order under subsection (1) is to be made by statutory instrument.
- (4) A statutory instrument containing an order under subsection (1) which amends or repeals a provision of an Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament. 5
- (5) A statutory instrument containing an order under subsection (1) which does not amend or repeal a provision of an Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- 44 Extent, commencement, transitional provision and short title 10**
- (1) An amendment or repeal contained in this Act has the same extent as the Act or relevant part of the Act to which the amendment or repeal relates (ignoring extent by virtue of an Order in Council).
- (2) This Act (apart from this Part) comes into force on such day as a Minister of the Crown, or two or more Ministers of the Crown acting jointly, may by order appoint; and different days may be appointed for different purposes. 15
- (3) A Minister of the Crown, or two or more Ministers of the Crown acting jointly, may by order make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.
- (4) An order under subsection (2) or (3) is to be made by statutory instrument. 20
- (5) This Act may be cited as the Constitutional Renewal Act 2008.

SCHEDULES

SCHEDULE 1

Section 7

ENDING OF CERTAIN PROSECUTION CONSENT FUNCTIONS OF ATTORNEY

PART 1

TRANSFER TO DIRECTOR OR (IN DIRECTOR’S ABSENCE) AUTHORISED PERSON 5

Public Bodies Corrupt Practices Act 1889 (c. 69)

- 1 (1) Amend section 4 as follows.
 - (2) In subsection (1) (prosecution for an offence under the Act not to be instituted except by, or with the consent of, Attorney), for “the Attorney General” substitute “the appropriate authority”. 10
 - (3) For subsection (2) (meaning of “Attorney General”), substitute—
 - “(2) In this section “the appropriate authority” means—
 - (a) in relation to the institution of proceedings in England and Wales—
 - (i) the Director of Public Prosecutions or, in the absence of that Director, a person authorised by that Director, or 15
 - (ii) the Director of the Serious Fraud Office or, in the absence of that Director, a person authorised by that Director; 20
 - (b) in relation to the institution of proceedings in Scotland, the Lord Advocate;
 - (c) in relation to the institution of proceedings in Northern Ireland, the Director of Public Prosecutions for Northern Ireland. 25
 - (2A) In relation to any time before the coming into force of section 41(2) of the Justice (Northern Ireland) Act 2002 the reference in subsection (2)(c) to the Director of Public Prosecutions for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland.”

Prevention of Corruption Act 1906 (c. 34) 30

- 2 (1) Amend section 2 as follows.
 - (2) In subsection (1) (prosecution for an offence under the Act not to be instituted in England except with the consent of the Attorney), for “, in England of the Attorney General” substitute “—
 - (a) in England and Wales, except with the consent of— 35

	(i) the Director of Public Prosecutions or, in the absence of that Director, a person authorised by that Director, or	
	(ii) the Director of the Serious Fraud Office or, in the absence of that Director, a person authorised by that Director;	5
	(b) in Northern Ireland, except with the consent of the Director of Public Prosecutions for Northern Ireland.”	
(3)	After subsection (1) insert—	
	“(1A) In relation to any time before the coming into force of section 41(2) of the Justice (Northern Ireland) Act 2002 the reference in subsection (1)(b) to the Director of Public Prosecutions for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland.”	10
<i>Official Secrets Act 1920 (c. 75)</i>		
3	(1) Amend section 8 as follows.	15
	(2) In subsection (2), for the proviso (no summary trial of offences under Official Secrets Acts 1911 and 1920 except with Attorney’s consent) substitute— “But no offence under the principal Act or this Act is to be tried summarily except with the consent of the appropriate authority.”	
(3)	After subsection (3) insert—	20
	“(3A) In subsection (2) “the appropriate authority” means—	
	(a) in relation to summary trial in England and Wales, the Director of Public Prosecutions or, in the absence of that Director, a person authorised by that Director;	
	(b) in relation to summary trial in any other place, the Attorney General (as defined as respects that place by section 12 of the principal Act).	25
	(3B) But if it appears to a person mentioned in subsection (3A)(a) that the offence in question has been committed for a purpose wholly or partly connected with the affairs of a country other than the United Kingdom, that person’s consent for the purposes of this section may be given only with the permission of the Attorney General.”	30
<i>Solicitors Act 1974 (c. 47)</i>		
4	In section 42(2) (proceedings for an offence under section 42 not to be instituted outside the normal time limit except by, or with the consent of, Attorney), for “the Attorney General” substitute “the Director of Public Prosecutions or, in the absence of that Director, a person authorised by that Director”.	35
<i>Aviation Security Act 1982 (c. 36)</i>		
5	In section 8(1)(a) (proceedings for offences under Part 1 of the Act, except offences under sections 4 and 7, not to be instituted in England and Wales except by, or with the consent of, Attorney), for “the Attorney General” substitute “the Director of Public Prosecutions or, in the absence of that Director, a person authorised by that Director”.	40

Income and Corporation Taxes Act 1988 (c. 1)

- 6 In section 766(4) (proceedings for an offence under section 766 not to be instituted except by, or with the consent of, Attorney), for the words from “instituted” to “or in Northern Ireland,” substitute “instituted –
- “(a) in England and Wales, except by or with the consent of the Director of Public Prosecutions or, in the absence of that Director, a person authorised by that Director, or
 - (b) in Northern Ireland.”

Criminal Justice Act 1988 (c. 33)

- 7 In section 135(a) (proceedings for an offence of torture under section 134 not to be instituted in England and Wales except by, or with the consent of, Attorney), for “the Attorney General” substitute “the Director of Public Prosecutions or, in the absence of that Director, a person authorised by that Director”.

War Crimes Act 1991 (c. 13)

- 8 In section 1, for subsection (3) (proceedings for an offence by virtue of section 1 of the Act not to be brought except by, or with the consent of, Attorney etc.) substitute –
- “(3) No proceedings shall by virtue of this section be brought –
 - (a) in England and Wales except by or with the consent of the Director of Public Prosecutions or, in the absence of that Director, a person authorised by that Director;
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (3A) The reference in subsection (3)(b) to the Director of Public Prosecutions for Northern Ireland is to be read, in relation to any time before the commencement of section 41(2) of the Justice (Northern Ireland) Act 2002, as a reference to Attorney General for Northern Ireland.”

Landmines Act 1998 (c. 33)

- 9 In section 20, for paragraph (a) (proceedings for a section 2 offence not to be instituted in England and Wales except by, or with the consent of, Attorney) substitute –
- “(a) in England and Wales, except by or with the consent of –
 - (i) the Director of Public Prosecutions or, in the absence of that Director, a person authorised by that Director;
 - (ii) the Director of Revenue and Customs Prosecutions or, in the absence of that Director, a person authorised by that Director;”

PART 2

TRANSFER TO DIRECTOR WITH RELEVANT DELEGATION PROVISION APPLYING

Explosive Substances Act 1883 (c. 3)

- 10 (1) In section 7(1) (no further proceeding to be taken against person charged before a justice without the consent of the Attorney), for “without the consent of the Attorney-General,” substitute “– 5
- “(a) in England and Wales, without the consent of the Director of Public Prosecutions;
- (b) in Northern Ireland, without the consent of the Director of Public Prosecutions for Northern Ireland.” 10
- (2) After section 7(1) insert–
- “(1A) The reference in subsection (1)(b) to the Director of Public Prosecutions for Northern Ireland is to be read, in relation to any time before the commencement of section 41(2) of the Justice (Northern Ireland) Act 2002, as a reference to Attorney General for Northern Ireland. 15
- (1B) Subsection (1)(b) is subject to section 11 of the Criminal Jurisdiction Act 1975.”

Law of Property Act 1925 (c. 20)

- 11 In section 183– 20
- (a) in subsection (4) (prosecution for an offence of fraudulent concealment of documents etc. under section 183 not to be commenced without the leave of the Attorney), and
- (b) in subsection (5) (notice of application for leave), 25
- for “Attorney-General” substitute “Director of Public Prosecutions”.

Auctions (Bidding Agreements) Act 1927 (c. 12)

- 12 In section 1(3) (prosecution for an offence under section 1 not to be instituted in England and Wales without the consent of the Attorney), for “Attorney-General” substitute “Director of Public Prosecutions”.

Public Health Act 1936 (c. 49)

- 13 In section 298 (proceedings for an offence created by or under the Act not to be taken by persons other than specified persons without written consent of Attorney), for “Attorney-General” substitute “Director of Public Prosecutions”.

Public Order Act 1936 (1 Edw. 8 & 1 Geo. 6 c. 6)

- 14 In section 1(2) (no further proceedings to be taken against person charged with an offence under section 1, except such as are authorised by section 6 of the Prosecution of Offences Act 1979, except with the consent of the Attorney; person charged entitled to be released if no consent obtained)– 35
- (a) for “Attorney-General (except such as are authorised by section 6 of the Prosecution of Offences Act 1979)” substitute “Director of Public 40

	Prosecutions (except such as are authorised by section 25 of the Prosecution of Offences Act 1985)”, and	
	(b) for “the Attorney-General” (in the second place where it occurs) substitute “that Director”.	
15	In section 2(2) (prosecution for an offence under section 2 not to be instituted without the consent of the Attorney), for “Attorney-General” substitute “Director of Public Prosecutions”.	5
<i>Cancer Act 1939 (c. 13)</i>		
16	In section 4(6) (prosecution for an offence under section 4 not to be instituted in England and Wales without the consent of, Attorney), for “Attorney-General” substitute “Director of Public Prosecutions”.	10
<i>Mines and Quarries Act 1954 (c. 70)</i>		
17	In section 164 (proceedings for an offence of contravening section 151(1) not to be instituted in England and Wales against specified persons except by an inspector or by, or with the consent of, the Minister or the Attorney), for “Attorney General” substitute “Director of Public Prosecutions”.	15
<i>Children and Young Persons (Harmful Publications) Act 1955 (c. 28)</i>		
18	In section 2(2) (prosecution for an offence under section 2 not to be instituted in England and Wales except by, or with the consent of, Attorney), for “Attorney General” substitute “Director of Public Prosecutions”.	20
<i>Theatres Act 1968 (c. 54)</i>		
19	In section 8 (proceedings for an offence under section 2 or 6 or similar offences at common law not to be instituted in England and Wales except by, or with the consent of, Attorney), for “Attorney-General” substitute “Director of Public Prosecutions”.	25
<i>Prevention of Oil Pollution Act 1971 (c. 60)</i>		
20	(1) In section 19(1) (proceedings for an offence under the Act other than section 3 not to be instituted in England and Wales except by, or with the consent of, Attorney or in specified circumstances by other specified persons), in paragraph (a), for “Attorney General” substitute “Director of Public Prosecutions”.	30
	(2) In section 30(4) (application of section 19(1) to proceedings in Northern Ireland), for “for references to the Attorney General” substitute “for references to the Director of Public Prosecutions”.	
<i>Criminal Law Act 1977 (c. 45)</i>		
21	In section 4, omit subsection (2) (under which, in certain circumstances, proceedings for conspiracy which would otherwise require the consent of the DPP require the consent of the Attorney).	35
<i>Highways Act 1980 (c. 66)</i>		
22	In section 312—	40

	(a) in subsection (1) (proceedings for an offence under specified provisions of the Act or under certain byelaws not to be instituted by persons other than specified persons without written consent of Attorney), and	
	(b) in subsection (3) (ability of constable to take certain proceedings without such consent),	5
	for “Attorney General” substitute “Director of Public Prosecutions”.	
<i>Public Health (Control of Disease) Act 1984 (c. 22)</i>		
23	In section 64 –	
	(a) in subsection (1) (proceedings for an offence created by or under the Act not to be instituted by persons other than specified persons without written consent of Attorney), and	10
	(b) in subsection (2) (ability of constable to take certain proceedings without such consent),	
	for “Attorney General” substitute “Director of Public Prosecutions”.	15
<i>Building Act 1984 (c. 55)</i>		
24	In section 113 (proceedings for an offence created by or under the Act not to be instituted by persons other than specified persons without written consent of Attorney), for “Attorney General” substitute “Director of Public Prosecutions”.	20
<i>Housing Act 1985 (c. 68)</i>		
25	In section 339(2)(b) (prosecution against local housing authority for an offence under Part 10 of the Act to be brought only with the consent of the Attorney), for “Attorney General” substitute “Director of Public Prosecutions”.	25
<i>Public Order Act 1986 (c. 64)</i>		
26	In section 27(1) (proceedings for an offence under Part 3 not to be instituted except by, or with the consent of, Attorney), for “Attorney General” substitute “Director of Public Prosecutions”.	
27	In section 29L(1) (proceedings for an offence under Part 3A not to be instituted except by, or with the consent of, Attorney), for “Attorney General” substitute “Director of Public Prosecutions”.	30
<i>Merchant Shipping Act 1995 (c. 21)</i>		
28	(1) In each of the provisions listed in sub-paragraph (2), for “Attorney General” substitute “Director of Public Prosecutions”.	35
	(2) The provisions are –	
	(a) section 15(6)(a) (proceedings for an offence under section 15 not to be instituted in England and Wales except by, or with the consent of, Attorney or Secretary of State);	
	(b) section 143(1)(a) (proceedings for an offence under Chapter 2 of Part 6 not to be instituted in England and Wales except by, or with the consent of, Attorney or, in certain cases, by other persons);	40

- (c) in Schedule 3A, paragraph 9(1)(a) (proceedings for an offence under paragraph 6 or 7 not to be instituted in England and Wales except by, or with the consent of, Attorney).

Shipping and Trading Interests (Protection) Act 1995 (c. 22)

- 29 In section 7(2)(a) (proceedings for an offence under section 6 not to be instituted in England and Wales except by, or with the consent of, Attorney or Secretary of State), for “Attorney General” substitute “Director of Public Prosecutions”. 5

Law Reform (Year and a Day Rule) Act 1996 (c. 19)

- 30 (1) Amend section 2 as follows. 10
 - (2) In subsection (1) (proceedings for certain fatal offences not to be instituted except by, or with the consent of, Attorney), for “Attorney General” substitute “Director of Public Prosecutions”.
 - (3) Omit subsection (4) (provisions requiring consent of Director of Public Prosecutions disapplied). 15
 - (4) For subsection (5) (application of section 2 to Northern Ireland) substitute—
 - “(5) In the application of this section to Northern Ireland the reference in subsection (1) to the Director of Public Prosecutions is to the Director of Public Prosecutions for Northern Ireland.
 - (6) But, in relation to any time before the commencement of section 41(2) of the Justice (Northern Ireland) Act 2002 (transfer of certain functions to Director of Public Prosecutions for Northern Ireland)—
 - (a) the reference in subsection (1) to the Director of Public Prosecutions is to be read as a reference to the Attorney General for Northern Ireland, and 25
 - (b) no provision that proceedings may be instituted only by or with the consent of the Director of Public Prosecutions for Northern Ireland shall apply to proceedings to which this section applies.”

Care Standards Act 2000 (c. 14) 30

- 31 In section 29(1) (proceedings for an offence under Part 2 or regulations under Part 2 not to be instituted by persons other than specified persons without written consent of Attorney), for “Attorney General” substitute “Director of Public Prosecutions”.

Vehicles (Crime) Act 2001 (c. 3) 35

- 32 (1) In—
 - (a) section 14(b) (proceedings for an offence under Part 1 not to be instituted except by a local authority or constable or with consent of Attorney), and
 - (b) section 30(1)(b) (proceedings for an offence under Part 2 not to be instituted except by the Secretary of State or a local authority or constable or with consent of Attorney), 40for “Attorney General” substitute “Director of Public Prosecutions”.

- (2) In relation to a time before the coming into force of section 46(8) of the Road Safety Act 2006 (c. 49), the reference in sub-paragraph (1)(b) to section 30(1)(b) is to be read as a reference to section 30(b).

Adoption and Children Act 2002 (c. 38)

- 33 In section 99 (proceedings for an offence by virtue of section 9 or 59 not to be instituted by persons other than specified persons without written consent of Attorney), for “Attorney General” substitute “Director of Public Prosecutions”. 5

Serious Organised Crime and Police Act 2005 (c. 15)

- 34 In section 128(6)(a) (proceedings for an offence under section 128 of trespassing on nuclear and other sites not to be instituted in England and Wales except by, or with the consent of, Attorney), for “Attorney General” substitute “Director of Public Prosecutions”. 10

National Health Service Act 2006 (c. 41)

- 35 In section 269(9) (proceedings for an offence under section 269(8) not to be instituted by persons other than specified persons without written consent of Attorney), for “Attorney-General’s written consent” substitute “written consent of the Director of Public Prosecutions”. 15

National Health Service (Wales) Act 2006 (c. 42)

- 36 In section 200(9) (proceedings for an offence under section 269(8) not to be instituted by persons other than specified persons without written consent of Attorney), for “Attorney-General’s written consent” substitute “written consent of the Director of Public Prosecutions”. 20

Armed Forces Act 2006 (c. 52)

- 37 In— 25
- (a) section 61(2) (proceedings for an offence may be instituted after time limit with consent of Attorney), and
 - (b) section 68(4) (application of section 67 in case where person may be charged only with consent of Attorney),
- for “Attorney General” substitute “Director of Service Prosecutions”. 30
- 38 In section 326 (exclusion of enactments requiring consent of Attorney General or DPP), omit “Subject to section 61(2)”. 30

PART 3

ABOLITION OF FUNCTION

Marine Insurance (Gambling Policies) Act 1909 (c. 12) 35

- 39 In section 1(3) (proceedings for an offence of gambling on loss by maritime perils not to be instituted except by, or with the consent of, Attorney), omit “in England of the Attorney-General”. 35

Agricultural Credits Act 1928 (c. 43)

- 40 Omit section 10(3) (prosecution for offence under section 10 of publishing details of agricultural charges not to be commenced without the consent of Attorney).

Agriculture and Horticulture Act 1964 (c. 28)

5

- 41 In section 20(3) (proceedings for an offence under Part 3 not to be instituted except by, or with the consent of, Minister or with the consent of Attorney), omit “or with the consent of the Attorney General”.

Water Industry Act 1991 (c. 56)

- 42 Omit section 211 (proceedings for an offence created by or under any of the relevant sewerage provisions not to be instituted by persons other than specified persons without written consent of Attorney).

10

SCHEDULE 2

Section 18

CONSEQUENTIAL AMENDMENTS

PART 1

15

GROUND RULES FOR ATTORNEY’S SUPERINTENDENCE OF DIRECTORS

Prosecution of Offences Act 1985 (c. 23)

- 1 After section 3(1) (DPP’s functions to be discharged under superintendence of Attorney) insert –
“(1A) Subsection (1) is subject to sections 2 and 3 of the Constitutional Renewal Act 2008 (ground rules for superintendence).”

20

Criminal Justice Act 1987 (c. 38)

- 2 After section 1(2) (functions of Director of Serious Fraud Office to be discharged under superintendence of Attorney) insert –
“(2A) Subsection (2) is subject to sections 2 and 3 of the Constitutional Renewal Act 2008 (ground rules for superintendence).”

25

Commissioners for Revenue and Customs Act 2005 (c. 11)

- 3 After section 36(1) (functions of Director of Revenue and Customs Prosecutions to be discharged under superintendence of Attorney) insert –
“(1A) Subsection (1) is subject to sections 2 and 3 of the Constitutional Renewal Act 2008 (ground rules for superintendence).”

30

Serious Crime Act 2007 (c. 27)

- 4 (1) In Schedule 2, re-number the provisions listed in sub-paragraph (2) as sub-

paragraph (1) of the paragraph and after sub-paragraph (1) insert –

“(2) Sub-paragraph (1) is subject to sections 2 and 3 of the Constitutional Renewal Act 2008 (ground rules for superintendence).”

- (2) The provisions are – 5
- paragraph 3 (DPP’s functions in relation to serious crime prevention orders to be discharged under superintendence of Attorney);
 - paragraph 8 (functions of Director of Revenue and Customs Prosecutions in relation to serious crime prevention orders to be discharged under superintendence of Attorney); 10
 - paragraph 14 (functions of Director of Serious Fraud Office in relation to serious crime prevention orders to be discharged under superintendence of Attorney).

PART 2

NEW PROVISIONS ABOUT TENURE OF OFFICE OF DIRECTORS 15

Prosecution of Offences Act 1985 (c. 23)

- 5 Omit sections 2 and 15(7) (appointment of DPP etc.).

Criminal Justice Act 1987 (c. 38)

- 6 In section 1(2) (appointment and superintendence of Director of Serious Fraud Office), omit “The Attorney General shall appoint a person to be” and “, and he”. 20
- 7 In Schedule 1, omit paragraph 1 (remuneration of Director).

Commissioners for Revenue and Customs Act 2005 (c. 11)

- 8 In section 34 (Revenue and Customs Prosecution Office) – 25
- (a) omit subsection (1), and
 - (b) in subsection (2), for “The Director” substitute “The Director of Revenue and Customs Prosecutions”.
- 9 In Schedule 3 omit – 30
- (a) paragraphs 1 to 3 (qualification and remuneration of Director etc.), and
 - (b) in paragraph 8 (Director and members of office to be civil servants) “the Director or”.

PART 3

ATTENUATION OF ATTORNEY’S PROSECUTION CONSENT FUNCTIONS

Prosecution of Offences Act 1985 35

- 10 (1) In section 1(7) (prosecution consents etc.) –
- (a) for “enactment (whenever passed)” substitute “enactment or provision of subordinate legislation (whenever passed or made)”, and

(b) after “that enactment” insert “or provision”.

(2) After section 1(7) insert –

“(8) “Subordinate legislation” has the same meaning as it has in the Interpretation Act 1978.”

11 In section 25 (consents to prosecutions etc.), in subsection (1)(a) and (b), for “or the Director” substitute “the Director or, in the absence of that Director, a person authorised by that Director”. 5

Criminal Justice Act 1987 (c. 38)

12 In section 1 (the Serious Fraud Office), after subsection (8) insert –

“(8A) Where any enactment or provision of subordinate legislation (whenever passed or made) – 10

(a) prevents any step from being taken without the consent of the Director or without his consent or the consent of another, or

(b) requires any step to be taken by or in relation to the Director, any consent given by or, as the case may be, step taken by or in relation to, a member so designated is to be treated, for the purposes of that enactment or provision, as given by or, as the case may be, taken by or in relation to the Director. 15

(8B) “Subordinate legislation” has the same meaning as it has in the Interpretation Act 1978.” 20

Commissioners for Revenue and Customs Act 2005 (c. 11)

13 In section 35 (prosecutors), after subsection (3) insert –

“(4) Where any enactment or provision of subordinate legislation (whenever passed or made) – 25

(a) prevents any step from being taken without the consent of the Director or without his consent or the consent of another, or

(b) requires any step to be taken by or in relation to the Director, any consent given by or, as the case may be, step taken by or in relation to, a Prosecutor is to be treated, for the purposes of that enactment or provision, as given by or, as the case may be, taken by or in relation to the Director. 30

(5) “Subordinate legislation” has the same meaning as it has in the Interpretation Act 1978.” 35

Armed Forces Act 2006 (c. 52)

14 In section 365 (prosecuting officers), after subsection (4) insert –

“(4A) Where any enactment or provision of subordinate legislation (whenever passed or made) –

(a) prevents any step from being taken without the consent of the Director or without his consent or the consent of another, or 40

(b) requires any step to be taken by or in relation to the Director, any consent given by or, as the case may be, step taken by or in relation to, a prosecuting officer is to be treated, for the purposes of that enactment or provision, as given by or, as the case may be, taken by or in relation to the Director. 5

(4B) “Subordinate legislation” has the same meaning as it has in the Interpretation Act 1978.”

PART 4

ABOLITION OF NOLLE PROSEQUI

Contempt of Court Act 1981 (c. 49) 10

15 In Schedule 1 (time when proceedings are active for purposes of section 2), in paragraph 7(a), for “or a nolle prosequi entered” substitute “or if, in Northern Ireland, a nolle prosequi is entered”.

SCHEDULE 3

Section 19

JUDICIAL APPOINTMENTS ETC

15

PART 1

SELECTION OF SUPREME COURT JUDGES

1 Part 3 of the Constitutional Reform Act 2005 (c. 4) (which includes the selection process for judges of the Supreme Court) is amended as follows.

2 (1) Amend section 26 as follows. 20

(2) In subsection (2) for “the Prime Minister” substitute “the Lord Chancellor”.

(3) Omit subsection (3).

(4) In subsection (4) for “his name is notified to the Prime Minister for an” substitute “the person is recommended for”.

3 After section 27(10) insert – 25

“(11) Before giving guidance for the purposes of subsection (9) the Lord Chancellor must consult the persons mentioned in subsection (2)(c) to (e).

(12) The Lord Chancellor must also consult –

(a) the President of the Court, or

(b) if there is no President, the Deputy President, or

(c) if there is no President and no Deputy President, the senior ordinary judge. 30

(13) The Lord Chancellor must lay before Parliament any guidance given.” 35

4 (1) Amend section 29 as follows.

- (2) In subsections (2)(a), (3)(a) and (4) for “notify” substitute “recommend”.
- (3) In subsection (4) for “notification” substitute “recommendation”.
- (4) In subsection (5) for “notify that person’s name to the Prime Minister” substitute “recommend that person for appointment”.
- (5) In subsection (6) for “notifying a selection” to the end substitute “recommending a selection are references to the Lord Chancellor recommending the selected person for appointment”. 5
- 5 In section 60(5) for “notifying” substitute “recommending”.
- 6 In paragraphs 10, 13(2) and 14(2) of Schedule 8 for “notifies” substitute “recommends”. 10

PART 2

BASIC PROVISIONS ABOUT JUDICIAL APPOINTMENTS ETC UNDER CHAPTER 2 OF PART 4 OF THE CONSTITUTIONAL REFORM ACT 2005

- 7 Chapter 2 of Part 4 of the Constitutional Reform Act 2005 (c. 4) (which contains selection processes for judges etc) is amended as follows. 15
- 8 (1) Amend section 63 as follows.
- (2) In subsection (1) for “and (3)” substitute “to (4)”.
- (3) After subsection (3) insert –
- “(4) The selecting body must deal with any requirements specified in the request for the selection under section 63A(1) in accordance with any provision included in that request under section 63A(3) to (5). 20
- (5) In carrying out their functions under this Chapter (other than section 98), the persons listed in subsection (6) must have regard to the following principles –
- (a) that selection processes need to be fair, transparent, efficient, flexible, proportionate and effective; 25
- (b) that, in making a decision as to whether a person is to be selected, the selecting body needs to act independently.
- (6) The persons are –
- (a) the Commission; 30
- (b) selection panels;
- (c) the Lord Chancellor;
- (d) the Lord Chief Justice;
- (e) the Lord President of the Court of Session;
- (f) the Lord Chief Justice of Northern Ireland.” 35
- (4) For the heading of section 63 substitute “Basic provision about selection”.
- 9 After section 63 insert –
- “63A Particular business requirements**
- (1) For the purposes of a request for a selection under this Chapter or paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007, the Lord Chancellor may – 40

-
- (a) determine any particular requirements of the business of the court, other body or office to which the selection relates, and
- (b) specify those requirements in the request.
- (2) These may include (for example) –
- (a) requirements relating to the qualifications, experience or expertise of the person selected or to the office currently held by that person; 5
- (b) requirements relating to the location where the person selected is to carry out the functions of the office for which the person is selected; 10
- (c) requirements relating to how soon a selection needs to be made.
- (3) In relation to a specified requirement, the Lord Chancellor may include in the request provision to the effect that –
- (a) a person must not be selected unless the selecting body is satisfied that the person meets the requirement (but see subsection (4)), 15
- (b) the selecting body must have regard to the requirement, or
- (c) in the case of a requirement within subsection (2)(c), the selecting body must seek to meet the requirement. 20
- (4) In relation to provision under subsection (3)(a), the Lord Chancellor may also include provision permitting the selecting body to dispense with the requirement if the body is satisfied –
- (a) that conditions specified in the provision are met, and
- (b) that, in the circumstances, it is appropriate for the requirement to be dispensed with. 25
- (5) Provision under subsection (4) may require the selecting body to do any of the following before dispensing with the requirement –
- (a) notify the Lord Chancellor of its intention to dispense with the requirement, setting out its reasons; 30
- (b) obtain the Lord Chancellor’s consent to dispense with the requirement.”
- 10 In section 64(1) for “The Commission” to “this Part,” substitute “In carrying out their functions under this Chapter (other than section 98), the persons listed in section 63(6)”. 35
- 11 After section 95(9) insert –
- “(10) The power under this section to modify requests includes power –
- (a) to modify or remove a requirement specified under section 63A(1) or to specify a new requirement;
- (b) to modify or remove provision included under section 63A(3) to (5) or to include new provision.” 40
- 12 After section 98(7) insert –
- “(8) Sections 63(5) and 64 apply for the purposes of the Commission’s functions under this section as they apply for the purposes of the Commission’s other functions under this Chapter.” 45

PART 3

PANEL TO REPRESENT POTENTIAL CANDIDATES FOR APPOINTMENT ETC

- 13 Part 4 of the Constitutional Reform Act 2005 (c. 4) (which includes selection processes for judges etc) is amended as follows.
- 14 After section 64 insert – 5
- “64A Establishment of panel to represent potential candidates etc**
- (1) The Commission must establish and maintain a panel of persons under this section.
- (2) The members of the panel are to be persons representing bodies which, in the opinion of the Commission, have an interest in the Commission’s functions under this Chapter. 10
- (3) They may not include anyone who is a member of the Commission or of the Commission’s staff.
- (4) The panel is to regulate its own procedures.
- (5) The Commission must – 15
- (a) consider any representations made to it by the panel in relation to the Commission’s functions under this Chapter, and
- (b) provide a written response within a reasonable time.
- (6) The panel – 20
- (a) must, in carrying out its functions, have regard to the provisions contained in sections 63 and 64, and
- (b) when making a representation to the Commission, must indicate how the representation relates to those provisions (if at all).” 25
- 15 In section 66(1)(a), (4) and (6)(b) after “Justice” insert “and the panel established under section 64A”.
- 16 After paragraph 32(1) of Schedule 12 insert –
- “(1A) The Commission –
- (a) must show the report in draft to the panel established under section 64A, 30
- (b) must specify to the panel a reasonable period during which it may make representations to the Commission about the draft, and
- (c) before providing the report to the Lord Chancellor, must consider any such representations made by the panel during that period.” 35

PART 4

POWER TO AMEND SCHEDULE 14 TO THE CONSTITUTIONAL REFORM ACT 2005

- 17 The Constitutional Reform Act 2005 is amended as follows. 40

- 18 (1) Amend section 85 (which is about the selection of puisne judges and other office holders) as follows.
- (2) After subsection (3) insert –
- “(3A) The Lord Chancellor may, after consulting the Lord Chief Justice, by order amend Schedule 14 so as to remove a reference to an office or an enactment.” 5
- (3) In subsection (4) after “(3)” insert “or (3A)”.
- 19 After section 144(5)(a) (which is about orders and regulations) insert –
- “(aa) an order under section 85(3A);”.

PART 5 10

REMOVAL OF SOME OF THE LORD CHANCELLOR’S FUNCTIONS IN RELATION TO SELECTIONS UNDER CHAPTER 2 OF PART 4 OF THE CONSTITUTIONAL REFORM ACT 2005 ETC

- 20 Chapter 2 of Part 4 of the Constitutional Reform Act 2005 (c. 4) (which contains selection processes for judges etc) is amended as follows.
- 21 (1) Amend section 85 as follows. 15
- (2) In subsection (1) for “93” substitute “89A”.
- (3) After subsection (2) insert –
- “(2ZA) Sections 90 to 92 contain further provision in relation to recommendations within subsection (1)(a).”
- 22 (1) Amend section 87 as follows. 20
- (2) After subsection (3) insert –
- “(3A) But a request may not relate to a recommendation within section 85(1)(a) as well as a recommendation or appointment within section 85(1)(b) or (c).”
- (3) In subsection (4) – 25
- (a) for “93” substitute “92”, and
- (b) after “this section” insert “in relation to a recommendation within section 85(1)(a)”.
- (4) After subsection (4) insert –
- “(4A) Sections 88 to 89A apply where the Lord Chancellor makes a request under this section in relation to a recommendation or appointment within section 85(1)(b) or (c).” 30
- (5) In subsection (5) for “Those sections” substitute “The provisions applying as mentioned in subsections (4) and (4A)”.
- 23 (1) Amend section 88 as follows. 35
- (2) In subsection (2) for “93” substitute “89A”.
- (3) In subsection (5) for “92 or 93” substitute “89A or 92”.

- 24 After section 89 insert—
- “89A Reconsideration of decision not to select**
- (1) The Lord Chancellor may require the Commission to reconsider a decision that the selection process has not identified candidates of sufficient merit for it to make a selection. 5
- (2) The Commission must inform the Lord Chancellor of any person selected on reconsideration under this section.
- (3) In the case of a person selected for a recommendation within section 85(1)(a), sections 90 to 92 apply as if the Commission had selected the person instead of making the decision reconsidered.” 10
- 25 (1) Amend section 90 as follows.
- (2) Before subsection (1) insert—
- “(A1) This section applies to the selection of a person for a recommendation within section 85(1)(a).”
- (3) Omit subsection (6). 15
- (4) In the heading of section 90 after “options” insert “in relation to selections for puisne judges”.
- 26 In section 91(1) and (2)(a) for “concerned” substitute “of puisne judge of the High Court”.
- 27 In section 92(4)(a) and (b) for “93” substitute “89A”. 20
- 28 Omit section 93.
- 29 Omit section 94A(3).
- 30 (1) Amend section 95 as follows.
- (2) After subsection (2) insert—
- “(2A) The Lord Chancellor may act under subsection (2) in relation to a request even though a selection has been made pursuant to the request. 25
- (2B) In deciding whether to act under subsection (2)(a) or (b) in relation to a request, the Lord Chancellor must not have any regard to the identity of any person selected pursuant to the request or being considered for selection pursuant to the request. 30
- (2C) Subsections (3) and (4) apply to requests other than ones in relation to a recommendation or appointment within section 85(1)(b) or (c).”
- (3) After subsection (4) insert—
- “(4A) Subsection (4B) applies to a request in relation to a recommendation or appointment within section 85(1)(b) or (c). 35
- (4B) If the request is withdrawn in part or modified, the Commission may, if it thinks it appropriate because of the withdrawal or modification, change any selection already made pursuant to the request.” 40

- 31 (1) Amend section 96 as follows.
- (2) In subsection (1) for “the Lord Chancellor” to the end substitute—
- “(a) the Lord Chancellor accepts a selection for a recommendation within section 67(1), 76(1) or 85(1)(a) above or paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007, or 5
- (b) the Commission makes a selection for a recommendation or appointment within section 85(1)(b) or (c).”
- (3) In subsection (2) after “Subject to” insert “section 95 and”.
- (4) In subsection (5)(a) omit “accepted”. 10
- 32 After section 96 insert—
- “96A Delegation of functions by Lord Chief Justice**
- The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4)) to carry out any of the Lord Chief Justice’s functions under any of the following— 15
- (a) section 85(3A);
- (b) section 87(2);
- (c) section 88(3)(a);
- (d) section 94(3)(a);
- (e) section 94A(1)(b).” 20

PART 6

MEDICAL ASSESSMENTS

- 33 Chapter 2 of Part 4 of the Constitutional Reform Act 2005 (c. 4) (which contains selection processes for judges etc) is amended as follows.
- 34 (1) Amend section 96 as follows. 25
- (2) In subsection (2)(b) after “selected” insert “(“the candidate”)”.
- (3) After subsection (2) insert—
- “(2A) Before making the appointment or recommendation the Lord Chancellor may act under subsection (2B) or (3) (or both).
- (2B) The Lord Chancellor may request the candidate— 30
- (a) to provide the Lord Chancellor with the information specified in the request relating to the candidate’s physical or mental condition, and
- (b) to do so within the period specified in the request.”
- (4) For subsection (3) substitute— 35
- “(3) The Lord Chancellor may—
- (a) request the candidate to undergo, in accordance with arrangements made by the Lord Chancellor, any assessment of the candidate’s physical or mental condition that the Lord Chancellor considers appropriate, and 40
- (b) arrange for a report of the assessment to be provided to the Lord Chancellor.”

- (5) In subsection (4) –
- (a) in paragraph (a) for “that he is not satisfied” to the end substitute “under subsection (4A)”, and
 - (b) in paragraphs (b) and (c) for “person selected” substitute “candidate”. 5
- (6) After subsection (4) insert –
- “(4A) The Lord Chancellor may notify the Commission under this subsection if –
- (a) the candidate does not comply with a request under subsection (2B) or (3)(a), or 10
 - (b) the Lord Chancellor is not satisfied, on the basis of a report under subsection (3)(b), that it would be appropriate to appoint or recommend the candidate.
- (4B) Before notifying the Commission under subsection (4A) the Lord Chancellor must consult the Lord Chief Justice.” 15
- (7) In subsection (5) –
- (a) in paragraph (a) for “previous” substitute “other”, and
 - (b) after paragraph (c) insert –
 - “(d) the candidate must not be selected again pursuant to that request for the same appointment or recommendation.” 20
- 35 In section 97(1)(e) for “96(4)(a)” substitute “96(4B)”.

PART 7

POWERS OF LORD CHANCELLOR IN RELATION TO INFORMATION

- 36 Chapter 2 of Part 4 of the Constitutional Reform Act 2005 (c. 4) (which contains selection processes for judges etc) is amended as follows. 25
- 37 Omit sections 72(2)(b) and (4), 75D(2)(b) and (4), 81(2)(b) and (4) and 89(2)(f) and (4).
- 38 After section 97 insert –
- “97A Provision of information” 30**
- (1) The Lord Chancellor may, by notice, require the Commission or a selection panel –
 - (a) to provide the Lord Chancellor with any information, or information of a description, specified in the notice, or
 - (b) to produce to the Lord Chancellor documents, or documents of a description, specified in the notice. 35
 - (2) A notice under subsection (1) –
 - (a) may specify the manner and form in which any information is to be provided;
 - (b) must specify the period within which any information is to be provided or document is to be produced. 40
 - (3) The Lord Chancellor may take copies of a document produced pursuant to a notice under subsection (1).

- (4) The Lord Chancellor’s powers under this section may be exercised only for purposes that are, in opinion of the Lord Chancellor, connected with the Lord Chancellor’s functions under this Chapter.”

PART 8

DEPLOYMENT, AUTHORISATIONS, NOMINATIONS ETC

5

Children and Young Persons Act 1933 (c. 12)

- 39 In section 45 (youth courts) in subsection (3), omit “, with the concurrence of the Lord Chancellor,”.

Agriculture Act 1947 (c. 48)

- 40 In Schedule 9 (constitution of Agricultural Land Tribunals) in paragraph 16A(1), omit “, after consulting the Lord Chancellor”.

10

Lands Tribunal Act 1949 (c. 42)

- 41 In section 2 (members, officers and expenses of Lands Tribunal) in subsection (3), omit “, after consulting the Lord Chancellor,”.

Magistrates’ Courts Act 1980 (c. 43)

15

- 42 In section 67 (family proceedings courts) in subsection (4), for “after consulting” substitute “with the concurrence of”.

Supreme Court Act 1981 (c. 54)

- 43 In section 3 (divisions of Court of Appeal) in subsection (3), omit “, after consulting the Lord Chancellor”.

20

- 44 In section 6 (the Patents, Admiralty and Commercial Courts) in subsection (2), omit “, after consulting the Lord Chancellor,”.

- 45 (1) Amend section 9 (assistance for transaction of judicial business of Supreme Court) as follows.

- (2) In subsection (2A) for “subsections (2B) to (2D)” substitute “subsection (2D)”.

25

- (3) Omit subsections (2B) and (2C).

- (4) For subsection (2D) substitute –

“(2D) If the appropriate authority is considering making a request to a Circuit judge or Recorder to act as a judge of the High Court, any process for determining the person to whom the request is to be made must be approved by the Judicial Appointments Commission.”

30

- (5) In subsection (4), omit (in both places) “, after consulting the Lord Chancellor,”.

35

- 46 In section 68 (exercise of jurisdiction of High Court otherwise than by judges of that court) in subsection (1)(a), omit “, after consulting the Lord Chancellor,”.

- 47 In section 100 (district judges) in subsection (1), omit “, after consulting the Lord Chancellor”.
- 48 In section 102 (deputy district judges) in subsection (4A), omit “, after consulting the Lord Chancellor”.
- County Courts Act 1984 (c. 28)* 5
- 49 (1) Amend section 5 (judges of county courts) as follows.
- (2) In subsections (1) and (4)(a), omit “, after consulting the Lord Chancellor,”.
- (3) In subsections (2) and (3), omit “after consulting the Lord Chancellor”.
- 50 In section 6 (district judges) in subsection (2), omit “, after consulting the Lord Chancellor”.
- 51 In section 8 (deputy district judges) in subsection (1B), omit “, after consulting the Lord Chancellor”.
- Matrimonial and Family Proceedings Act 1984 (c. 42)*
- 52 In section 36 (assignment of circuit judges to matrimonial proceedings) in subsection (1), omit “, after consulting the Lord Chancellor,”.
- 53 In section 36D (assignment of circuit judges to civil partnership proceedings) in subsection (1), omit “, after consulting the Lord Chancellor,”.
- Transport Act 1985 (c. 67)*
- 54 In Schedule 4 (constitution, powers and proceedings of Transport Tribunal) omit paragraph 10(1A)(a).
- Courts and Legal Services Act 1990 (c. 41)*
- 55 (1) Section 72 (Presiding Judges) is amended as follows.
- (2) In subsection (1), omit “at least two”.
- (3) After subsection (1) insert—
- “(1A) The number of Presiding Judges for a Circuit—
- (a) is to be determined by the Lord Chief Justice; but
- (b) must be at least two.
- (1B) The agreement of the Lord Chancellor is required for a determination under subsection (1A) that would increase the number of Presiding Judges for a Circuit.”
- (4) In subsection (3), omit “with the agreement of the Lord Chancellor”.
- 56 (1) The Lord Chief Justice is to be taken to have made a determination under section 72(1A) in relation to each of the Circuits on the coming into force of paragraph 55.
- (2) The determination is that the number of Presiding Judges for a Circuit is—
- (a) two, or
- (b) if greater, the number of persons holding office as Presiding Judge for that Circuit on the coming into force of paragraph 55.

Judicial Pensions and Retirement Act 1993 (c. 8)

- 57 In section 26 (retirement date for holders of certain judicial offices etc) omit subsection (13).

Employment Tribunals Act 1996 (c. 17)

- 58 In section 22 (membership of Appeal Tribunal) in subsection (1)(a), omit “, after consulting the Lord Chancellor,”. 5
- 59 In section 23 (temporary membership) omit subsection (6).
- 60 (1) Amend section 24 (temporary additional judicial membership) as follows.
- (2) In subsection (1A), omit “, after consulting the Lord Chancellor,”.
- (3) In subsection (1B), omit “, after consulting the Lord Chancellor”. 10

Access to Justice Act 1999 (c. 22)

- 61 In section 69 (vice-president of Queen’s Bench Division) in subsection (1), omit “, after consulting the Lord Chancellor,”.

Local Government Act 2000 (c. 22)

- 62 In section 76 (case tribunals and interim case tribunals) omit subsection (9A). 15

Courts Act 2003 (c. 39)

- 63 (1) Amend section 10 (appointment of lay justices etc) as follows.
- (2) In subsection (3), for “Lord Chief Justice” substitute “the Lord Chief Justice after consulting the Lord Chancellor”.
- (3) Omit subsection (6). 20
- 64 In section 13 (entry of names in supplemental list) for subsection (3) substitute –
- “(3) Where –
- (a) proceedings are in progress on the day on which the lay justice reaches 70, and 25
- (b) the lay justice is exercising functions in those proceedings as a justice of the peace,
- the lay justice is not to be entered in the supplemental list until the proceedings have ended.”
- 65 In section 17 (chairman and deputy chairmen: selection) for subsection (3) substitute – 30
- “(3) Where –
- (a) proceedings are in progress on the day on which a lay justice would (apart from this subsection) cease to hold office as chairman or deputy chairman, and 35
- (b) the lay justice is exercising functions in those proceedings as a justice of the peace,

the lay justice is to continue to hold office as chairman or deputy chairman for the purposes of those proceedings until the proceedings have ended.”

- 66 In section 62 (Head and Deputy Head of Civil Justice) in subsection (4) – 5
- (a) omit “these conditions are met”;
 - (b) omit paragraph (a).

Constitutional Reform Act 2005 (c. 4)

- 67 In section 8 (Head and Deputy Head of Criminal Justice) in subsection (4) – 10
- (a) omit “these conditions are met”;
 - (b) omit paragraph (a).

- 68 In section 9 (Head and Deputy Head of Family Justice) in subsection (3) –
- (a) omit “these conditions are met”;
 - (b) omit paragraph (a).

- 69 In Schedule 7 (protected functions), in Part A of paragraph 4, in the entry for the Courts Act 2003, insert at the appropriate place “Section 10(3)”. 15

Power to abolish or modify certain concurrence or consultation functions of Lord Chancellor

- 70 (1) This paragraph applies to any statutory provision that confers on the Lord Chief Justice of England and Wales a function which – 20
- (a) may not be exercised without the concurrence or agreement of the Lord Chancellor (a “concurrence requirement”), or
 - (b) may not be exercised without the Lord Chief Justice having consulted the Lord Chancellor (a “consultation requirement”).
- (2) The Lord Chancellor may, with the concurrence of the Lord Chief Justice, by order make provision so as – 25
- (a) to remove the concurrence requirement or consultation requirement, or
 - (b) in the case of a provision to which sub-paragraph (1)(a) applies, to change the concurrence requirement into a consultation requirement.
- (3) An order under this paragraph – 30
- (a) may include consequential, transitional or saving provision;
 - (b) is to be made by statutory instrument.
- (4) A statutory instrument containing an order under this paragraph which amends or repeals a provision of an Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament. 35
- (5) A statutory instrument containing an order under this paragraph which does not amend or repeal a provision of an Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) “Statutory provision” means a provision contained in – 40
- (a) an Act (other than this Act) which is passed on or before the last day of the session in which this Act is passed, or
 - (b) an instrument under an Act which is made on or before that day.

- (7) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to carry out the Lord Chief Justice’s function under sub-paragraph (2).

SCHEDULE 4

Section 26

CIVIL SERVICE COMMISSION

5

PART 1

THE COMMISSIONERS

Membership of the Commission

- 1 (1) The Civil Service Commission (“the Commission”) is to consist of at least seven members. 10
- (2) One of those is to be the First Civil Service Commissioner appointed under paragraph 2.
- (3) The others are to be Civil Service Commissioners appointed under paragraph 3.

Appointment of First Civil Service Commissioner

15

- 2 (1) This paragraph is about the appointment of the First Civil Service Commissioner (“First Commissioner”).
- (2) The First Commissioner is appointed by Her Majesty on the recommendation of the Minister for the Civil Service.
- (3) Before making a recommendation, the Minister must consult – 20
- (a) the First Ministers for Scotland and Wales, and
- (b) the relevant opposition leaders (see sub-paragraph (7)).
- (4) The First Commissioner holds office for five years.
- (5) The other terms on which the First Commissioner holds office are determined by the Minister for the Civil Service. 25
- (6) A person cannot be appointed as First Commissioner more than once.
- (7) The relevant opposition leaders are the registered leaders of the registered parties in opposition to Her Majesty’s Government in the United Kingdom which had the highest and second highest national vote at the previous parliamentary general election. 30
- (8) In sub-paragraph (7) –
- “registered leader”, in relation to a party, means the person registered as that party’s leader in accordance with section 24 of the Political Parties, Elections and Referendums Act 2000 (c. 41);
- “registered party” means a party registered in a register of political parties maintained by the Electoral Commission in accordance with section 23 of that Act. 35

Appointment of Civil Service Commissioners

- 3 (1) This paragraph is about the appointment of Civil Service Commissioners (“Commissioners”).
- (2) A Commissioner is appointed by Her Majesty on the recommendation of the Minister for the Civil Service. 5
- (3) The Minister must not make a recommendation without the agreement of the First Commissioner, unless the Minister is satisfied that it is appropriate to do so.
- (4) A Commissioner holds office for five years.
- (5) The other terms on which a Commissioner holds office are determined by the Minister. 10
- (6) The Minister must not make a determination without the agreement of the First Commissioner, unless the Minister is satisfied that it is appropriate to do so.
- (7) A person cannot be appointed as a Commissioner more than once. 15
- (8) A person cannot be a Commissioner and the First Commissioner at the same time.
- (9) If the office of First Commissioner is vacant, the Minister may authorise a Commissioner to carry out the functions of First Commissioner until the vacancy is filled. 20
- (10) Sub-paragraph (11) applies in relation to the appointment as Commissioner of a person who already holds office under the Crown or an enactment.
- (11) The terms determined under sub-paragraph (5) may –
- (a) provide for the person to cease to hold office as Commissioner if the person ceases to hold the office mentioned in sub-paragraph (10); 25
 - (b) restrict the functions that the person may carry out as Commissioner.

Payment of remuneration and allowances etc

- 4 (1) The terms mentioned in paragraph 2(5) or 3(5) may provide for the Commission –
- (a) to pay remuneration and allowances to the person appointed; 30
 - (b) to make provision for a pension in relation to that person.
- (2) The Commission must make the payments or provision accordingly.

Resignation or removal from office

- 5 (1) This paragraph is about resignation or removal from the office of First Commissioner or Commissioner. 35
- (2) A person may resign from office by giving written notice to the Minister for the Civil Service.
- (3) Her Majesty may, on the recommendation of the Minister, remove a person from office if a condition in sub-paragraph (4) is met.
- (4) The conditions are that – 40

- (a) the person is absent from three successive meetings of the Commission without the Commission’s approval;
 - (b) the person is convicted of an offence (see sub-paragraph (5));
 - (c) the person becomes bankrupt (see sub-paragraph (6));
 - (d) the person is unfit or unable to carry out the functions of the office. 5
- (5) For the purpose of determining if a person is convicted of an offence –
- (a) it does not matter where the person is convicted;
 - (b) an act punishable under the law of a territory outside the United Kingdom constitutes an offence for the purposes of this paragraph (however it is described in that law). 10
- (6) A person becomes bankrupt if –
- (a) a court in England and Wales makes a bankruptcy order in relation to the person,
 - (b) a court in Scotland awards sequestration of the person’s estate, or
 - (c) a court in Northern Ireland adjudges the person bankrupt. 15

Compensation for loss of office of First Commissioner

- 6 The Minister for the Civil Service may direct the Commission to pay compensation if –
- (a) a person ceases to hold office as First Commissioner, and
 - (b) the Minister is satisfied that, because of the circumstances in which the person ceased to hold office, compensation should be paid to the person. 20

PART 2

THE COMMISSION

Status of the Commission and its property 25

- 7 (1) The Commission is not to be regarded –
- (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The Commission’s property is not to be regarded as property of, or held on behalf of, the Crown. 30

Powers

- 8 (1) The Commission may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.
- (2) But the Commission may not borrow money except with the agreement of the Minister for the Civil Service. 35
- (3) Nothing in this Schedule which specifies powers of the Commission limits the generality of sub-paragraph (1).

Committees

- 9 (1) The Commission may establish committees.

- (2) A committee of the Commission may establish sub-committees.
- (3) Members of a committee or sub-committee may include persons who are not members of the Commission.

Procedure and proceedings

- 10 (1) The Commission may regulate its own procedure, and the procedure of its committees and sub-committees, including quorum. 5
- (2) The validity of proceedings of the Commission or a committee or sub-committee is not affected by –
 - (a) a vacancy among the members, or
 - (b) a defect in the appointment of a member. 10

Staff

- 11 The Commission may employ staff.
- 12 Employees of the Commission are not to be regarded as –
 - (a) servants or agents of the Crown, or
 - (b) enjoying any status, immunity or privilege of the Crown. 15

Pensions

- 13 (1) Employment by the Commission is included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 (c. 11) may apply.
- (2) The office of First Commissioner is included among the offices to which such a scheme may apply. 20
- (3) Accordingly, in Schedule 1 to the Superannuation Act 1972 (kinds of employment to which a scheme under section 1 of that Act may apply) –
 - (a) at the end of the list of “Royal Commissions and other Commissions” insert “Civil Service Commission”, and 25
 - (b) in the list of “Offices” the reference to the First Civil Service Commissioner is to be read as a reference to the office of First Commissioner.
- (4) The Commission must pay the Minister for the Civil Service the sums determined by the Minister in relation to any increase attributable to this paragraph in the sums payable out of money provided by Parliament under the Superannuation Act 1972. 30
- (5) The payments must be made at the times directed by the Minister.

Arrangements for assistance

- 14 (1) The Commission may make arrangements with other persons for the provision of assistance to the Commission. 35
- (2) In particular, arrangements may be made with the Minister for the Civil Service for civil servants to provide assistance.
- (3) Arrangements may provide for the making of payments by the Commission.

Delegation

- 15 (1) The Commission may delegate functions to—
- (a) any of its members;
 - (b) any of its committees;
 - (c) any of its employees; 5
 - (d) a person with whom arrangements are made under paragraph 14 or any person (including a civil servant) assisting the Commission under such arrangements.
- (2) A committee may delegate functions (including functions delegated to it) to a sub-committee. 10

Financial provisions

- 16 (1) The Minister for the Civil Service must pay to the Commission the sums determined by the Minister as appropriate for, or in connection with, the carrying out of the Commission's functions.
- (2) When making a payment, the Minister may impose conditions— 15
- (a) about how some or all of the money is to be used;
 - (b) requiring the Commission to follow specified procedures in relation to its costs and expenditure.
- (3) Before making a determination under sub-paragraph (1) or imposing a condition under sub-paragraph (2), the Minister must consult the Commission. 20

Accounts

- 17 (1) The Commission must keep proper accounts and proper records in relation to them.
- (2) The Commission must prepare a statement of accounts for each financial year (see paragraph 19). 25
- (3) The statement must give a true and fair view of—
- (a) the state of the Commission's affairs at the end of the financial year, and
 - (b) the Commission's income and expenditure and cash flows in the financial year. 30
- (4) The statement must be in compliance with any directions given by the Minister for the Civil Service with the Treasury's approval as to— 35
- (a) the information to be contained in the statement,
 - (b) the manner in which the information is to be presented, or
 - (c) the methods and principles according to which the statement is to be prepared.
- (5) The Commission must send the statement to the Minister at such time as the Minister may direct.
- (6) The Minister must then send the statement to the Comptroller and Auditor General. 40
- (7) The Comptroller and Auditor General must—

- (a) examine, certify and report on the statement, and
- (b) lay copies of the statement and the report before Parliament (unless it has been arranged for the Minister to do so).

Reports

- 18 (1) The Commission – 5
- (a) must, as soon as practicable after the end of each financial year (see paragraph 19), prepare a report about the carrying out of its functions during the year, and
 - (b) may, in exceptional cases, prepare a report at any other time about any matter relating to the carrying out of its functions. 10
- (2) As soon as practicable after preparing a report under sub-paragraph (1), the Commission must give a copy of the report to the Minister for the Civil Service and to the First Ministers for Scotland and Wales.
- (3) The Commission must then publish the report in the way the Commission thinks appropriate. 15
- (4) The Minister for the Civil Service must lay a copy of the report before Parliament (unless it has been arranged for the Comptroller and Auditor General to do so).
- (5) The First Minister for Scotland must lay a copy of the report before the Scottish Parliament. 20
- (6) The First Minister for Wales must lay a copy of the report before the National Assembly for Wales.

Meaning of “financial year”

- 19 For the purposes of paragraphs 17 and 18, each of the following is a “financial year” – 25
- (a) the period which begins when section 26 comes into force and ends with the following 31 March;
 - (b) each successive period of 12 months.

Documentary evidence

- 20 The application of the Commission’s seal is to be authenticated by the signature of any of the following – 30
- (a) a member of the Commission;
 - (b) if the Commission’s staff includes a chief executive, the chief executive;
 - (c) any person authorised (whether generally or specifically) for the purpose by anyone within sub-paragraph (a) or (b). 35
- 21 Any contract or instrument which, if entered into or executed by an individual, would not need to be under seal, may be entered into or executed on behalf of the Commission by any of the following –
- (a) a member of the Commission; 40
 - (b) if the Commission’s staff includes a chief executive, the chief executive;

(c)	any person authorised (whether generally or specifically) for the purpose by anyone within sub-paragraph (a) or (b).	
22	A document purporting to be duly executed under the Commission’s seal or signed on its behalf—	
(a)	is to be received in evidence, and	5
(b)	is to be taken to be executed or signed in that way, unless the contrary is proved.	
 PART 3 		
TRANSITIONAL PROVISION RELATING TO THE OLD COMMISSION		
	<i>Head of the old commission to become First Commissioner</i>	10
23	(1) The person who is the head of the old commission (see paragraph 28) immediately before section 26 comes into force becomes the First Commissioner on that section coming into force.	
	(2) Sub-paragraphs (3) and (4) apply instead of paragraph 2(4) and (5).	
	(3) The person holds office as the First Commissioner for a period equal to the remaining part of the period for which the person was appointed as head of the old commission.	15
	(4) The other terms on which the person holds office as the First Commissioner are—	
(a)	the same terms as those on which the person held office as head of the old commission, or	20
(b)	if the person agrees, the terms determined by the Minister for the Civil Service.	
	(5) Paragraph 4 applies for the purposes of sub-paragraph (4)(b).	
	(6) The person’s becoming First Commissioner as a result of this paragraph is not an appointment for the purposes of paragraph 2(6).	25
	 <i>Restriction on period of office if First Commissioner is former head of the old commission</i>	
24	(1) This paragraph applies if the person who is the First Commissioner is a former head of the old commission (see paragraph 28).	
	(2) The person’s period of office mentioned in paragraph 2(4) or 23(3) is reduced so far as necessary to ensure compliance with the five year rule.	30
	(3) The five year rule is that the total of the following must not exceed five years—	
(a)	the period or periods for which the person holds office as the First Commissioner, and	35
(b)	the period or periods for which the person was head of the old commission.	
	 <i>Members of the old commission to become Commissioners</i>	
25	(1) The persons who are members of the old commission (see paragraph 28) immediately before section 26 comes into force become Commissioners on that section coming into force.	40

- (2) Sub-paragraph (1) does not apply to the person who is the head of the old commission.
- (3) Sub-paragraphs (4) and (5) apply instead of paragraph 3(4) and (5).
- (4) A person holds office as Commissioner for a period equal to the remaining part of the period for which the person was appointed as a member of the old commission. 5
- (5) The other terms on which the person holds office as Commissioner are—
- (a) the same terms as those on which the person held office as a member of the old commission, or
 - (b) if the person agrees, the terms determined by the Minister for the Civil Service. 10
- (6) Paragraph 4 applies for the purposes of sub-paragraph (5)(b).
- (7) The person’s becoming Commissioner as a result of this paragraph is not an appointment for the purposes of paragraph 3(7).
- Restriction of period of office for former member of old commission* 15
- 26 (1) This paragraph applies if a person who is a Commissioner is a former member of the old commission (see paragraph 28).
- (2) The person’s period of office mentioned in paragraph 3(4) or 25(4) is reduced so far as necessary to ensure compliance with the five year rule.
- (3) The five year rule is that the total of the following must not exceed five years— 20
- (a) the period or periods for which the person holds office as Commissioner, and
 - (b) the period or periods for which the person was a member of the old commission. 25
- (4) Sub-paragraph (3)(b) does not include any period for which the person was also head of the old commission.
- Carrying out of functions by old commission*
- 27 (1) During the preparatory period the old commission (see paragraph 28) may carry out, in the name and on behalf of the Commission, any functions conferred on the Commission by this Schedule. 30
- (2) “The preparatory period” is the period that—
- (a) starts when this Act is passed, and
 - (b) ends when section 26 comes into force.
- Meaning of “member of old commission” etc* 35
- 28 (1) A person is a “member of the old commission” if the person is one of Her Majesty’s Civil Service Commissioners for the purposes of the Civil Service Order in Council 1995.
- (2) References to the “old commission” are to be read accordingly.
- (3) A person is the “head of the old commission” if the person is the First Civil Service Commissioner in relation to the old commission. 40

DRAFT CONSTITUTIONAL RENEWAL BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the draft Constitutional Renewal Bill as published on 25 March 2008. They have been prepared by the Ministry of Justice, in conjunction with the Attorney General's Office, the Cabinet Office, the Foreign and Commonwealth Office and the Home Office. These notes have been prepared in order to assist the reader of the draft Bill and to help inform pre-legislative scrutiny on it. They do not form part of the draft Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

OVERVIEW OF THE BILL

3. The draft Constitutional Renewal Bill has 6 Parts and 4 Schedules. The explanatory notes are divided into 6 Parts, reflecting the structure of the draft Bill. A summary of each Part and background in relation to the draft Bill as a whole and each Part separately is provided below. Commentary on each Part is then set out in number order, with the commentary on the various Schedules included with the section to which they relate.

SUMMARY

4. A summary of the draft Bill is set out below.

Part 1: Demonstrations in the vicinity of Parliament

5. Clause 1 of the draft Bill provides for the repeal of sections 132-138 of the Serious Organised Crime and Police Act 2005, thereby removing the distinct legislative framework for the policing of demonstrations around Parliament. Repeal of these sections will remove the requirement to give notice of demonstrations in the designated area around Parliament. It will also remove the offence of holding such demonstrations without the authorisation of the Metropolitan Police Commissioner.

Part 2: The Attorney General and Prosecutions

6. Part 2 of the draft Bill contains rules about the role of the Attorney General, in particular the role of the Attorney General in relation to the main prosecuting authorities and in relation to prosecutions.

7. The draft Bill makes it clear that the Attorney General may not give a direction to the Director of Public Prosecutions, the Director of the Serious Fraud Office or the Director of Revenue and Customs Prosecutions in relation to an individual case (except in certain limited cases, discussed below). The Attorney General is required to prepare a protocol that states how the Attorney General and those Directors are to discharge their responsibilities in relation to each other. The draft Bill also provides for the appointment of the Directors to be for a term of 5 years. The grounds on which the Directors may be removed from office are also specified.
8. The draft Bill enables the Attorney General to give a direction to a prosecutor that, in relation to an investigation of specified matters, no proceedings for an offence are to be instituted or a direction that proceedings for a specified offence against a specified person are not to be continued. The Attorney General may also give a direction to the Director of the Serious Fraud Office that no investigation of specified matters is to take place. These directions may only be given in relation to proceedings or an investigation in England and Wales. Such a direction may only be given if it is necessary for the purposes of safeguarding national security.
9. The draft Bill also modifies some of the Attorney General’s functions in relation to prosecutions. In particular, it amends various Acts under which the consent of the Attorney General has to be obtained before a prosecution can be brought so that instead the consent of one of the public prosecutors (the DPP and others) is required. It also abolishes the Attorney General’s power to halt a trial on indictment by entering a nolle prosequi.
10. The draft Bill also provides a requirement that the Attorney General must report to Parliament on an annual basis on the exercise of the functions of the Attorney General.

Part 3: Courts and Tribunals

11. Part 3 of the draft Bill provides for:
 - a) a guarantee that the salaries of judicial office holders in certain tribunals may not be reduced;
 - b) the removal of the Prime Minister’s role in the process for appointing Supreme Court judges;
 - c) powers to enable the Lord Chancellor to specify additional criteria to be used in selections by the Judicial Appointments Commission;
 - d) the establishment of a panel to represent potential candidates for appointment etc;
 - e) a power enabling the Lord Chancellor to remove offices from Schedule 14 to the Constitutional Reform Act 2005, so that Judicial Appointments Commission selection would no longer be required for those offices;

f) a reduction in the role played by the Lord Chancellor in judicial appointments below the High Court;

g) a new method of obtaining medical assessments from candidates for judicial office;

h) new general powers for the Lord Chancellor to require information from the Judicial Appointments Commission; and

i) removal of the need for the Lord Chief Justice to consult or obtain the concurrence of the Lord Chancellor before exercising certain functions such as deploying serving members of the judiciary to particular posts.

Part 4: Ratification of Treaties

12. Part 4 of the draft Bill formalises the procedure for Parliament to scrutinise treaties prior to ratification. It provides that:

(a) a treaty cannot be ratified unless:

(i) a copy of it is laid before Parliament

(ii) it is published in a way that the Secretary of State thinks appropriate;

(iii) 21 sitting days have expired without either House having resolved that the treaty should not be ratified; or

(iv) if either House does so resolve, the Secretary of State has laid before both Houses a statement indicating why the treaty should nevertheless be ratified; and if the House of Commons has voted against ratification, a further 21 sitting day period has expired without the House of Commons voting against ratification;

(b) in exceptional cases a treaty may be ratified without fulfilling the conditions in (a) above;

(c) the conditions in (a) above do not apply to the descriptions of treaties set out in clause 23.

Part 5: The Civil Service

13. The clauses of the draft Bill which cover the civil service contains the following main provisions:

- A power for the Minister for the Civil Service to manage the Civil Service, and a parallel power for the Secretary of State in relation to the Diplomatic Service (in practice, the powers in relation to the Diplomatic Service are likely to be exercised by the Foreign Secretary);
 - A requirement for a code of conduct for civil servants which specifically requires civil servants to carry out their duties in accordance with the core Civil Service values of integrity, honesty, objectivity and impartiality. There is also a requirement for a separate code of conduct for special advisers;
 - The establishment of a Civil Service Commission with functions in relation to selections to the Civil Service;
 - A requirement for appointments to the Civil Service to be made on merit on the basis of fair and open competition;
 - A definition of special adviser as a civil servant appointed directly by a Minister in order to assist that Minister. Appointments of special advisers are to be exempt from the fair and open competition principle.
14. The new statutory Civil Service Commission will take on the functions of the existing Civil Service Commissioners. The Civil Service Commission will publish principles on the application of the fundamental recruitment requirement of selection on merit on the basis of fair and open competition, and will investigate complaints from civil servants under the code of conduct for civil servants. The First Civil Service Commissioner and the other Civil Service Commissioners will be the members of the new Civil Service Commission.
15. Whilst the draft Bill removes the prerogative powers for the management of the Civil Service, the prerogative will be retained in relation to security vetting. To place vetting for civil servants on a statutory footing would mean that a parallel system under the prerogative would still be required to cover vetting for those working in the intelligence agencies and those outside the Civil Service, for example, the Police and contractors. There is therefore a saving provision for the retention of the prerogative in this area in clause 27.

Part 6: Final Provisions

16. Part 6 of the draft Bill makes provision relating to interpretation, power to make consequential provision, extent, commencement, transitional provision and the short title of the Bill.

BACKGROUND

17. The provisions contained within the draft Constitutional Renewal Bill stem from *The Governance of Britain* Green Paper (CM 7170) published on 3 July 2007. This document can be found at:

<http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf>

18. This Green Paper set out the Government’s proposals for constitutional renewal based around four key goals:

- *To invigorate our democracy;*
- *to clarify the role of government, both central and local;*
- *to rebalance power between Parliament and the Government, and give Parliament more ability to hold the Government to account; and*
- *to work with the British people to achieve a stronger sense of what it means to be British.*

19. As part of this wider agenda of work, the Green Paper set out the Government’s intention to reform the complex and multifaceted role of the Attorney General, to alleviate conflicts or the appearance of them. The Government made a commitment to explore the future of its role in judicial appointments. The Government sought to improve the ways in which people can influence decisions and participate in the political process. One of the specific proposals here was to review restrictions on people’s right to protest.

20. The Green Paper proposed that the power to make key decisions that affect the whole country, such as whether to ratify treaties, should not stem solely from the royal prerogative, but rest on a more formal footing, with Parliament key in determining the exercise of the power. Similarly, the Government proposed that the governance of the Civil Service, also based on the royal prerogative, and the fundamental values of the Civil Service – impartiality, integrity, honest and objectivity – should be set out in statute.

21. The following provides a background to each Part of the draft Bill.

Part 1 Background – Demonstrations in the vicinity of Parliament

22. *The Governance of Britain* Green Paper committed the Government to consult widely on the provisions covering demonstrations in the vicinity of Parliament, with a view to ensuring that people’s right to protest was not subject to unnecessary restrictions and with a presumption in favour of the freedom of expression.
23. The Government subsequently published the consultation paper *The Governance of Britain – Managing Protest around Parliament* (CM 7235, 25 October 2007) which

sought views on whether there remained a sufficiently strong case for a distinct legislative framework to apply to the policing of protests around Parliament. This document can be found at:

<http://www.homeoffice.gov.uk/documents/cons-2007-managing-protest?version=1>

24. The majority of responses called for the repeal of the current provisions in sections 132 to 138 of the Serious Organised Crime and Police Act. A detailed analysis of the consultation responses can be found in *The Governance of Britain – Analysis of Consultations* (CM 7342-3). Following this consultation the Government decided to seek to repeal sections 132-138 of the Serious Organised Crime and Police Act 2005. Provisions to repeal these sections can be found in Part 1.

Part 2 Background – The Attorney General and Prosecutions

25. *The Governance of Britain* Green Paper stated that “The Government is fully committed to enhancing public confidence in the office of the Attorney General”. The Green Paper announced the Government’s intention to consult on the role of the Attorney General.

26. Proposals for the reform of the role of the Attorney General were the subject of consultation (*The Governance of Britain – A Consultation on the Role of the Attorney General* CM 7192, 25 July 2007). This document can be found at:

<http://www.official-documents.gov.uk/document/cm71/7192/7192.asp>

27. Two key issues raised in the consultation document were whether the Attorney General should continue to be both the Government’s chief legal adviser and a Government Minister, and whether the Attorney General should remain as superintending Minister for the prosecution authorities. Other issues raised in the consultation document were what functions the Attorney General should retain in relation to individual prosecutions (including whether the Attorney General should retain the function of consenting to prosecutions for certain offences), whether the legal advice given by the Attorney General should be disclosed (and if so under what circumstances), whether the current practice whereby the Attorney General attends, but is not a member of, Cabinet should be modified and whether the oath of office should be amended.

28. A detailed analysis of the consultation responses can be found in *The Governance of Britain – Analysis of Consultations* (CM 7342-3).

29. The Constitutional Affairs Committee (as it then was, now the Justice Committee) published its report on the *Constitutional Role of the Attorney General* (HC 306) on 17 July 2007. It concluded that there were “inherent tensions in combining ministerial and political functions, on the one hand, and the provision of independent legal advice and superintendence of the prosecution services, on the other hand, within one office”. The Committee recommended (in summary) that “the current duties of the Attorney General be split in two”.

Part 3 Background – Courts and Tribunals

30. Part 3 of the draft Bill provides for the protection of the salaries of various judicial office holders. Effect is also given to Schedule 3 to the draft Bill which seeks to address the commitment in page 6 of *The Governance of Britain* that:

“The Government will seek to surrender or limit the powers which it considers should not, in a modern democracy, be exercised exclusively by the executive (subject to consultation with interested parties and, where necessary, legislation).”

31. The Government subsequently published *The Governance of Britain – Judicial Appointments* (CM 7210, 25 October 2007). This document can be found at:

<http://www.justice.gov.uk/docs/cp2507.pdf>

32. A detailed analysis of the consultation responses can be found in *The Governance of Britain – Analysis of Consultations* (CM 7342-3).

33. Schedule 3 adjusts the existing functions of the executive, legislature and judiciary in relation to judicial appointments and other judiciary related matters. In particular, the Schedule removes the Prime Minister from the appointment process with regard to the Supreme Court, and reduces the role played by the Lord Chancellor in judicial appointments below the High Courts.

34. In addition, Schedule 3 makes a series of reforms to current practice, including powers to specify additional criteria to be used by the Judicial Appointments Commission when making selections for judicial appointments; the establishment of a panel to represent potential candidates for appointment; and a new method of obtaining medical assessments from candidates for judicial office.

Part 4 Background – Ratification of Treaties

35. The Government announced its intention to formalise the procedure for Parliament to scrutinise treaties as part of the review of prerogative powers, when it published *The Governance of Britain* Green Paper in July 2007. A consultation document *The Governance of Britain – War powers and treaties: Limiting Executive powers* (CM 7239) was published on 25 October 2007. This document can be found at:

<http://www.justice.gov.uk/docs/cp2607a.pdf>

36. The document invited comments on an appropriate means to put the Ponsonby Rule on a statutory footing and the consultation period ran until the 17 January 2008.

37. The Ponsonby Rule provides that, subject to certain exceptions, treaties which do not come into force on signature, but rather when governments express their consent to be bound through a formal act such as ratification, must be laid before both Houses

of Parliament as a Command Paper for a minimum period of 21 sitting days prior to ratification.

38. A detailed analysis of the consultation responses can be found in *The Governance of Britain – Analysis of Consultations* (CM 7342-3). The draft Bill provides for treaties to be laid before Parliament for 21 sitting days prior to ratification with provision for flexibility and exceptions based on established practice and for the effect of a negative vote in either House of Parliament.

Part 5 Background – The Civil Service

39. The basis of the Civil Service as we know it today dates back to the Northcote-Trevelyan Report of 1854. The Report set out the enduring core values and key principles that underpin the role and governance of the Civil Service – integrity, honesty, impartiality and objectivity. The Report also recommended that these values and principles should be enshrined in legislation. However, no Government ever took forward this recommendation. Instead, over the last 150 years or so, Ministers have exercised powers in relation to the Civil Service under the royal prerogative.
40. In recent years, the merits of Civil Service legislation have been the subject of considerable debate, and there have been growing calls to implement the Northcote-Trevelyan recommendation and bring forward legislation for the Civil Service. In 2003, the House of Commons Public Administration Select Committee published a draft Civil Service Bill and, building on this, the Government launched a consultation *A draft Civil Service Bill – A Consultation Document* (CM 6373, November 2004). This document can be found at:

http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/propriety_and_ethics/consultation_bill_cm_6373.pdf

41. These consultation processes and other public debates have revealed a considerable body of opinion in favour of Civil Service legislation. Therefore, the Government announced in July 2007, in its Green Paper, *The Governance of Britain* (CM 7170), that it intended to bring forward legislation which would “*include measures which will enshrine the core principles and values of the Civil Service in law*”.

TERRITORIAL EXTENT

42. All of the provisions contained within the draft Bill extend to England and Wales while certain provisions extend to Scotland and Northern Ireland. The draft Bill largely addresses reserved and excepted matters though there are some devolved matters in Scotland that are affected by the provisions. Discussions will take place with the Devolved Administrations with respect to any devolved provisions during the course of the consultation process.

43. Some provisions within the draft Bill fall within the terms of the Sewel Convention. The Convention states that Parliament will not legislate with respect to a devolved matter without the agreement of the Scottish Parliament. If the Bill is introduced in this form, the Government would seek the consent of the devolved legislatures for the provisions outlined below:
- **Special Advisers** – clause 38 creates a requirement for the First Minister of Scotland to approve the appointment of Special Advisers working to Scottish Ministers.
 - **Special Advisers Report** – clause 39 requires the First Minister of Scotland to prepare an annual report about Special Advisers and to lay this before the Scottish Parliament.
 - **Civil Service Commission’s Report** – Schedule 4, paragraph 18 requires the First Minister of Scotland to lay the Civil Service Commission’s report before the Scottish Parliament.
44. Where the judicial appointment provisions relate to either a cross-border authority or a tribunal with mixed reserved and devolved functions (e.g. the Transport Tribunal) certain of the amendments are likely to require a Legislative Consent Motion, while others may require consultation.
45. The draft Bill also contains other provisions that would not require a Legislative Consent Motion but which make incidental changes to Scottish law and the law in Northern Ireland. The Government will consult with the Devolved Administrations on these proposed changes during the consultation process.

COMMENTARY ON CLAUSES

PART 1: DEMONSTRATIONS IN THE VICINITY OF PARLIAMENT

Clause 1: Repeal of sections 132 to 138 of Serious Organised Crime and Police Act 2005

46. *Subsection (1)* repeals sections 132 to 138 of the Serious Organised Crime and Police Act 2005 which regulate demonstrations and the use of loudspeakers in a designated area around Parliament. Repeal of sections 132 to 138 of the 2005 Act means that it will no longer be a requirement to give notice of demonstrations in the designated area and there will no longer be an offence of holding such demonstrations without the authorisation of the Metropolitan Police Commissioner. There will no longer be an offence under the 2005 Act for a person to use a loudspeaker in the designated area; the use of loudspeakers will continue to be governed by section 62 of the Control of Pollution Act 1974 and section 8 of the Noise and Statutory Nuisance Act 1993. Repeal of sections 132 to 138 of the 2005 Act also means that there will no longer be a designated area around Parliament as set out in the Serious Organised Crime and Police Act 2005 (Designated Area) Order 2005 (S.I. 2005, No. 1537).

Additionally, repeal will restore the applicability of section 14 of the Public Order Act 1986 (imposition of conditions on public assemblies) to a public assembly in the vicinity of Parliament.

47. *Subsection (2)* is a consequential amendment which removes the entries in the Table in section 175 (3) of the Serious Organised Crime and Police Act 2005 relating to the penalties in section 136 of that Act. Section 175 contains transitional modifications to penalties for certain offences committed in England and Wales. *Subsection (3)* is a consequential amendment which removes the reference to section 137(1) of the Serious Organised Crime and Police Act 2005 (loudspeakers in designated area) from paragraph 1(1) of Schedule 2 to the Noise and Statutory Nuisance Act 1993. *Subsection (4)* makes a consequential amendment by omitting paragraph 64 of Schedule 6 to the Serious Crime Act 2007, which deals with penalties for inchoate offences committed in relation to offences under section 136 of the Serious Organised Crime and Police Act 2005.

PART 2: THE ATTORNEY GENERAL AND PROSECUTIONS

Clause 2: Ban on directions in individual cases

48. *Subsection (1)* provides that the Attorney General’s function of superintendence of the Directors (the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Revenue and Customs Prosecutions) does not include a power to give a direction in relation to an individual case. In particular, this will mean that the Attorney General cannot give a direction as to whether a particular prosecution should, or should not, be proceeded with.
49. By virtue of *subsection (2)*, *subsection (1)* operates subject to clause 12 (which enables the Attorney General to give a direction in relation to an individual case in certain limited circumstances).
50. *Subsection (4)* makes it clear that *subsection (1)* does not affect any enactment or provision of subordinate legislation under which the consent of the Attorney General is required to institute proceedings for an offence.

Clause 3: Protocol for running of prosecution services

51. *Subsection (1)* provides that the Attorney General must prepare a statement (referred to as a “protocol”) as to how the Attorney General and the Directors are to discharge their functions in relation to each other. The protocol must be prepared in consultation with the Directors.
52. *Subsection (2)* specifies certain matters which may be included in the protocol.
53. *Subsection (3)* provides that the Attorney General must lay the protocol before Parliament.

- 54. *Subsections (4) and (5)* make provision for the revision of the protocol.
- 55. *Subsection (6)* provides that the Attorney General and the Directors, when carrying out their functions, must have regard to any relevant provision of the protocol.

Clause 4: Director of Public Prosecutions

- 56. Clause 4 makes provision for the terms of appointment of the Director of Public Prosecution and the status of that office. A number of the provisions of this clause restate the current position.
- 57. *Subsection (3)* provides that the Director is a civil servant.
- 58. *Subsection (5)* provides that the appointment of the Director must be for a term of 5 years. The person may resign before the end of that term.
- 59. *Subsection (7)* provides that the Director may be removed from office by the Attorney General only if the Attorney General is satisfied that the Director is unable, unfit or unwilling to carry out the functions of the office.

Clause 5: Director of Serious Fraud Office

- 60. Clause 5 makes provision for the terms of appointment of the Director of the Serious Fraud Office and the status of that office. A number of the provisions of this clause restate the current position.
- 61. *Subsection (2)* provides that the Director is a civil servant.
- 62. *Subsection (5)* provides that the appointment of the Director must be for a term of 5 years. The person may resign before the end of that term.
- 63. *Subsection (6)* provides that the Director may be removed from office by the Attorney General only if the Attorney General is satisfied that the Director is unable, unfit or unwilling to carry out the functions of the office.

Clause 6: Director of Revenue and Customs Prosecutions

- 64. Clause 6 makes provision for the terms of appointment of the Director of Revenue and Customs Prosecutions and the status of that office. A number of the provisions of this clause restate the current position.
- 65. *Subsection (3)* provides that the Director is a civil servant.
- 66. *Subsection (5)* provides that the appointment of the Director must be for a term of 5 years. The person may resign before the end of that term.

67. *Subsection (7)* provides that the Director may be removed from office by the Attorney General only if the Attorney General is satisfied that the Director is unable, unfit or unwilling to carry out the functions of the office.

Clause 7 and Schedule 1: Ending of certain prosecution consent functions of Attorney

68. Clause 7 introduces Schedule 1. That Schedule amends a number of enactments which require the consent of the Attorney General to be obtained to a prosecution for certain offences.
69. Some of those provisions are repealed (see the amendments made by Part 3 of Schedule 1).
70. In relation to other provisions, the Attorney General's function of giving consent is transferred to another person. Mostly the function is transferred to the Director of Public Prosecutions. In some cases it is transferred to one of the other Directors (i.e., the Director of the Serious Fraud Office, the Director of Revenue and Customs Prosecutions or the Director of Service Prosecutions). And in some cases the consent has to be given by the Director personally or, in the Director's absence by a person authorised by the Director. (See the amendments made by Part 1 of Schedule 1). This approach is taken where it is thought that determining whether to give consent to a prosecution is likely to give rise to particularly difficult considerations.
71. In cases where a prosecution for the offence is thought to be especially likely to give rise to public interest considerations such as national security, no amendment is made. In such cases, the consent of the Attorney General will continue to be required.

Clause 8: Power to end other prosecution consent functions of Attorney

72. *Subsection (1)* provides that the Attorney General may, by order, amend any existing enactment or existing provision of subordinate legislation under which the Attorney General has a prosecution consent function. This power supplements the provision made by Schedule 1. In particular, it will enable amendments to be made to enactments which are not amended by Schedule 1 and amendments to be made to provisions of subordinate legislation.
73. By virtue of *subsection (2)*, an order under clause 8 may remove the Attorney General's prosecution consent function or transfer it to one of the Directors (including, in this case, the Director of Service Prosecutions). Where the function is transferred to one of the Directors, provision may also be made to ensure that the decision is taken by the Director personally or by a person authorised by the Director. (Clause 9 makes further provision as to such authorised persons.)

Clause 10: Sections 8 and 9: supplementary

74. Clause 10 contains supplementary provisions including definitions and provisions as to the exercise of the power under clause 8.

Clause 11: Abolition of nolle prosequi

75. Clause 11 abolishes the Attorney General’s power to enter a nolle prosequi. (The effect of a nolle prosequi is to halt a trial on indictment.)

Clause 12: Power to intervene to safeguard national security

76. *Subsection (1)* provides that the Attorney General may give a direction to a prosecutor that, in relation to an investigation of specified matters, no proceedings for an offence are to be instituted in England and Wales in respect of those matters. A direction may also be given to a prosecutor that proceedings for a specified offence which are being conducted in England and Wales against a specified person are not to be continued. A direction may also be given to the Director of the Serious Fraud Office that no investigation of specified matters is to take place in England and Wales.
77. A direction may only be given if the Attorney General is satisfied that it is necessary to give the direction for the purpose of safeguarding national security.
78. *Subsection (2)* provides that the Attorney General may withdraw a direction.
79. *Subsection (3)* defines “prosecutor” for the purposes of *subsection (1)*. The effect of this definition is that a direction under *subsection (1)* can be given to any person who has the conduct of proceedings for an offence or who has the function of or is determining whether proceedings for an offence should be instituted.

Clause 13: Effect of certain directions under section 12 etc.

80. *Subsection (1)* provides that where the Attorney General has given a direction that proceedings are not to be instituted in relation to an investigation of specified matters, no such proceedings are to be instituted. *Subsection (2)* makes it clear that this does not prevent the institution of proceedings if the direction is withdrawn.
81. *Subsection (3)* provides that where the Attorney General has given a direction in relation to proceedings which are in progress, the prosecutor must take such steps as are appropriate to ensure that the proceedings are brought to an end as soon as is practicable. *Subsection (4)* provides that where the prosecutor fails to take such steps, any court before which the proceedings are being conducted may make an order bringing the proceedings to an end and making such other provision as appears to be appropriate.
82. *Subsection (5)* provides that in any proceedings where any question arises whether a direction under clause 12 is or was necessary for the purpose of safeguarding national

security, a certificate signed by a Minister of the Crown certifying that the direction was necessary for that purpose is conclusive evidence of that fact.

Clause 14: Reports on directions under section 12

83. *Subsection (2)* provides that where the Attorney General has given or withdrawn a direction under clause 12, he/she must prepare and lay before Parliament a report on that matter. The report must be prepared as soon as is practicable after the giving or withdrawal of the direction unless the Attorney General is satisfied that delay is necessary for the purposes of safeguarding national security.
84. *Subsection (3)* makes it clear that information need not be included in the report in certain cases (including where the inclusion of the information would prejudice national security or prejudice the investigation of a suspected offence or proceedings before any court).

Clause 15: Power to require information for purposes of section 12

85. Clause 15 supplements clause 12 by enabling the Attorney General to obtain information which could assist the Attorney General in determining whether to give or to withdraw a direction under that clause or in preparing a report to Parliament under clause 14. Information may only be obtained from the person to whom the direction is, or could be, given.
86. *Subsection (1)* provides that if the Attorney General is considering whether to give a direction under clause 12 and it appears to the Attorney General that the person to whom the direction would be given may possess information which could assist him/her in determining whether to give a direction, the Attorney General may require the person to provide him/her with that information.
87. *Subsection (2)* provides that the Attorney General may also require a person to provide him/her with information where the information may assist the Attorney General in determining whether to withdraw a direction or in preparing a report under clause 14.
88. *Subsection (4)* provides that a person who fails without reasonable excuse to comply with a requirement to provide information is guilty of an offence.

Clause 16: Annual report on exercise of Attorney's functions

89. *Subsection (1)* requires the Attorney General to prepare an annual report on the exercise of his/her functions.
90. *Subsection (2)* makes it clear that information need not be included in the report in certain cases (including where the inclusion of the information would prejudice national security or prejudice the investigation of a suspected offence or proceedings before any court).

Clause 17: Interpretation

91. Clause 17 defines certain terms for the purposes of this Part of the Bill.

Clause 18 and Schedule 2: Amendments consequential on this Part

92. Clause 18 introduces Schedule 2. This makes amendments which are consequential on this Part of the Bill.

PART 3: COURTS AND TRIBUNALS

Clause 19: Judicial appointments etc

93. Clause 19 gives effect to Schedule 3.

Clause 20: Salary protection for members of tribunals

94. Clause 20 provides that the salaries of certain Tribunal office-holders once determined may not be reduced. The purpose is to provide similar protection for these office-holders as is already available to office holders in the courts.

95. The protection applies to those with salaries determined under the following provisions:-

- S.5(1)(a) to (c) of the Employment Tribunals Act 1996 (Presidents and Chairmen of Employment Tribunals)
- Paragraph 10(a) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 (Immigration Judges)
- The specified provisions in Schedules 1, 2, 3 and 4 to the Tribunals, Courts and Enforcement Act 2007 (Senior President of Tribunals; those serving on the First-Tier Tribunal and Upper Tribunal; and Chamber Presidents, Deputy Chamber Presidents and acting Chamber Presidents).

Schedule 3: Judicial appointments etc

Part 1: Selection of Supreme Court judges

- ***Amendments to Part 3 of the Constitutional Reform Act 2005 – Sections 26, 27, 29, 60 and Schedule 8.***

96. These provisions remove the Prime Minister from the appointment process with regard to the President, Deputy President and judges of the Supreme Court. *Paragraph 2* amends section 26 of the Constitutional Reform Act 2005 with the effect that, when presented with a candidate chosen by a Selection Commission, recommendations for appointment will now be made by the Lord Chancellor instead of the Prime Minister.

Instead of notifying a selection to the Prime Minister, the Lord Chancellor is to make a recommendation for appointment.

97. *Paragraph 3* amends section 27 of the Constitutional Reform Act 2005 to require the Lord Chancellor to consult the devolved administrations and the senior available judge of the Supreme Court before giving guidance on procedure regarding selection for Supreme Court appointments. Any guidance needs to be laid before Parliament.
98. *Paragraphs 4-6* make various consequential amendments to sections 29 and 60(5) of, and paragraphs 10, 13(2) and 14(2) of Schedule 8 to, the 2005 Act.

Part 2: Basic provisions about judicial appointments etc under Chapter 2 of Part 4 of the Constitutional Reform Act 2005

- ***Amendments to Chapter 2 of Part 4 of the Constitutional Reform Act 2005 – Sections 63, 63A, 64, 95 and 98***

99. These amendments make it clear that the Lord Chancellor may set out additional criteria to be used by the Judicial Appointments Commission when making selections for judicial appointments, and create new duties to be followed by all those with responsibilities in the appointments processes set out in this part of the Constitutional Reform Act 2005.
100. Paragraph 9 adds a new section 63A to the Constitutional Reform Act 2005 to give the Lord Chancellor power to include any particular business requirements in a request for a selection by the Judicial Appointments Commission. *Subsection (2) of the new section 63A* states that those requirements may be as to qualifications, experience or expertise of the person to be selected, or to the office currently held by that person; requirements as to where the person selected is to carry out his functions; and requirements as to how soon a selection should be made. Under *subsection (4)* the Lord Chancellor may allow for the selecting body, in the circumstances set out in that *subsection* to dispense with those requirements. *Subsection (5)* enables the Lord Chancellor to require that the Judicial Appointments Commission notify him, or obtain his consent, before dispensing with a particular requirement. *Paragraph 11* amends the power in section 95 for the Lord Chancellor to withdraw or modify requests to the Judicial Appointments Commission to enable him to modify or remove any business requirement which he has previously specified, or to add a new one.
101. One example of a requirement that could be specified under the new section 63A is that candidates for some senior tribunal positions, for example President or Vice-President, are required to be existing holders of senior judicial office, for example High Court judge, or Circuit judge. An example of a requirement that the Judicial Appointments Commission might be permitted to dispense with (perhaps after notifying, or obtaining the consent of the Lord Chancellor) is that for most salaried positions, candidates are normally required to have at least 2 years' fee-paid experience. Some positions may require knowledge of a particular area of legal practice (for example competition law). Finally, a candidate once appointed may be required to carry out functions at a particular location.

102. Paragraph 8 of the Schedule changes the duties on those who have responsibilities in the procedures set out in Chapter 2 of Part 4 of the Constitutional Reform Act 2005.
103. Paragraph 8 inserts new *subsections (4), (5) and (6)* into section 63 of the 2005 Act to create new duties to ensure that the selection processes are fair, transparent, efficient, flexible, proportionate and effective. All persons listed in *subsection (6)* must have regard to the Judicial Appointments Commission’s need to act independently when selecting persons for judicial office. The Lord Chancellor might, for example, need to take that into account when specifying business requirements to apply to particular vacancies, or when seeking additional information from the Judicial Appointments Commission. The persons listed in the proposed new *subsection (6)* are the Judicial Appointments Commission, selection panels, the Lord Chancellor; the Lord Chief Justice; the Lord President of the Court of Session; and the Lord Chief Justice of Northern Ireland.
104. Although the Judicial Appointments Commission selection is mandatory for offices set out in Schedule 14 to the 2005 Act , and for appointments to the High Court and above, Judicial Appointments Commission assistance may also be sought for other positions where appointments are made or recommended by Ministers of the Crown: see section 98 Constitutional Reform Act. There are many such appointments of different kinds, and the assistance can range from advice on the procedures to be followed to running a selection exercise on a Minister’s behalf. Depending on the nature of the assistance the Judicial Appointments Commission is providing, these duties will apply to the Judicial Appointments Commission when performing its functions under section 98.
105. The need to encourage diversity in the range of people available for selection for appointment, which currently applies to the Judicial Appointments Commission, is extended to persons other than the Judicial Appointments Commission. They will also apply in particular to the Lord Chancellor (for example, when sending vacancy requests, and specifying business criteria); and to the Lord Chief Justice (for example, when he is consulted on vacancy requests). Depending on the nature of the assistance the Judicial Appointments Commission is providing, these duties will continue to apply to the Judicial Appointments Commission when performing its functions under s. 98.

Part 3: Panel to represent potential candidates for appointment etc

- ***Amendments to Part 4 of the Constitutional Reform Act 2005 – Sections 64A, 66 and Schedule 12***

106. These provisions amend the 2005 Act by inserting a new section 64A which requires the Judicial Appointments Commission to establish a panel of persons representing bodies which, in the opinion of the Commission, have an interest in how it carries out its functions under Chapter 2 of Part 4 of the 2005 Act. This panel is likely to include representatives from bodies such as the Bar Council, Law Society, Institute of Legal Executives, and the Chartered Institute of Patent Agents.

107. Under the proposed new section 64A, the panel is to be independent of the Judicial Appointments Commission. It cannot include Judicial Appointments Commission members or staff, and it will regulate its own procedures (new *subsections (3) and (4)*). It will be able to make representations to the Judicial Appointments Commission on any of the Judicial Appointments Commission’s functions under this Chapter of the Act. The Judicial Appointments Commission must respond to those representations in writing and within a reasonable time (new *subsection (5)*).
108. Since the panel has no direct part in the appointment procedures prescribed by the Constitutional Reform Act 2005, the new and extended duties set out in sections 63 and 64 of the Act will not apply to it, but it must have regard to those duties, and say whether and how any representations it may make to the Judicial Appointments Commission relate to them (new *subsection (6)*).
109. Before issuing statutory guidance to the Judicial Appointments Commission or selection panels, the Lord Chancellor will have to consult the panel as well as the Lord Chief Justice; and must consult both before amending or withdrawing any guidance.
110. Paragraph 16 amends paragraph 32 of Schedule 12 to the 2005 Act by inserting a requirement that the Annual Report from the Judicial Appointments Commission, produced at the end of each financial year, must be seen and commented on by the panel before going to the Lord Chancellor.

Part 4: Power to amend Schedule 14 to the Constitutional Reform Act 2005

• ***Amendments to the Constitutional Reform Act 2005 – Sections 85 and 144***

111. Paragraph 18 amends section 85 of the 2005 Act to enable the Lord Chancellor, after consultation with the Lord Chief Justice, to make an order to remove a reference to an office or enactment in Schedule 14, and so remove the requirement for candidates to be selected by the Judicial Appointments Commission before they can be appointed. Orders removing references can only be made after approval by both Houses of Parliament.

Part 5: Removal of some of the Lord Chancellor’s functions in relation to selections under Chapter 2 of Part 4 of the Constitutional Reform Act 2005 etc

• ***Amendments to Chapter 2 of Part 4 of the Constitutional Reform Act 2005 – Sections 85, 87, 88, 89A, 90, 91, 92, 93, 94A, 95, 96, and 96A***

112. These provisions remove the Lord Chancellor’s powers to reject, or require reconsideration of, selections made by the Judicial Appointments Commission for all judicial offices below the High Court. Those options are preserved in relation to the High Court by paragraph 21(3). The 2005 Act’s provisions relating to the Lord Chief Justice and the Heads of Divisions (sections 67-75), Lords Justices of Appeal (sections 76-84) and the Senior President of Tribunals (sections 75A-75G) are not amended in this respect.

113. In addition, paragraph 24 inserts a new section 89A in the 2005 Act, which reiterates the current position that the Lord Chancellor may require the Judicial Appointments Commission to reconsider a decision that no candidate of sufficient merit has been identified by a particular selection process.
114. In respect of all offices included in Schedule 14 to the Act, the amendments to section 96 of the Act will require the Lord Chancellor to appoint or recommend for appointment any person the Judicial Appointments Commission informs him has been selected to fill a vacancy. That requirement is subject to the following exceptions.
115. First, the Lord Chancellor may refuse to make an appointment on medical grounds. (The provisions in relation to medical reports are amended by Part 6 of Schedule 3 to the Bill).
116. Secondly, the Lord Chancellor will not be required to make the appointment if the person selected declines it or does not accept within the time specified for that purpose or is not available for the appointment within a reasonable time.
117. Thirdly, the Lord Chancellor’s powers under section 95 of the Act to modify or withdraw a request under sections 69 (Lord Chief Justice and Heads of Divisions), 78 (Lord Justice of Appeal), 87 (High Court and Schedule 14 appointments), or paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007 (Senior President of Tribunals) are to be retained. Those powers, enable the Lord Chancellor to withdraw or modify a request:
- to fill a vacancy, with the agreement of the Lord Chief Justice;
 - other than to fill a vacancy, i.e. one which would have resulted in the creation of additional posts, after consulting the Lord Chief Justice; or
 - he may withdraw a request as a whole, if he considers that the process of identifying candidates by the Judicial Appointments Commission or the selection panel was not satisfactory or not applied satisfactorily, after consulting the Lord Chief Justice.
118. Paragraph 30 amends section 95 to enable the Lord Chancellor to exercise his powers in the first or second circumstances even though a selection (but not, of course, an appointment) has already been made. He will therefore not be required to proceed with an appointment where there has been a change in the business need since the request was sent. In deciding whether to exercise that power, however, he is prevented by the new *subsection (2B)* from having any regard to the identity of the person who has been selected, or is being considered for selection, under the request.
119. Section 95(3) will allow the Judicial Appointments Commission to change selections for High Court judges, and more senior offices, where a request is withdrawn in part or modified, unless the selection has already been accepted. The new *subsections (4A)* and *(4B)* similarly enable the Judicial Appointments Commission to change

selections for requests in relation to recommendations or appointments for Schedule 14 offices, where the request has been withdrawn in part or modified.

120. Paragraph 32 enables the Lord Chief Justice to delegate specified consultation or concurrence functions to another judicial office holder. This individual would have to be nominated by the Lord Chief Justice.

Part 6: Medical assessments

• ***Amendments to Chapter 2 of Part 4 of the Constitutional Reform Act 2005 – Sections 96 and 97***

121. Paragraph 34 of the Schedule makes amendments to the provisions in section 96 of the Constitutional Reform Act 2005 relating to medical assessments of those who have been selected for appointment. Sub-paragraph (3) adds new *subsections (2A)* and *(2B)* to section 96 to enable the Lord Chancellor to request a person who has been selected for appointment (“the candidate”) to provide information about his or her physical or mental condition. The Lord Chancellor may specify a period in which the information has to be supplied.
122. Sub-paragraph (4) amends section 96(3). The amendment made to section 96(3) provides that the Lord Chancellor may also request a candidate to undergo a medical assessment and for a report of that assessment to be made available to the Lord Chancellor.
123. These provisions replace the existing section 96(3) under which the Lord Chancellor may direct the Judicial Appointments Commission to make arrangements for any assessment of the health of those who have been selected for appointment.
124. Sub-paragraph(5) modifies section 96(4) and sub-paragraph(6) inserts new *subsections (4A)* and *(4B)*. These provide that the Lord Chancellor may after consultation with the Lord Chief Justice notify the Judicial Appointments Commission that he is not proceeding with an appointment if the circumstances specified in the new *subsection (4A)* apply. These circumstances are if the candidate does not comply with a request to provide information under the new *subsection (2B)* or to undergo a medical assessment under *subsection (3)(a)*; or if the Lord Chancellor is not satisfied on the basis of a medical report under *subsection (3)(b)* that it would be appropriate to proceed with the appointment. Selections can also be disregarded where the candidate does not accept an appointment when it is offered or is not available within a reasonable time to take up a post.
125. Sub-paragraph (7) amends and clarifies section 96(5) to make it clear that if a candidate is rejected then any other selection for the same appointment or recommendation is to be disregarded; and the candidate must not be selected again pursuant to that request for the same appointment or recommendation.
126. Paragraph 35 of the Schedule makes a consequential amendment to section 97 (Scotland and Northern Ireland).

Part 7: Powers of Lord Chancellor in relation to information

- ***Amendments to Chapter 2 of Part 4 of the Constitutional Reform Act 2005 – Sections 72, 75D, 81, 89, and 97A***

127. Part 7 of the Schedule replaces a series of individual powers for the Lord Chancellor to ask for specified information in relation to individual selection exercises with a general power to require information connected with his appointments functions under the Act.
128. Paragraph 37 repeals sections 72(2)(b) and (4), 75D(2)(b) and (4), 81(2)(b) and (4) and 89(2)(f) and (4) of the 2005 Act. Paragraph 38 inserts a new section 97A in the 2005 Act. This gives the Lord Chancellor the power to issue a notice requiring the Judicial Appointments Commission to provide any information, or information of a particular description, specified in the notice, or to produce documents specified in the notice. Such a notice may specify the manner and form in which any information is to be provided; and must specify the period within which any information is to be provided or document to be produced. The Lord Chancellor is to have powers to take copies of documents produced under these powers.

Part 8: Deployment, authorisations, nominations etc

129. The Constitutional Reform Act 2005, and other provisions in statute, currently require the Lord Chief Justice to consult the Lord Chancellor or obtain his concurrence before exercising certain functions such as deploying serving members of the judiciary to particular posts (usually leadership ones) or nominating them or authorising them to carry out certain functions.
130. Part 8 of Schedule 3 removes those requirements in relation to a number of functions with consequential drafting changes as appropriate.
131. Paragraph 42 inserts a requirement to obtain the concurrence of the Lord Chancellor in place of the existing consultation requirement in section 67(4) of the Magistrates' Courts Act 1980. This brings this provision into line with the corresponding provision in section 45(4) of the Children and Young Persons Act 1933.
132. Paragraph 45 amends section 9 of the Supreme Court Act 1981 so that, in particular, if a request is made for a Circuit judge or Recorder to act as a judge of the High Court the Judicial Appointments Commission's approval is required for the process for deciding to whom the request should be made.
133. In addition to the consequential amendments specified in the Bill, paragraph 70 also gives the Lord Chancellor the power by order to remove other requirements that he be consulted, or concurrence requirements, or to convert requirements for concurrence into requirements to consult. Orders made by the Lord Chancellor using this power are subject to the affirmative resolution procedure if they make changes to provisions in Acts of Parliament. Otherwise, the negative resolution procedure applies.

PART 4: RATIFICATION OF TREATIES

Clause 21: Treaties to be laid before Parliament before ratification

134. Clause 21 sets out the conditions which, subject to certain exceptions set out in clauses 22 and 23, must be complied with before a treaty may be ratified.
135. *Subsection (2)* sets out Condition 1 which is that a copy of the treaty is laid before Parliament. *Subsection (3)* sets out Condition 2, which is that the treaty is published in a way that the Secretary of State thinks appropriate. *Subsection (4)* sets out Condition 3, which is that 21 sitting days have expired without either House having resolved that the treaty should not be ratified. Under Condition 3 if either House does resolve that the treaty not be ratified, Condition 4 must also be met. *Subsection (5)* sets out Condition 4, which has two elements. The first element, set out in paragraph (a) of the *subsection*, is that the Secretary of State has laid before both Houses a statement indicating that he is of the opinion that the treaty should nevertheless be ratified and explaining why. The second element, set out in paragraph (b), is relevant if the House of Commons has resolved against ratification, whether or not the House of Lords has also done so. In those circumstances, the treaty may not be ratified until a further 21 sitting days have expired without the House of Commons resolving against ratification again.
136. *Subsection (6)* provides that the Secretary of State may lay such a statement on more than one occasion in relation to the same treaty. This means that each subsequent laying of a statement will again trigger the 21 sitting day period during which a further resolution against ratification may be made by the House of Commons. *Subsection (7)* defines “sitting day” for the purposes of this section as meaning a day on which either House of Parliament sits.

Clause 22: Section 21 not to apply in exceptional cases

137. This clause provides for an exception to the procedure set out in clause 21.
138. *Subsection (1)* provides that the procedure does not apply if the Secretary of State is of the view that, for exceptional reasons, a treaty should be ratified without having to meet the conditions for which that clause provides.
139. *Subsection (2)* provides that *subsection (1)* may not be invoked where either House has voted against ratification in accordance with clause 21(4). *Subsection (3)* provides that if, exceptionally, the treaty is to be, or has been, ratified without fulfilling the conditions in clause 21, the Secretary of State must either before, or as soon as practicable after, the treaty is ratified lay before Parliament a copy of the treaty and a statement indicating why the conditions in clause 21 are not met. The Secretary of State must also arrange for the treaty to be published in a way that he/she thinks appropriate.

Clause 23: Section 21 not to apply to certain descriptions of treaties

140. This clause provides that the procedure in clause 21 does not apply to certain descriptions of treaties.
141. *Subsection (1)* states that the procedure does not apply to a treaty covered by section 12 of the European Parliamentary Elections Act 2002 (c. 24) (which provides for treaties resulting in an increase in the European Parliament’s powers not to be ratified unless approved by Act of Parliament) or by section 5 of the European Union (Amendment) Act 2008 – this is a reference to the European Union (Amendment) Bill currently before Parliament – (which provides for amendments to the founding treaties not to be ratified unless approved by Act of Parliament).
142. *Subsection (2)* exempts treaties in relation to which an Order in Council may be made under section 158 of the Inheritance Tax Act 1984 (double taxation conventions), section 788 of the Income and Corporation Taxes Act 1988 (double taxation arrangements) or section 173 of the Finance Act 2006 (international tax enforcement arrangements).

Clause 24: Meaning of “treaty” and “ratification”

143. This clause deals with definitions in Part 4.
144. *Subsection (1)* provides a definition of “treaty”. *Subsections (2) and (3)* provide that references to ratification of a treaty in this Part are to the act of depositing or delivering an instrument of ratification (or a similar instrument) or a notification that domestic procedures have been completed, which establishes as a matter of international law the consent of the United Kingdom to be bound by the treaty.

PART 5: THE CIVIL SERVICE**Clause 25: Application of Part**

145. Clause 25 applies Part 5 of the Bill to the civil service of the State, subject to the exclusions listed in *subsection (2)*. The terms civil service and civil servant throughout this Part are therefore to be read as excluding those parts of the civil service listed in *subsection (2)* and the civil servants in those parts of the civil service.

Clause 26: Establishment of the Civil Service Commission

146. *Subsection (1)* establishes the Civil Service Commission as a body corporate with legal personality.

147. *Subsections (3) and (4)* set out the main function of the Commission. This concerns recruitment to the civil service, covered in clauses 35 to 37. Reference is also made to the Commission’s other functions concerning complaints to the Commission under the civil service codes of conduct (clause 32) and additional functions (clause 44).

Clause 27: Management of the civil service

148. Clause 27 provides a power for the Minister for the Civil Service to manage the Civil Service and a parallel power for the Secretary of State in relation to the Diplomatic Service. In practice, the powers in relation to the Diplomatic Service in this Part are likely to be exercised by the Foreign Secretary.
149. *Subsection (4)* expressly excludes national security vetting from the power to manage the Civil Service and the diplomatic service. This confirms that national security vetting will continue to be carried out under existing prerogative powers.
150. *Subsection (5)* requires the Secretary of State to seek the agreement of the Minister for the Civil Service in relation to remuneration and retirement conditions for civil servants in the diplomatic service.

Clause 28: Civil service management functions

151. Clause 28 amends the Civil Service (Management Functions) Act 1992 so as to enable the Minister for the Civil Service to delegate to other servants of the Crown (including other Ministers of the Crown, and Heads of Departments or Agencies) the power to manage the Civil Service (as conferred by clause 27). This will enable the Minister’s power to manage the Civil Service to be delegated to other servants of the Crown in the same way as his current powers to manage the Home Civil Service are delegated.

Clause 29: Management of the civil service: supplementary

152. *Subsections (1) and (2)* provide that statutory powers of management of the civil service (whether before or after the Act comes into force) are subject to the powers to manage the civil service in clause 27.
153. *Subsections (3) and (4)* preserve the appointments of civil servants made under existing prerogative powers and provide that the authority to manage those civil servants will on the coming into force of clause 27 derive from the power to manage as set out in clause 27.

Clause 30: Civil service code

154. Clause 30 makes provision for codes of conduct for the civil service (with the exception of the diplomatic service). Clause 30 enables the Minister to publish separate codes of conduct for civil servants in the Scottish Executive or the Welsh Assembly Government. The codes published under this clause will be along the lines of the existing civil service codes, covering civil servants in the UK Departments

in the civil service, the Scottish Executive and the Welsh Assembly Government respectively. Copies of the existing codes can be viewed at the following websites:

<http://www.civilservice.gov.uk/iam/codes/cscode/code.asp>;

<http://www.scotland.gov.uk/Resource/Doc/923/0030759.doc>;

http://new.wales.gov.uk/about/career_opportunities/civilservicecode/?lang=en

155. There is no parliamentary procedure attached to the obligation in *subsection (4)* for the Minister of the Civil Service to lay the Codes before Parliament.

Clause 31: Diplomatic service code

156. Clause 31 makes provision for a code of conduct for the diplomatic service which will be along the lines of the existing code for the diplomatic service, the *Diplomatic Service Code of Ethics*. The code reflects the core principles of the civil service code of conduct.

157. There is no parliamentary procedure attached to the obligation in *subsection (3)* on the Secretary of State to lay the code before Parliament.

Clause 32: Minimum requirements for civil service and diplomatic service codes

158. Clause 32 sets out the minimum requirements for the civil service and diplomatic service codes of conduct. *Subsections (2)* and *(3)* require civil servants in the various administrations, to serve the Government of the day, whatever its political complexion.

159. *Subsection (4)* requires the code to contain an obligation on civil servants to carry out their duties in accordance with the core civil service values of integrity, honesty, objectivity and impartiality. *Subsection (5)* concerns the provisions of the codes as they apply to special advisers. Clause 33 makes separate provision for the special advisers code.

160. *Subsection (6)* makes provision for complaints to the Civil Service Commission. It requires the code to allow civil servants to take a complaint to the Civil Service Commission on the grounds specified.

161. *Subsection (7)* provides for the code to include information on the steps a civil servant must take before making a complaint. It is expected that these will reflect the procedures already set out in the existing code.

162. *Subsection (8)* requires the Civil Service Commission to establish procedures for complaints under *subsection (6)*. It requires the Civil Service Commission to consider complaints in accordance with the procedures established by the Commission and allows for the Commission to make recommendations to resolve the complaint.

Clause 33: Special advisers code

163. Clause 33 makes provision for a code of conduct for special advisers. The code published under this clause will be along the lines of the existing special advisers code, which can be viewed at the following website:

http://www.cabinetoffice.gov.uk/propriety_and_ethics/special_advisers/code.aspx.

164. There is no parliamentary procedure attached to the obligation in *subsection (3)* for the Minister for the Civil Service to lay the code before Parliament.

Clause 34: Selections for appointments to the civil service

165. Clause 34 requires appointments to the civil service to be made on merit on the basis of fair and open competition and makes provision for exceptions to this requirement. The exceptions to this requirement are set out in *subsection (3)(a) to (d)*.
166. Further provision on special adviser appointments and appointments excepted by the recruitment code are set out in clauses 38 and 36 respectively.
167. *Subsection (4)* provides that those appointed under *subsection (3)(a) to (c)* (appointments made directly by Her Majesty, Heads of Mission or Governors of overseas territories in the diplomatic service, and special advisers) are only excepted from the requirement for selection on merit on the basis of fair and open competition for the duration of that appointment. The persons holding such appointments would therefore be subject to the requirements of clause 34 (in particular, the requirement of selection on merit on the basis of fair and open competition) in relation to any further appointments to the civil service.

Clause 35: Recruitment principles

168. Clause 35 makes provision for the publication of principles on the application of the requirement in clause 34 of selection on merit on the basis of fair and open competition. These are referred to as “the recruitment principles”.
169. *Subsections (4) and (5)* require appointing authorities to comply with the recruitment principles. Appointing authorities are any body or person with the power to make appointments in the Civil Service.

Clause 36: Approvals for selections and exceptions

170. *Subsection (1)(a)* enables the recruitment principles to specify those appointments (which are subject to the requirement in clause 34 of selection on merit on the basis of fair and open competition) which require the approval of the Commission before they can be made. *Subsections (2) and (3)* enable the Commission to participate in the selection process for any such appointments.

171. *Subsection (1)(b)* and *subsection (4)* enable the recruitment principles to set out exceptions to the requirement of selection on merit on the basis of fair and open competition where justified by the needs of the civil service (as permitted by *subsection (3)(d)* of clause 34 – selections excepted by the recruitment principles).
172. *Subsection (1)(c)* makes provision for the recruitment principles to specify terms and conditions to be included in the terms and conditions of appointments resulting from the exercise of the exceptions under *subsections (3)(d)* of clause 34.

Clause 37: Monitoring by the Commission

173. Clause 37 requires the Commission where it considers necessary, to review departments’ recruitment policies and practices, to monitor their compliance with the recruitment principles. For these purposes the Commission may require appointing authorities to provide it with information about selections.

Clause 38: Definition of “special adviser”

174. Clause 38 makes provision about the appointment of special advisers and their terms and conditions of appointment. Special adviser appointments by a Minister of the Crown are approved by the Prime Minister, and those appointed by Scottish or Welsh Ministers are approved by the respective First Minister. The terms and conditions of all special advisers are approved by the Minister for the Civil Service. Appointments of special advisers are exempt from the requirement in clause 34 of selection on merit on the basis of fair and open competition by virtue of *subsection (3)(c)* of clause 34.
175. *Subsections (3)(b)* and *(4)* provide that a special adviser appointment ends when the appointing minister’s term of office ends. This is the earlier of either the date on which the minister ceases to hold office or the end of the day after the relevant election day. The relevant election day in relation to Ministers of the Crown and Scottish and Welsh Ministers is defined in *subsection (5)*.

Clause 39: Annual reports about special advisers

176. Clause 39 makes provision for annual reports about special advisers, and the laying of such reports before Parliament, the Scottish Parliament and the National Assembly for Wales. Similar reports are already published by the Minister for the Civil Service and the First Minister in Scotland and can be viewed at:

www.publications.parliament.uk/pa/cm200708/cmhansrd/cm071122/wmstext/71122m0002.htm#column_147WS

<http://www.scottish.parliament.uk/business/pqa/wa-07/wa1015.htm>

Clause 40: Arrangements for Civil Service Commission to carry out additional functions

177. Clause 40 enables the Minister for the Civil Service to confer additional functions on the Commission subject to the Commission’s agreement and for the Commission to be able to carry out these functions. The additional functions may be directly or indirectly related to their existing functions and would for example, allow the Minister for the Civil Service to request the Commission, subject to the Commission’s consent, to undertake a specific investigation or inquiry in relation to the civil service.

SCHEDULE 4 – CIVIL SERVICE COMMISSION

Part 1

Civil Service Commission

178. Schedule 4 makes provision for the Civil Service Commission. It contains provisions relating to: membership of the new Civil Service Commission; appointment of the First Civil Service Commissioner (who in practice will chair the Commission), and its other members the Commissioners, and their tenure of office; status and powers of the Commission; regulation of its proceedings; appointment of staff; arrangements for assistance, delegation and committees; financial provision and accounts; publication of its annual report; and transitional arrangements relating the old Civil Service Commission.

Part 1: The Commissioners

179. *Paragraph 1* provides for a minimum of seven members of the Civil Service Commission, one as the First Civil Service Commissioner (“the First Commissioner”) and the others as Civil Service Commissioners (“the Commissioners”).
180. *Paragraphs 2 and 3* provide for the appointment of the First Commissioner and Commissioners, and the terms of appointment. Paragraphs 3(10) and (11) also make provision for the appointment of ex-officio Commissioners. This might include for example, the appointment of the Public Appointments Commissioner as a Commissioner.
181. *Paragraph 4* makes provision for the terms of appointment of a Commissioner to require the Commission to make provision for remuneration, allowances and pensions.
182. *Paragraph 5* sets out the circumstances in which the First Commissioner or Commissioner may resign or be removed from office by Her Majesty on the recommendation of the Minister for the Civil Service.
183. *Paragraph 6* makes provision for compensation for the loss of the office of First Commissioner.

Part 2: The Commission

184. *Paragraph 7* establishes the status of the Civil Service Commission as a non Crown body. It provides that the Commission is not to be regarded as a servant or agent of the Crown and is not to enjoy any status, immunity or privilege of the Crown. It provides that any property held by the Commission is not held on behalf of the Crown.
185. *Paragraph 8* sets out the powers of the Commission and enables it to take any action necessary to support and carry out its functions. Borrowing by the Commission is subject to the agreement of the Minister for the Civil Service.
186. *Paragraph 9* makes provision for committees and sub-committees to assist the Commission in carrying out its functions, and *paragraph 10* the procedure of the Commission and its committees and sub-committees.
187. *Paragraphs 11 and 12* enable the Civil Service Commission to employ staff. *Paragraph 12* confirms that staff employed directly by the Civil Service Commission are not Crown servants (and therefore are not civil servants).
188. *Paragraph 13* enables pension provision to be made for the staff of the Commission and the First Commissioner. It provides for such persons to be eligible for membership of a pension scheme under section 1 of the Superannuation Act 1972. It places an obligation on the Civil Service Commission to cover the costs involved in membership of the pension scheme, and to pay the sums involved to the Minister for the Civil Service.
189. *Paragraph 14* enables the Civil Service Commission to enter into arrangements with other parties for the provision of assistance to the Commission. In particular, it enables the Commission to make arrangements with the Minister for the Civil Service for serving civil servants to provide assistance to the Commission.
190. *Paragraph 15* makes provision for the delegation of the Commission's functions.
191. *Paragraph 16* requires the Minister for the Civil Service to pay a grant or grant-in-aid to the Civil Service Commission to enable it to carry out its functions. Conditions may be attached to the payment of the grant or grant-in-aid. This is in line with the requirements and procedures set down in *Managing Public Money*. The Minister must consult with the Commission before setting the level of grant or grant-in-aid, or attaching any conditions to its payment.
192. *Paragraph 17* makes provision for the accounts and records of the Civil Service Commission. The preparation and content of the annual statement of accounts must comply with HM Treasury requirements, and provide a fair and true view of the Commission's income and expenditure and cash flows over the financial year and the state of its affairs at the end of the financial year. The Commission must send the annual statement of accounts to the Minister for the Civil Service by the date specified by the Minister. The Minister then sends the statement to the Comptroller

and Auditor General who is required to examine, certify and report on it, and to lay copies of the statement and report before Parliament, unless the Minister for the Civil Service arranges to do so himself.

193. *Paragraph 18* makes provision for the preparation and laying of the Commission’s annual report. The Report is laid before the Parliament by the Minister for the Civil Service, (unless it has been arranged for the Comptroller and Auditor General to do so where the annual report has been combined with the annual statement of accounts in a joint document). Copies of the report are also laid before the Scottish Parliament and National Assembly for Wales by the First Ministers for Scotland and Wales respectively.
194. *Paragraph 19* provides a definition of the financial year for the purposes of *paragraphs 17 and 18*. The period begins when clause 26 comes into force (that is, when the Commission is established), and ends with the following 31 March. Thereafter it runs in successive 12 month periods.
195. *Paragraphs 20 to 22* make provision for the authentication of the Commission’s seal and the execution of documents by the Commission.

Part 3: Transitional Provision Relating to the old Commission

196. *Paragraphs 23 to 28* make transitional provision relating to the old Commission. The old Commission means, in accordance with *paragraph 28*, Her Majesty’s Civil Service Commissioners for the purposes of the Civil Service Order in Council 1995.
197. *Paragraph 23* provides for the First Civil Service Commissioner in the old Commission, to become the First Civil Service Commissioner in the new Civil Service Commission when it becomes operational. The First Civil Service Commissioner who moves to the new Commission on this basis will be entitled to hold office for the remaining period of their original appointment. For example, where the serving First Civil Service Commissioner has been appointed for a five year term, and has served two years at the time the new Civil Service Commission becomes operational, he or she will be entitled to remain in office for a further three years, making a total period of appointment of five years. The other terms of the original appointment will continue to apply, unless the individual concerned agrees to different terms.
198. *Paragraph 24* makes provision to restrict the period of office of the First Commissioner where that person was previously head of the old Commission. The aggregate of time the individual concerned served as First Civil Service Commissioner in the old Commission, and as First Commissioner in the new Commission, must not exceed a total of five years.
199. *Paragraph 25* provides for those who are Commissioners in the old Commission immediately prior to the establishment of the Commission to become Commissioners in the new Commission when it becomes operational. A Civil Service Commissioner who moves to the new Commission on this basis will be entitled to hold office for the

remaining period of their original appointment. For example, where the serving Civil Service Commissioner has been appointed for a three year term, and has served two years at the time the new Civil Service Commission becomes operational, he or she will be entitled to continue to serve as a Commissioner for a further year, making a total period of appointment of three years. Under these transitional arrangements, the other terms of the original appointment will continue to apply, unless the individual concerned agrees to different terms.

200. *Paragraph 26* makes provision to restrict the period of office of a Commissioner where that person was previously a Commissioner in the old Commission. The aggregate of time the individual concerned served as a Civil Service Commissioner under the old arrangements, and as a Civil Service Commissioner in the new Commission, must not exceed a total of five years.
201. *Paragraph 27* establishes that in the period between the passing of the Act and the new Civil Service Commission becoming operational, the serving First Civil Service Commissioner and the other serving Civil Service Commissioners in the old Commission may undertake functions conferred on the new Civil Service Commission by the Act, on behalf of the new Commission.

PART 6 FINAL PROVISIONS

Clause 42: Meaning of “Minister of the Crown”

202. Clause 42 provides that the term “Minister of the Crown” in the draft Constitutional Renewal Bill will have the same meaning as provided in the Ministers of the Crown Act 1975 (c.26). This includes Secretaries of State but also, for example, the Attorney General and the Minister for the Civil Service.

Clause 43: Power to make consequential provision

203. Clause 43 contains a power to make changes to primary or secondary legislation in consequence of the Bill by order. *Subsection (1)* provides that the power can be exercised by a Minister of the Crown, or two or more Ministers acting jointly.
204. *Subsection (2)* provides that an order may amend, repeal or revoke provision in primary or secondary legislation and may include transitional, transitory or saving provisions. An order under this clause must be made by statutory instrument (*subsection (3)*). If it amends primary legislation, an order will be subject to the affirmative resolution procedure (*subsection (4)*). Any other order will be subject to negative resolution procedure (*subsection (5)*).

Clause 44: Extent, commencement, transitional provision and short title

205. *Subsection (1)* provides that an amendment or repeal made by the Bill will have the same extent as the Act or relevant part of the Act to which it relates.

206. *Subsection (2)* provides that the Act will come into force on a day which a Minister of the Crown or two or more Ministers acting jointly, decide by order and that different provisions may be brought into force at different times.
207. *Subsection (3)* provides that a Minister of the Crown or two or Ministers acting jointly may make an order making transitional, transitory or saving provisions in relation to the commencement of provisions of the Act.
208. *Subsection (4)* provides that an order under *subsection (2)* or *(3)* must be made by statutory instrument.
209. *Subsection (5)* sets out the short title of the Bill.

FINANCIAL EFFECTS

210. The draft Constitutional Renewal Bill will not result in additional expenditure to the public sector and neither is it expected to result in savings in public sector expenditure.

PUBLIC SERVICE MANPOWER

211. The provisions contained within the draft Constitutional Renewal Bill have no substantial effect on public service manpower.

IMPACT ASSESSMENT

212. The provisions contained within the draft Constitutional Renewal Bill do not require an Impact Assessment.

EUROPEAN CONVENTION ON HUMAN RIGHTS

213. The provisions contained within the draft Constitutional Renewal Bill are compatible with obligations arising under the European Convention on Human Rights (ECHR).

Part 1 – Demonstrations in the vicinity of Parliament

214. Part 1 contains provisions which repeal sections 132 to 138 of the Serious Organised Crime and Police Act 2005. The vicinity of Parliament will be regulated according to the same statutory frameworks as those which apply to other parts of the country and which applied in the vicinity of Parliament prior to the 2005 Act, that is, section 14 of the Public Order Act 1986 and section 62 of the Control of Pollution Act 1974 and section 8 of the Noise and Statutory Nuisance Act 1993. The regime under section 14 of the Public Order Act 1986 has already been deemed compatible with the Convention most recently in the case of *R(on the application of Louise Brehony) v Chief Constable of Greater Manchester* [2005] EWHC 640 (Admin).

215. The Public Order Act 1986 provides that conditions may be imposed on certain assemblies of people in specified circumstances. The imposition of those conditions may give rise to issues under Articles 10 and 11 ECHR. Conditions may only be imposed on such an assembly by the police where they are reasonably believed to be necessary to prevent serious public disorder, serious damage to property, serious disruption to the life of the community or unjust intimidation. Further the conditions imposed may only pertain to the place of the assembly, its maximum duration and the maximum number of people involved. Accordingly, it is considered that any interference with ECHR rights caused by imposition of a condition on these grounds would be justified and proportionate by reference to a legitimate aim.
216. Section 62 of the Control of Pollution Act 1974 imposes restrictions on the use of loudspeakers in streets at night and in the early hours of the morning. Such a restriction may engage Article 10 and 11 ECHR. Such a restriction is limited in its duration and targeted at the prevention of disorder and the protection of the rights of others. As such it pursues a legitimate aim and is a proportionate means of achieving it. Furthermore, under section 8 of the Noise and Statutory Nuisance Act 1993 the local authority, another public authority bound to act compatibly with ECHR, is able to consent to the use of loudspeakers (with conditions where appropriate) in its area and to disapply the offence of breaching the restriction under the 1974 Act. It is considered that these provisions are compatible with the ECHR.

Part 2 – Role of the Attorney General

217. Part 2 of the draft Bill relates to the role of the Attorney General. Two convention rights may be engaged under this Part.
218. Dismissal of a Director under clauses 4 to 6 may raise issues under Article 6. If Article 6 is engaged, it is thought that the draft Bill is compatible. It is considered that the combination of the procedure adopted by the Attorney General in determining whether to dismiss a Director and access to the employment tribunal in respect of that decision will satisfy the requirements of Article 6.
219. The exercise of the power under clause 15 power to obtain information may engage Article 8. The disclosure of private personal information without the consent of the individual may give rise to an interference with the right to private life. It is considered that any interference with the right to respect for private life occasioned by these new powers would be in accordance with the law (because of the provision the draft Bill makes). Further, any interference would be justified by reference to a legitimate aim – that of safeguarding national security. The question of whether any interference is proportionate will always depend on the circumstances of each case.

Part 3 – Courts and Tribunals

220. Part 3 of the draft Bill relates to the courts and tribunals system. The Part may give rise to an issue under Article 8. Paragraph 34 of Schedule 3 gives the Lord Chancellor the power to request that a person who has been selected for appointment provide information about his or her physical or mental condition. The Lord Chancellor may

also request a candidate to undergo a medical assessment and for a report of that assessment to be made available to the Lord Chancellor.

221. The power to request information regarding the physical and medical condition of a candidate or that a candidate undergo a medical assessment may interfere with Article 8 rights. However, it is considered that any interference can be justified under Article 8(2). Any interference occasioned by these new powers would be in accordance with the law (because of the provision the draft Bill makes). It would be justified by reference to the legitimate aim of ensuring that the candidate is physically and mentally able to perform the functions of the office for which he is selected. A candidate's ability to do so has a bearing on the protection of rights and freedoms of others, public safety, prevention of disorder and crime and the economic well being of the country. The question of whether any interference is proportionate will depend on the circumstances of each case.

Part 4 – Treaties

222. Part 4 of the draft Bill contains provisions which set down a procedure for formalising the role of Parliament in scrutinising treaties before ratification. It is not considered that clauses 21 to 24 give rise to any Convention rights issues.

Part 5 – The Civil Service

223. Part 5 of the draft Bill relates to the Civil Service. This Part may give rise to issues under Article 6 ECHR. Clause 26 gives effect to Schedule 4 which makes provision about the Civil Service Commission. Paragraph 5(3) provides that Her Majesty may remove the First Commissioner or a Commissioner, on the recommendation of the Minister for the Civil Service, if one of the conditions set out in sub-paragraph (4) is met. The removal of the First Commissioner or Commissioner may engage Article 6. However, the procedure for removal will be specified in the terms of appointment and the decision of the Minister recommending removal would be amenable to judicial review. It is considered that the combination of the procedure which will be set out in the terms of appointment and the possibility of judicial review of the decision of the Minister recommending removal, would satisfy the requirements of Article 6.
224. Clauses 30 to 33 make provision for codes of conduct for the civil service, diplomatic service and special advisers. Clause 32 makes provision for civil servants to complain to the Commission about breaches of the codes. The consideration of complaints by the Commission does not engage Article 6 ECHR as it does not involve the determination of a civil right within Article 6(1).

225. That is because the ability to make a complaint in these circumstances is not a civil right within the meaning of Article 6(1). In any event, the Commission’s role after consideration of a complaint is limited to making recommendations about how the complaint is to be resolved. In practice, these recommendations are likely to be made confidentially to the department and civil servants concerned. So even if (contrary to the above) a court were to conclude that the code conferred on civil servants a right within the meaning of Article 6(1), the Commission’s role in making a recommendations is not likely to be considered as determinative of that right.



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