



A Draft Civil Service Bill

A Consultation Document

Cm 6373



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A Consultation Document

PRESENTED TO PARLIAMENT BY THE MINISTER FOR THE
CABINET OFFICE BY COMMAND OF HER MAJESTY,
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A DRAFT CIVIL SERVICE BILL

A CONSULTATION DOCUMENT

Providing a statutory basis to underpin the role, governance and values of the Civil Service would be a major constitutional reform. A Civil Service Act was first proposed some 150 years ago but no Government has ever introduced a Bill.

The Government would welcome comments on this consultation paper that has annexed to it the draft of a Civil Service Bill.

As the paper makes clear, the Government wishes to consult on whether legislation is a necessary and desirable step to take in support of the values that have characterised the Civil Service since Northcote and Trevelyan wrote their report.

The Government will consider how to proceed in the light of responses to this paper.

1. The basis of the Civil Service as we know it today was set out 150 years ago in the Northcote-Trevelyan report. The enduring values set out in that report underpin the international reputation of the national asset that is our Civil Service. But the rapidly changing environment in the era of globalisation means that the Civil Service must reform if it is to meet the modern challenges that it faces. Alongside the reform of public services, the Government is therefore engaged on a substantial programme of Civil Service reform to deliver services in a way that meets the ever more demanding expectations of the general public.¹
2. Sir Andrew Turnbull, the Head of the Home Civil Service, who reports directly to the Prime Minister, leads this programme of reform for the Civil Service. The four basic elements of his reform programme are leadership and skills; departmental restructuring; an effective centre of government; and efficiency.
3. Leadership and skills – All high performing organisations have one thing in common – high quality leaders. The Civil Service therefore needs:

“visible leaders who inspire trust, taking personal responsibility for delivering results effectively and swiftly; working in teams which are more than the sum of their parts and across traditional boundaries; focused on strategic outcomes, matching resources to business priorities, honest, courageous and realistic with staff and Ministers; constantly learning.”²
4. The Civil Service is taking several initiatives to develop those identified as having the potential to reach the very top. Senior leadership training and development is being improved and a High Potential Development Scheme is up and running to develop the next generation of leaders in the service. Departments are taking a more robust approach to performance management and are actively managing the careers of senior civil servants to ensure that people stay long enough in post to deliver priorities, but not so long that they become stale and complacent.
5. Departments have made good progress in appointing individuals with professional skills and demonstrable track records to fill key specialist roles, such as finance, human resources and communications. To develop professional

¹ The reform programme is set out in full in *Civil Service Reform: Delivery and Values*, Cabinet Office, February 2004.

² Ibid, paragraph 5.2, page 17.

talent, the Civil Service is providing better training and development opportunities and different career paths for those already in the service. It is also opening up to talent coming in from outside – from the public, private and voluntary sectors – and encouraging interchange between these sectors.

6. But professionalism is essential in all areas, departmental headquarters, front-line agencies; in all disciplines, policy, operations, and corporate services. Taking through a piece of legislation, managing the processes of government, conducting international negotiations, preparing a policy document, delivering public accountability through parliamentary questions and correspondence, all require as much professionalism as specialist functions like human resources, drawing up resource accounts, negotiating a purchasing contract, or working as a government vet. The Professional Skills for Government initiative launched last month provides an opportunity to lay to rest, once and for all, the generalist/specialist labels which have dogged the Civil Service for years by sustaining the stereotypes of the talented generalist and the isolated specialist. Two new Heads of Profession have been appointed for operational delivery and for policy to work alongside leaders of profession in areas such as economics, law, statistics, science, information technology and communications.
7. Departmental restructuring – As part of their efforts to deliver high quality public services, departments are creating smaller, more strategic, headquarters, which push resources out to the front line and free up those best able to deliver. For example, the Department of Health is slimming down its headquarters by 38% and distributing more power closer to the front line in order to deliver the kind of services patients and the public want. Similar programmes are underway across the Civil Service.
8. An Effective Centre of Government – As well as reforming delivery of services, the Civil Service is reviewing how the centre of government – HM Treasury, the Cabinet Office and Number 10 – can support departments effectively in the delivery of their priorities. The Centre of Government will become a cluster of Centres of Excellence in key functions, such as human resources, procurement, strategy and information technology. The Centres of Excellence will provide a driving force for the establishment of professional disciplines in departments and will be a source of support to networks of professionals across the Civil Service, giving support and advice and providing services best delivered centrally.

9. Efficiency – As part of the Spending Review 2004, Sir Peter Gershon's Review of Public Sector Efficiency found that, by 2007-08, the Civil Service serving UK Government Departments could deliver £20bn in savings from activities that could be undertaken more efficiently, to be redeployed to front line services. The proposals will result in a gross reduction of over 84,000 posts in the Civil Service and military personnel in administrative and support roles. Departments are developing their own plans for implementing efficiency savings. They will be assisted by the centre, both in terms of framework that is being put in place to realise the efficiency gains and in addressing systemic issues, such as the need to strengthen financial management. The devolved administrations are also engaged in efficiency initiatives of comparable scope.
10. This reform programme aims to deliver not only better public services but also better government and a Civil Service that is confident in its ability to meet the immense challenges of the 21st century. But reform goes hand in hand with a determination to protect the enduring values of the Civil Service. The very nature of those values make them perfectly compatible with a programme designed to reform the Civil Service's own operations and improve its performance:
 - a. incorruptibility and integrity – advice and decisions are not influenced by considerations of personal gain;
 - b. impartiality – governments can come into office knowing that their policies and programmes will be put into action from the start. But at the same time civil servants owe neither their jobs nor their prospects to the influence of political parties, lobbyists, business or other interest groups;
 - c. honesty and objectivity – honest and full advice is given based on the best available information so that decisions are as well-founded as possible.
11. The Government now wants to consult on whether legislation is a necessary and desirable step to take in support of these values. This document fulfils the undertaking given last year³ that, once the Public Administration Select Committee had published its proposals for legislation⁴, the Government would

³ *Government's Response to the Ninth Report of the Committee on Standards in Public Life*, September 2003, Cm 5964.

⁴ House of Commons Public Administration Select Committee, *A Draft Civil Service Bill: Completing the Reform*, First Report of Session 2003-04, HC 128-I, January 2004.

publish its own draft Civil Service Bill. The Bill on which the Government now invites comments is set out in the Annex to this document.

The purpose of a Civil Service Act

12. The idea of a Civil Service Act is not new. It was first proposed in the Northcote-Trevelyan Report of 1854.⁵ The final paragraph reads:

“It remains for us to express our conviction that if any change of the importance of those that we have recommended is to be carried into effect, it can only be successfully done through the medium of an Act of Parliament. The existing system is supported by long usage and powerful interests; and were any Government to introduce material alterations into it, in consequence of their own convictions without taking the precaution to give those alterations the force of law, it is almost certain that they would be imperceptibly, or perhaps avowedly, abandoned by their successors, if they were not even allowed to fall into disuse by the very Government which had originated them. A few clauses would accomplish all that is proposed in this paper.”

13. In fact, the Northcote Trevelyan principles have survived and prospered even though neither Gladstone nor any of his successors thought it a priority to give them legislative force. Over the past 150 years, Ministers have managed the Civil Service under the executive authority of the royal prerogative without being subject to statute law or parliamentary approval. But Parliament’s general authority as the ultimate sovereign body and source of the Government’s right to govern has ensured that over this entire period successive governments have taken seriously Parliament’s concerns about the organisation, management and culture of the Civil Service. The period has been marked by a solid and largely uncontested political consensus on the benefits of an impartial and politically neutral permanent Civil Service recruited and promoted on the basis of merit.
14. This non-statutory approach has stood the test of time and change as the permanent Civil Service has adapted to numerous political, organisational and managerial transformations over the past one hundred and fifty years.

⁵ Stafford Northcote and C E Trevelyan, *The Organisation of the Permanent Civil Service*, Parliamentary Papers, Volume XXVII, 1854.

The Government believes that the current arrangements remain workable and afford welcome flexibility in the way in which the Civil Service can be organised and managed in accordance with the employment market and changes in public expectations and consequent changes in the requirements of government. Political commentators have often noted that even the best-intentioned changes can bring with them unintended consequences, and before adopting a statutory approach, the Government would want to be sure that these advantages would be preserved.

What should be the scope of a Civil Service Act?

15. Over the last decade or so, there have been calls to implement the final recommendation of the Northcote–Trevelyan Report. In 1994, the Treasury and Civil Service Select Committee called for a deliberately limited piece of legislation.

“We are not convinced of the case for a wide-ranging Civil Service Act as a mechanism for either furthering or delimiting reforms of the Civil Service. However, we do believe there would be considerable value in a much narrower statute, principally designed to provide statutory backing for the new mechanisms for maintaining the essential values of the Civil Service..... We believe the time has come to implement the last recommendation of the Northcote-Trevelyan Report and establish a new Civil Service Commission on a statutory basis”

The Select Committee went on to say that:

“The introduction of such legislation should also be used as an opportunity to place the powers of the Minister for the Civil Service and the Treasury to make rules in connection with the terms and conditions of employment of civil servants on a statutory footing and require such rules to be laid before Parliament.”⁶

16. In the January 1995 White Paper, *Taking Forward Continuity and Change*, the then Government declared itself open-minded about a Civil Service Act but said that before introducing any legislation it would need to be satisfied that three conditions would be met. First, it would be widely

⁶ *The Role of the Civil Service*, Fifth Report from the Treasury and Civil Service Select Committee, 1993-94, November 1994, paragraphs 116 and 117, page xxiv.

supported, and there would not be attempts to extend its scope. Second, it must sustain the existing constitutional position of the Civil Service. And third, it would not limit flexibility to regulate civil servants' terms and conditions, nor alter their position under general employment law.⁷ In the event no legislation was forthcoming.

17. The case for such legislation has been argued most recently in the Ninth Report of the Committee on Standards in Public Life⁸, the Report of the Select Committee on Public Administration, and the Civil Service Bill introduced in the House of Lords by Lord Lester.⁹ All argue that the fundamental values of the Civil Service cannot be assured when the arrangements for upholding them are laid down in prerogative Orders in Council that can be amended by the Executive without the involvement and scrutiny of Parliament. They share a belief that the values should be enshrined in statute to put beyond doubt the impartiality and political neutrality of the permanent Civil Service and to maintain public trust in central government and public office holders.
18. The Government welcomes and would like to put on record its appreciation of the careful consideration that has been given to these important matters over recent times by the Select Committee on Public Administration, the Committee on Standards in Public Life, and Lord Lester. In preparing its own draft Bill, the Government has found it most helpful to be able to take account of and often draw upon their work as well as the debates that their work has stimulated.
19. The Government accepts that the arrangements under which the Civil Service is constituted, works and is managed must command confidence across the political spectrum if a politically impartial Civil Service is to be sustained. It shares with the current advocates of legislation the consensus that any such legislation must not inhibit the Civil Service's continuing evolution, development and reform. Certainly, the draft Bill that the Government is bringing forward for

⁷ *The Civil Service, Taking Forward Continuity and Change*, Cm 2748, January 1995, page 8.

⁸ *Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service*, April 2003, Cm 5775. *The Government's Response to the Ninth Report of the Committee on Standards in Public Life*, September 2003, Cm 5964

⁹ Given its Second Reading on 5 March 2004 as the Executive Powers and Civil Service Bill, Official Report, Cols 889-934 and subsequently amended to become the Civil Service (No 2) Bill.

consultation is confined to securing the non-partisan status of the permanent Civil Service. It would put on a statutory basis the basic principles and values governing its selection and conduct and the arrangements through which those principles and values are to be upheld.

20. The Government thinks that any such Bill should have the following general characteristics.
 1. It should not change the constitutional and practical role of civil servants whose accountability will continue to be to their Ministers¹⁰ who, in their turn, are accountable to Parliament for their stewardship of the Civil Service and their custodianship of its values.
 2. It should command cross-party support by ensuring that the Civil Service is capable of serving with equal dedication and commitment future duly elected and constituted governments, whatever their political complexion.
 3. It should leave civil servants subject to general employment practices, with very similar statutory employment rights to other employees.
 4. It should not diminish the flexibility and responsiveness with which the service can be managed or interfere with the arrangements whereby Departments and devolved administrations are granted delegated responsibility from the centre for the pay, grading and management of their staff.
 5. It should not make the Civil Service immune to change, but should provide a framework within which it can continue its 150-year evolution into the era of globalisation.

Which civil servants should be covered by a Bill?

21. The principles and values that the draft Bill enshrines would apply to the 500,000 plus civil servants who work in the Home Civil Service and the Forestry Commission and the 6,000 or so who work in the Diplomatic Service.¹¹ Because there is no

¹⁰ Or, as the case may be, to the office holder in charge of their department. Civil servants working for the Welsh Assembly Government are accountable to the Assembly Secretaries who, in their turn, are accountable to the National Assembly. The civil servants working for the Assembly Parliamentary Service are directly accountable to the National Assembly.

¹¹ *Civil Service Staff in Post, 1 October 2003* when the number of total permanent full-time equivalent staff was 511,060 in the Home Civil Service and 5,930 in the Diplomatic Service.

satisfactory, authoritative and comprehensive definition of the term 'Civil Service', in order to achieve the necessary clarity and certainty about coverage, the draft Bill proposes that there should be a comprehensive listing of every part of the Civil Service to which the Bill is to apply.

22. The civil servants who support the devolved administrations in Scotland and Wales are members of the unified Home Civil Service and as such are within scope of the Bill. However, the Government wants to ensure that any legislation would not inhibit the growth of different ways of working that the Scottish Executive and the National Assembly for Wales have been developing to meet the needs of devolved government. The Government believes that the draft Bill achieves this purpose.
23. The Diplomatic Service will continue as a separate and distinct constituent of the Civil Service. It has a worldwide mobility obligation, and in support of this requires a distinct set of skills and attributes from its staff. These include the ability to operate and negotiate in different languages and a high degree of adaptability and resilience in working in demanding and sometimes dangerous environments. The Service has to fill a very wide variety of posts around the world and the UK needs a separate cadre of officials committed to the type of career that will support this need.
24. The Secret Intelligence Service and the Security Service already function in accordance with statutory arrangements laid down in the Security Service Act 1989, the Intelligence Services Act 1994 and the Regulation of Investigatory Powers Act 2000. These statutes were carefully designed to provide an accountable legal framework that allows for proper Ministerial and Parliamentary oversight and appropriate avenues of redress for staff, while leaving the Secret Intelligence Service and the Security Service the operational freedom they need to carry out their particular statutory duties effectively. The Government believes that it is essential to maintain this delicate balance and to avoid putting it at risk it has decided to exclude the civil servants who work in these two agencies from the scope of the draft Bill.
25. The Government has no objection in principle to having civil servants who work in the field of intelligence covered by the draft Bill. Because there is no operational impediment to their inclusion, GCHQ staff will be within scope of all the provisions of the draft Bill.
26. While the Government invites comments on the Bill's coverage and will give the most careful consideration to all the

representations it receives, it firmly believes that the decision to exclude the Secret Intelligence Service and the Security Service is in the national interest.

The Civil Service Commission

27. The Government's draft Bill provides for the establishment of a Civil Service Commission as an independent statutory body whose primary responsibility will be to uphold the principle of selection on merit on the basis of fair and open competition. Clauses 8 and 9 of the draft Bill require appointments to be made in accordance with that principle and accordingly the Commission is under a duty to uphold the requirements of those clauses. Putting the Commission on this statutory basis would remove the possibility of any government being able, without reference to Parliament, to dilute or even overturn the merit principle.
28. In view of the Commission's central role in upholding this core principle, its independence must be beyond dispute across the political spectrum. This means that there must be complete confidence in the person appointed as First Civil Service Commissioner. The First Commissioner will be appointed by Her Majesty upon the recommendation of the Minister for the Civil Service following statutory consultation with the leaders of the main Opposition parties and the leaders of the devolved Administrations, who will also, as a matter of good practice, be consulted on Commissioners appointed to take a particular interest in Scotland and Wales. The Government believes it would be unduly bureaucratic to extend this procedure to the appointment of all the other Commissioners.
29. The Civil Service Commission's primary function would continue to be to maintain the principle of selection on merit on the basis of fair and open competition. The Government believes that placing the role of the Commissioners on a statutory basis provides an opportunity to state the Commission's functions in general terms, leaving it free to decide the detail of how to exercise them. Accordingly, the Bill has been drafted to allow the Commission more latitude than it currently has to determine how it should go about upholding the principle of recruitment on merit. For example, where the current power to make exceptions to that principle is limited to categories specified in the 1995 and 1991 Orders in Council, under the Bill the Commission would be left free to prescribe and publish in its recruitment code the circumstances and criteria under which it will be prepared to make exceptions. It would also be left free to exercise its judgement on which appointments to the Senior Civil Service

are to be subject to its express approval. The general approach that the Government is taking is to create a framework where the Commissioners would be able to “to be firm on principle but flexible in practice”.¹²

30. Currently, the Commissioners have powers to carry out audits of recruitment policies and practices within the Home Civil Service and the Diplomatic Service in order to confirm that their recruitment code is being properly observed and the merit principle is being maintained. The Commission would continue to discharge this monitoring and auditing role, including the hearing of complaints from candidates.
31. The Commission would also continue to hear appeals by civil servants under the Civil Service Code. Under the current regime, civil servants must first make an internal complaint using departmental procedures before appealing to the Civil Service Commissioners. The Government accepts that in certain circumstances this procedure could act as a deterrent to staff and the draft Bill provides for civil servants who reasonably believe that they will be subject to a detriment to take their complaint to the Civil Service Commission direct.
32. The Government has given careful consideration to the proposal from the Public Administration Select Committee that the Commission should also be given the additional power to undertake inquiries into the operation of the Civil Service Code and the Code of Conduct for Special Advisers, especially as it has already, in response to a recommendation from the Committee on Standards on Public Life, given the Commissioners the role of advising Departments on the promotion of the Civil Service Code.¹³ However, it must ultimately be for management in Departments to ensure the effective application and operation of these Codes whose terms are incorporated into the terms and conditions of employment of every civil servant and special adviser. Management cannot abdicate such central responsibilities to outsiders. Where there is a need to inquire into the operation of the Codes, it should be for the Cabinet Secretary to make the necessary arrangements and report the outcome to the Minister for the Civil Service and other Ministers as appropriate. The Government would not want to introduce any arrangements that cut across or interfered with that

¹² First Civil Service Commissioner, Baroness Prashar, speaking in the House of Lords Debate on 5 March 2004.

¹³ *The Government's Response to the Ninth Report of the Committee on Standards in Public Life*, Recommendation 11, page 7.

management line. Nor would the Government want the Commission to be subject to pressure to undertake inquiries into matters of political controversy.

33. Of course, the Government has no objection to the Codes being the subject of external scrutiny (as they have been on numerous occasions since their introduction) by the Select Committee on Public Administration and the Committee on Standards in Public Life. Nor does the Government see any objection to the Civil Service Commission using its reports to Parliament¹⁴ as a vehicle to offer such reflections as it may have on the two Codes derived from carrying out its statutory functions. The Government will continue to take the most careful account of such observations made from outside the proper line of management accountability.
34. The Government invites views on these proposals.

Special Advisers

35. Special advisers play a valuable part in our system of government by giving the Ministers who select and appoint them a commitment that is personal and political in contrast to the professional commitment that they (and in due course their successors) can call upon from the permanent and politically neutral Civil Service. Over the past forty years or so, Ministers have been able to hand pick special advisers to whom they have been able to turn for advice and assistance that is rooted in a common political agenda and close personal relationships. The emergence under successive governments of this distinct source of engaged support has helped to protect from erosion the qualities that characterise the permanent Civil Service.
36. Over this period permanent civil servants and their temporary colleagues, special advisers, have generally worked effectively together as part of a team led by the Cabinet Minister they both serve. Over time, principles and procedures have been worked out and put into writing to place the close working relationship of these different classes of civil servant on as clear a footing as the complexity of modern government permits. These are now reflected in the various Codes that govern the behaviour and interrelationship of Ministers, permanent civil servants and special advisers.

¹⁴ Reports that will go to the Scottish Parliament and the National Assembly for Wales, as well as to the Westminster Parliament.

37. The Government does not consider that the occasional difficulties and rare breakdown in these relationships can be said to constitute a systemic or structural problem. It believes that the correct approach is to facilitate good working relations by seeking to maintain and improve the clarity and precision of the limits within which special advisers should work. With this in mind, the draft Bill provides for the continuing exemption of special advisers from the requirement that all civil servants be recruited competitively on the clear basis that, whilst they can assist their appointing Minister, they cannot exercise executive functions.
38. The Bill would clarify what special advisers can do. At the moment special advisers may be appointed “for the purpose only of providing advice”. This formulation has caused some uncertainty over the years since it was first applied (in 1991) as many of the sorts of work that a special adviser may do that are listed in their Model Contract and Code of Conduct extend beyond giving advice to giving specific forms of support and assistance. The Government welcomes the Public Administration Select Committee’s proposal to redefine the special adviser’s general function as “assisting” his or her appointing Minister, and believes that this will satisfactorily dispel this uncertainty.
39. It would also clarify what special advisers cannot do. The draft Bill provides that no special adviser can authorise expenditure, exercise line management supervision over permanent civil servants¹⁵ or discharge any statutory power. These executive functions can only be carried out on Ministers’ behalf by their permanent civil servants with the exception of up to two special advisers in the Prime Minister’s office. This is designed to give the Head of Government a small degree of freedom in how he or she chooses to organise the centre of government.
40. The Government believes that this general approach to special advisers offers a more realistic and manageable basis for managing and policing the inevitably fluid working relationship between permanent civil servants and special advisers and it invites views on this approach.

¹⁵ The Government believes that in order to do their jobs effectively special advisers need to be able, on behalf of their appointing Minister, to commission work from civil servants. It does not believe that this amounts to exercising a line management function especially as such commissions must reflect departmental priorities and the impact on the workload of the department.

41. The Government is not convinced that the important constitutional and management issues raised by the emergence of special advisers are somehow susceptible to resolution or control by the imposition of an upper limit on their number. Perhaps the only certain outcome from setting such a number is that pressure would quickly develop to make appointments right up to the maximum allowed. The fact is that permanent civil servants will always massively outnumber special advisers but what matters is not the numerical ratio but how well the two groups work together in support of their common political masters. The Government is convinced that it should focus on creating a clear understanding of roles and responsibilities as the best way of facilitating the teamwork that underpins close and effective working relationships.
42. Of course, the Government must account for the special advisers appointed by Ministers. The Bill's approach is to require transparency and it provides for the Minister for the Civil Service to make annual reports to Parliament giving their names, responsibilities, activities, and cost.
43. The Bill extends this reporting regime to special advisers appointed by the Ministers and Secretaries in the devolved administrations and it is proposed that the First Minister and the First Secretary should also make annual reports to the Scottish Assembly and the National Assembly for Wales. This means abandoning the current approach whereby the Prime Minister's approval is required for all such appointments and he sets an upper limit on the number of special advisers who can be appointed by the devolved administrations. The Government does not believe that this regime provides the right line of accountability for appointments made by people on the spot in the light of local circumstances and needs. Under the Bill, the First Minister and the First Secretary will be responsible for approving the appointments made by members of their administrations and exercising judgement on the proper overall level of special advisers that should be employed.

The Core Values of the Civil Service

44. The codification in the 1990s of the constitutional and practical role of civil servants and special advisers marked an important step in clarifying and publicising the values that govern the conduct of government business and the administration of public services in this country. The next logical step in entrenching these values and protecting against the risk of some future Government departing from them arbitrarily would be to provide for the Codes to be made under a statutory power and to be subject to parliamentary scrutiny. The draft

Bill accordingly places the Minister for the Civil Service under a duty to publish a Civil Service Code and a Code of Conduct for Special Advisers. Their minimum content is prescribed in the Bill. The Government regularly participates in regular Parliamentary debates on the Codes of Conduct and it expects this to continue.

45. There is wide consensus on the content of the current Codes and the Government would not expect future versions to depart from this. The Government's draft Bill follows the format adopted by the Select Committee and prescribes the minimum content of the Civil Service Code and in particular spells out the core values that civil servants are expected to uphold. A key policy purpose of the Bill is to ensure that whichever Government happens to be exercising stewardship over the Civil Service at a particular time can have complete confidence that it has its loyal and professionally committed support. But at the same time, that Government of the day must recognise that the same support will in due course be extended to another Government of a different political persuasion. The Government will maintain the position set out in the current code that permanent civil servants have

“a duty to conduct themselves in such a way as to deserve and retain the confidence of Ministers and to establish the same relationship with those whom they may be required to serve in some future Administration.”

46. The Government believes that it is most important that the politicians should uphold their side of this bargain, and will abide by the current position that Ministers and their special advisers should

“uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service Code.”

47. The Diplomatic Service has its own separate Code of Ethics that is issued by the Foreign Secretary and this arrangement is maintained in the draft Bill.

Civil Service Management

48. The Government is engaged on a significant programme of Civil Service reform and, just like earlier administrations, it does not wish to trammel the Service's ability to respond quickly and effectively in line with shifts in method that will occur from time to time in policy formulation and service delivery as well as developments in the wider employment market. Consistent with its approach to legislation and its determination not to diminish the flexibility that departments,

agencies, and the devolved administrations now have to recruit, retain, manage and motivate staff, the Government simply wishes to sweep up the management-related prerogative powers contained in the 1995 and 1991 Orders and leave the Minister for the Civil Service the freedom to lay down a minimum set of central rules within which departments may determine terms and conditions for their own staff in accordance with the Civil Service (Management Functions) Act 1992.

49. Accordingly, the draft Bill gives the Minister for the Civil Service the power to determine the terms and conditions of staff employed in the Civil Service and to publish a code (or codes) relating to management matters. In relation to control over the management of the Diplomatic Service, the responsible Minister is the Foreign Secretary and this is to continue to be the case.
50. The power to determine terms and conditions of staff would continue to be capable of delegation to other Ministers, to the devolved administrations and to heads of statutory bodies. The Bill is drafted to maintain the regime that has operated since the introduction of the Civil Service (Management Functions) Act 1992 under which control over salaries and terms and conditions is subject to extensive delegation. Under that Act, the Minister for the Civil Service has delegated day-to-day responsibility for a wide range of terms and conditions to departments and agencies but he has retained responsibility for the overall framework regulating the employment of civil servants. The delegations and authorisations he makes under the Act may be made subject to such conditions as the Minister thinks fit and in practice they are made subject to compliance with the Civil Service Management Code that is issued under the 1995 Order in Council. This Code sets out the principles that departments must follow when setting civil servants' terms and conditions. It is a substantial document running to twelve chapters.
51. The PASC Bill provides for management orders to be made by statutory instrument. The Government does not propose to follow this approach because it believes that this would interpose a third party in matters that are properly handled as part of the employer-employee relationship and so diminish the flexibility that is necessary if that relationship is to continue to be managed in a modern and responsive manner.
52. The Government would welcome views on these proposals.

Crown employment nationality provisions

53. The provisions in clauses 8 and 9 of the PASC Bill substantially replicate those in the Crown Employment (Nationality) Bill that is currently in the form of a Private Member's Bill. The Government finds these provisions acceptable in their entirety but they have not been replicated in the Government's draft Bill while they are contained in a Private Member's Bill. If a Civil Service Bill were to be introduced before those provisions become law then the intention would be to include them in the Bill.

Conclusion

54. The general approach outlined above is reflected in the clauses of the draft Bill published as an annex to this document. The Government now invites views on the Bill. Responses are requested by **28 February 2005**. The arrangements for making responses, whether in writing or electronically are explained on the back cover of this document.

Draft Civil Service Bill

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TO

Make provision about 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:—

Civil service

1 Application of this Act

- (1) This Act applies only to the parts of the civil service listed in Part 1 of Schedule 1.
- (2) But this Act does not apply to those parts of the civil service so far as they include anything listed in Part 2 of that Schedule.
- (3) The Minister for the Civil Service may by order amend Schedule 1 by altering, adding or removing an entry.

2 Civil service and civil servants

- (1) References to the civil service are references only to those parts of the civil service to which this Act applies.
- (2) References to civil servants are references only to civil servants in those parts of the civil service to which this Act applies.
- (3) This section applies for the purposes of this Act (apart from sections 1 and 16(8)(c) and Schedule 1).

Civil Service Commission

3 Civil Service Commission

- (1) There is to be a body corporate called the Civil Service Commission.
- (2) Schedule 2 is about the Commission.

*Management***4 Management of the civil service**

- (1) The Minister for the Civil Service has the powers to manage the civil service, except the diplomatic service, that are set out in subsection (3).
- (2) The Secretary of State has the powers to manage the diplomatic service that are set out in subsection (3).
- (3) The powers referred to in subsections (1) and (2) are powers in relation to these matters –
 - (a) numbers of civil servants;
 - (b) grading and classification of civil servants;
 - (c) recruitment and appointment by appointing authorities of persons to be civil servants;
 - (d) in relation to persons who have previously been civil servants (whether in the relevant part of the civil service or not), reinstatement or re-appointment by appointing authorities as civil servants;
 - (e) remuneration, expenses and allowances of civil servants;
 - (f) hours of work and working patterns of civil servants (including provision about part-time working);
 - (g) holiday entitlement of civil servants;
 - (h) conduct of civil servants;
 - (i) re-deployment of civil servants (whether within or outside the relevant part of the civil service);
 - (j) redundancy of civil servants;
 - (k) retirement of civil servants;
 - (l) other terms and conditions of service of civil servants.
- (4) Nothing in this section confers –
 - (a) power to recruit, appoint, discipline or dismiss civil servants, or
 - (b) any other power for the day to day management of civil servants.
- (5) In this Act the powers conferred by this section are referred to as “statutory management powers”.
- (6) The Secretary of State must not use his statutory management powers in relation to –
 - (a) remuneration, expenses and allowances of civil servants, or
 - (b) the conditions on which a civil servant may retire,unless the Minister for the Civil Service agrees to their use.

5 Civil service code and diplomatic service code of ethics

- (1) The Minister for the Civil Service must use his statutory management powers to publish a code that complies with subsections (7) to (10).
- (2) In this Act “civil service code” means the code published under subsection (1) as it is in force for the time being.
- (3) The Minister for the Civil Service must lay the civil service code before each House of Parliament.

- (4) The Secretary of State must use his statutory management powers to publish a code that complies with subsections (7) to (10).
- (5) In this Act “diplomatic service code of ethics” means the code published under subsection (4) as it is in force for the time being.
- (6) The Secretary of State must lay the diplomatic service code of ethics before each House of Parliament.
- (7) The code must require civil servants who serve –
 - (a) Her Majesty’s Government in the United Kingdom,
 - (b) the Scottish Executive, or
 - (c) the National Assembly for Wales,to carry out their duties for the assistance of the Government, Executive or Assembly as it is duly constituted for the time being, whatever its political complexion.
- (8) The code must require civil servants to carry out their duties –
 - (a) efficiently;
 - (b) with integrity and honesty;
 - (c) with objectivity and impartiality;
 - (d) reasonably;
 - (e) without maladministration;
 - (f) according to law.
- (9) But the code need not require special advisers to carry out their duties with objectivity or political impartiality.
- (10) The code must require ministers not to impede civil servants in their compliance with the code.
- (11) Subsection (8) does not require the code to include any provision about special advisers that is included in the special advisers code.
- (12) Nothing in subsections (7) to (10) prevents the code from containing provision about other matters that relate to the relevant part of the civil service.
- (13) In subsections (7) to (10) references to civil servants are references to the civil servants in the relevant part of the civil service.

6 Special advisers code

- (1) The Minister for the Civil Service must use his statutory management powers to publish a code about special advisers in the civil service.
- (2) In this Act “special advisers code” means the code published under subsection (1) as it is in force for the time being.
- (3) The Minister for the Civil Service must lay the special advisers code before each House of Parliament.

7 Civil servants’ terms and conditions

- (1) The civil service code forms part of the terms and conditions of service of civil servants in the relevant part of the civil service.

- (2) The diplomatic service code of ethics forms part of the terms and conditions of service of civil servants in the relevant part of the civil service.
- (3) The special advisers code forms part of the terms and conditions of service of special advisers.

Appointment

8 Duty to hold an open competition

- (1) An appointment in the civil service may not be made unless the appointing authority holds an open competition to select the person to be appointed.
- (2) This section does not apply to either of these –
 - (a) appointment (on promotion or otherwise) of a person who is already a civil servant by virtue of an appointment made in accordance with the rules for selection on merit;
 - (b) appointment (including reinstatement or re-appointment) of a person who has previously been a civil servant by virtue of an appointment made in accordance with the rules for selection on merit.
- (3) This section does not apply to any of these –
 - (a) an appointment made directly by Her Majesty;
 - (b) an appointment as a High Commissioner;
 - (c) an appointment as a special adviser;
 - (d) an appointment excepted from this section by provision included in the recruitment code in accordance with section 12.
- (4) For the purposes of subsection (2) an appointment is made in accordance with the rules for selection on merit if it meets one of these conditions –
 - (a) the appointment was made following selection on merit on the basis of fair and open competition (whether before or after the commencement of this section);
 - (b) in the case of an appointment made after the commencement of this section, the appointment was excepted from this section or section 9 by provision included in the recruitment code in accordance with section 12;
 - (c) in the case of an appointment made before the commencement of this section, the appointment was excepted by the commissioners from a requirement for selection for the appointment to be on merit on the basis of fair and open competition.
- (5) In subsection (4)(c) “commissioners” means any of Her Majesty’s Civil Service Commissioners for the purposes of the Diplomatic Service Order in Council 1991, the Civil Service Order in Council 1995 or any other Order in Council.
- (6) The Civil Service Commission must uphold the requirements of this section.

9 Rules for selection by open competition

- (1) Where an appointing authority holds an open competition to select a person for an appointment in the civil service (whether or not section 8 requires the competition to be held) –
 - (a) the competition must be fair;

- (b) selection for the appointment must be on merit on the basis of the competition.
- (2) This section does not apply to an appointment excepted from this section by provision included in the recruitment code in accordance with section 12.
- (3) The Civil Service Commission must uphold the requirements of this section.

10 Civil service recruitment code

- (1) The Civil Service Commission may publish a code or codes about the way in which appointments in the civil service are to be made.
- (2) In this Act “recruitment code” means the code published under subsection (1) as it is in force for the time being (or, if there is more than one, all the codes together).
- (3) Nothing in this Act which specifies provision that may be included in the recruitment code is to limit the generality of subsection (1).

11 Interpretation and application of sections 8 and 9

The recruitment code may make provision about—

- (a) the interpretation, and
 - (b) the application,
- of sections 8 and 9 by appointing authorities.

12 Excepted appointments

- (1) The Civil Service Commission may include provision in the recruitment code that excepts an appointment from section 8 or 9, but only if the Commission thinks that the exception is justified by the needs of the civil service.
- (2) The provision may be made in any way, including by reference to—
 - (a) particular appointments or descriptions of appointments;
 - (b) the circumstances in which an appointment is made;
 - (c) the circumstances of the person to be appointed.
- (3) The provision may confer a discretion on the Commission.

13 Approval of appointments

- (1) The recruitment code may include provision that requires an appointing authority to obtain the approval of the Civil Service Commission before making an appointment in the civil service.
- (2) The Commission may participate in the process of selecting a person for an appointment for which its approval is required by virtue of subsection (1).
- (3) It is for the Commission to decide how to participate in that process.

14 Compliance with recruitment code

An appointing authority must not make an appointment in the civil service unless any relevant provision of the recruitment code has been complied with.

15 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 sections 8, 9 and 14 are being complied with.
- (2) The Commission may do anything that it thinks necessary or expedient for that purpose, and in particular may require an appointing authority to supply it with information about—
 - (a) appointments which the authority has made, and
 - (b) the way in which those appointments were made.

Special advisers

16 Special advisers

- (1) In this Act “special adviser” means a civil servant appointed—
 - (a) by a minister directly;
 - (b) to assist that minister;
 - (c) in accordance with the conditions in subsections (2) and (3).
- (2) The appointment must be approved—
 - (a) by the Prime Minister, if the appointing minister is a Minister of the Crown;
 - (b) by the First Minister in Scotland, if the appointing minister is a Scottish Minister;
 - (c) by the Assembly First Secretary in Wales, if the appointing minister is an Assembly Secretary.
- (3) The appointment must be on terms that—
 - (a) incorporate conditions approved by the Minister for the Civil Service;
 - (b) provide for the appointment to end not later than the time when the appointing minister’s term of office ends;
 - (c) prohibit the special adviser from undertaking restricted duties.
- (4) Subsection (3)(c) does not apply to a person appointed by the Prime Minister and designated by him for the purposes of this section; but no more than two designations may have effect at the same time.
- (5) A designation for the purposes of Article 3(3) of the Civil Service Order in Council 1995 is to be treated as designating the person or persons to which it relates for the purposes of this section.
- (6) An appointing minister’s term of office ends—
 - (a) when the minister ceases to hold the ministerial office in respect of 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.
- (7) 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;
 - (b) in relation to a person appointed by a Scottish Minister, the day of the poll at the first ordinary or extraordinary general election following the appointment;

- (c) in relation to a person appointed by the Assembly First Secretary or an Assembly Secretary, the day of the poll at the first ordinary election following the appointment.
- (8) The following are restricted duties –
- (a) authorising the expenditure of public funds;
 - (b) exercising any power given by or under an Act of Parliament or an Act of the Scottish Parliament;
 - (c) exercising any function relating to the appraisal, reward, promotion or disciplining of civil servants in any part of the civil service (including a part of the civil service to which this Act does not apply).

17 Annual reports about special advisers

- (1) The Minister for the Civil Service must –
- (a) produce an annual report about special advisers, and
 - (b) lay the report before each House of Parliament.
- (2) The First Minister in Scotland must –
- (a) produce an annual report about special advisers, and
 - (b) lay the report before the Scottish Parliament.
- (3) The Assembly First Secretary in Wales must –
- (a) produce an annual report about special advisers, and
 - (b) lay the report before the National Assembly for Wales.
- (4) Any report under this section must be in accordance with Schedule 3.

Appeals and complaints about conduct

18 Qualifying complaints etc

- (1) This section applies for the purposes of sections 19 and 20.
- (2) A complaint is a “qualifying complaint” if –
- (a) the complaint consists of an allegation that a person other than the complainant has acted, or intends to act, in breach of a statutory code, and
 - (b) the complainant is directly interested in the breach.
- (3) The reference in subsection (2) to a statutory code is a reference to any of the following –
- (a) the civil service code;
 - (b) the diplomatic service code of ethics;
 - (c) the special advisers code.
- (4) The “complainant” is the civil servant making a qualifying complaint.
- (5) In relation to a civil servant in a part of the civil service that is not a department, references to his department are references to the part of the civil service in question.

19 Appeals to the Commission

- (1) This section applies where the complainant notifies the Civil Service Commission –
 - (a) that he has made a qualifying complaint under his department's internal complaints procedure,
 - (b) that the internal complaints procedure has been exhausted in relation to the complaint, and
 - (c) that he is not content with the outcome of the procedure.
- (2) The Commission must investigate the complaint if satisfied of the following matters –
 - (a) that the information notified to the Commission under subsection (1)(a) and (b) is true;
 - (b) that it is reasonable for the complainant not to be content with the outcome of the procedure.
- (3) The Commission must consult the complainant's department before making a decision on the matters mentioned in subsection (2).
- (4) If the Commission investigates the complaint, it must decide to what extent the complaint is justified.
- (5) The Commission must consult the complainant's department before making a decision under subsection (4).
- (6) If the Commission decides that the complaint is justified to any extent, it may make a recommendation to any person.
- (7) The Commission may do anything that it thinks necessary or expedient for investigating a complaint.
- (8) The power under subsection (7) may, in particular, be exercised to do the following things –
 - (a) to regulate the procedure under which an investigation is carried out;
 - (b) to request any person to provide information or assistance.

20 Complaints direct to the Commission

- (1) This section applies where the complainant makes a qualifying complaint to the Civil Service Commission.
- (2) The Commission must investigate the complaint if satisfied that the complainant –
 - (a) has not already made the complaint under his department's internal complaints procedure, and
 - (b) could not reasonably be expected to make the complaint under that procedure.
- (3) The Commission must consult the complainant's department before making a decision on the matters mentioned in subsection (2).
- (4) If the Commission investigates the complaint, it must decide to what extent the complaint is justified.
- (5) The Commission must consult the complainant's department before making a decision under subsection (4).

- (6) If the Commission decides that the complaint is justified to any extent, it may make a recommendation to any person.
- (7) The Commission may do anything that it thinks necessary or expedient for investigating a complaint.
- (8) The power under subsection (7) may, in particular, be exercised to do the following things –
 - (a) to regulate the procedure under which an investigation is carried out;
 - (b) to request any person to provide information or assistance.

Miscellaneous and general

21 Delegation of civil service management functions

- (1) Section 1 of the Civil Service (Management Functions) Act 1992 (c. 61) (delegation of functions) is amended as follows.
- (2) For subsection (1) substitute –
 - (1) This section applies to the functions conferred on the Minister for the Civil Service by section 4 of the Civil Service Act 2004, to the extent that they relate to Her Majesty’s Home Civil Service.”
- (3) In subsection (2) –
 - (a) for the words from the beginning to “vested” substitute “The Minister for the Civil Service”;
 - (b) for “the functions” substitute “a function to which this section applies”.
- (4) Omit subsection (5).

22 Minor and consequential amendments

Schedule 4 (minor and consequential amendments) has effect.

23 Repeals and revocations

- (1) The following cease to have effect –
 - The Diplomatic Service Order in Council 1991;
 - The Civil Service Order in Council 1995.
- (2) The provisions listed in Schedule 5 (which include certain spent provisions) are repealed or revoked to the extent specified.

24 Saving of existing management powers etc

- (1) Nothing in section 4 affects any power of Her Majesty to manage the civil service so far as the power relates to –
 - (a) the subject matter of the Servants of the Crown (Parliamentary, European Parliamentary and Northern Ireland Assembly Candidature) Order 1987,
 - (b) the establishment and functions of the Civil Service Appeal Board,
 - (c) the establishment and functions of the Security Vetting Appeals Panel,or

- (d) matters other than those in relation to which statutory management powers are conferred.
- (2) Nothing in section 4 affects any power to manage the civil service that is conferred on the Minister for the Civil Service or the Secretary of State by or under an enactment.
- (3) Nothing in section 4 affects any power of a person other than—
 - (a) Her Majesty,
 - (b) the Minister for the Civil Service, or
 - (c) the Secretary of State,to manage the civil service.
- (4) Nothing in section 4 affects any power excepted from the statutory management powers by subsection (4) of that section.
- (5) Subsections (1) to (3) do not prevent statutory management powers from being used in relation to matters to which powers saved by those subsections relate.
- (6) Any instrument made or other thing done under powers that cease to be exercisable on the commencement of section 4 or of any repeal or revocation made by this Act has effect as if made or done under the relevant statutory management powers so far as is necessary for continuing its effect after that commencement.
- (7) In subsection (6) “relevant statutory management powers” means—
 - (a) so far as the instrument or other thing relates to the diplomatic service, the statutory management powers of the Secretary of State;
 - (b) otherwise, the statutory management powers of the Minister for the Civil Service.
- (8) This section is subject to section 23 and Schedule 5.

25 Orders and regulations

- (1) Any power conferred by this Act to make an order or regulations is exercisable by statutory instrument.
- (2) A statutory instrument containing an order under section 1 or regulations under paragraph 10 of Schedule 2 is subject to annulment in pursuance of a resolution of either House of Parliament.

26 Supplementary provision

- (1) The Minister for the Civil Service may by order make—
 - (a) any supplementary, incidental or consequential provision, and
 - (b) any transitory, transitional or saving provision,which he thinks necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Act.
- (2) An order under this section may provide, in particular, for any provision of this Act that applies in relation to civil servants appointed in accordance with this Act to apply (if it would not otherwise do so) in relation to civil servants appointed in accordance with the Diplomatic Service Order in Council 1991, the Civil Service Order in Council 1995 or any other Order in Council.

- (3) In subsection (2) the references to civil servants include references to particular descriptions of civil servants.

27 Interpretation

In this Act –

“appointing authority” means a person with power to make appointments in the civil service;

“civil servant” is to be read in accordance with section 2;

“civil service” is to be read in accordance with section 2;

“civil service code” has the meaning given by section 5(2);

“diplomatic service” means Her Majesty’s diplomatic service;

“diplomatic service code of ethics” has the meaning given by section 5(5);

“minister” means –

(a) a Minister of the Crown;

(b) a Scottish Minister;

(c) in Wales, the Assembly First Secretary or an Assembly Secretary;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);

“recruitment code” has the meaning given by section 10(2);

“relevant part of the civil service”, in relation to statutory management powers or a code published under such powers, means –

(a) the civil service except the diplomatic service (if the power is exercisable, or the code is published, by the Minister for the Civil Service), or

(b) the diplomatic service (if the power is exercisable, or the code is published, by the Secretary of State);

“special adviser” has the meaning given by section 16;

“special advisers code” has the meaning given by section 6(2);

“statutory management powers” has the meaning given by section 4(5).

28 Short title and commencement

- (1) This Act may be cited as the Civil Service Act 2004.
- (2) This Act, except sections 25 to 27 and this section, comes into force in accordance with provision made by order by the Minister for the Civil Service.
- (3) An order under subsection (2) may make different provision for different purposes.

SCHEDULES

SCHEDULE 1

Section 1

APPLICATION

PART 1

PARTS OF CIVIL SERVICE TO WHICH ACT APPLIES

General

Any department of the Secretary of State that is not listed elsewhere in this Part of this Schedule

Any other department that a Minister of the Crown is in charge of and that is not listed elsewhere in this Part of this Schedule

Particular departments

Assets Recovery Agency

Board of Inland Revenue

Cabinet Office

Central Office of Information

Crown Prosecution Service

Her Majesty's Customs and Excise

Export Credits Guarantee Department

Food Standards Agency

Gas and Electricity Markets Authority

Government Actuary's Department

Government Communications Headquarters

Government Offices for the Regions

Her Majesty's Land Registry

Legal Secretariat to the Law Officers

National Savings and Investments Office

Office for National Statistics
Office of Fair Trading
Office of Rail Regulation
Office of the International Rail Regulator
Office of the Parliamentary Counsel
Office of Water Services
Ordnance Survey
Postal Services Commission
Public Records Office
Public Works Loan Board
Royal Mint
Serious Fraud Office
Her Majesty's Treasury
Treasury Solicitor's Department
Water Services Regulation Authority

Scotland

Scottish Administration

Wales

National Assembly for Wales
Office of Her Majesty's Chief Inspector of Education and Training in Wales
Office of the Health Service Commissioner for Wales
Office of the Welsh Administration Ombudsman

Other bodies

Advisory, Conciliation and Arbitration Service
Companies House (in England and Wales and in Scotland)
Her Majesty's Fire Service Inspectorate
Forestry Commission
Health and Safety Executive
Independent Review Service (being the service maintained by the social fund Commissioner)
Office of Her Majesty's Chief Inspector of Schools in England

Office of the Legal Services Ombudsman

Traffic Area Offices

PART 2

EXCLUSIONS FROM PART 1

Intelligence services

Secret Intelligence Service

Security Service

Northern Ireland

Northern Ireland Civil Service

Northern Ireland Court Service

SCHEDULE 2

Section 3

CIVIL SERVICE COMMISSION

PART 1

THE COMMISSIONERS

Membership of the Commission

- 1 (1) The Civil Service Commission is to consist of at least seven members, called Civil Service Commissioners.
- (2) The Commissioners are the persons who—
 - (a) become Commissioners under paragraph 2, or
 - (b) are appointed as Commissioners under paragraph 3.
- (3) One of the Commissioners is to be First Civil Service Commissioner.
- (4) The First Commissioner is the person who—
 - (a) becomes First Commissioner under paragraph 2, or
 - (b) is appointed as First Commissioner under paragraph 4.
- (5) In this Schedule—
 - “Commission” means the Civil Service Commission;
 - “Commissioner” means a Civil Service Commissioner;
 - “First Commissioner” means the First Civil Service Commissioner.

Members of the old commission to become Commissioners

- 2 (1) Each person who was a member of the old commission immediately before the commencement of section 3 becomes a Commissioner on the commencement of that section.

- (2) The head of the old commission also becomes First Commissioner on that commencement.
- (3) A person who becomes a Commissioner in accordance with sub-paragraph (1) (including the person who also becomes First Commissioner in accordance with sub-paragraph (2)) holds office on the following terms.
- (4) The Commissioner holds office for a period equal to the remaining part of his period of office as a member of the old commission.
- (5) The other terms on which he holds office are –
 - (a) the same as those on which the person held office as a member of the old commission, or
 - (b) if the person agrees, such as may be determined by the Minister for the Civil Service.

Appointment of Commissioners

- 3 (1) It is for Her Majesty to appoint a person to be a Commissioner.
- (2) If a person appointed under sub-paragraph (1) has not previously held relevant office, he holds office as a Commissioner –
 - (a) for a period of three years;
 - (b) on such other terms as may be determined by the Minister for the Civil Service.
- (3) If a person appointed under sub-paragraph (1) has previously held relevant office, he holds office as a Commissioner on such terms as may be determined by the Minister for the Civil Service.
- (4) If sub-paragraph (3) applies, the sum of the period for which the person is appointed and the period or periods for which he has previously held relevant office must not be more than 10 years.
- (5) In this paragraph “relevant office” means –
 - (a) office as a Commissioner, or
 - (b) office as a member of the old commission.

Appointment of First Commissioner

- 4 (1) It is for Her Majesty to appoint a person to be First Commissioner.
- (2) A person may be appointed as First Commissioner whether or not he holds, or has previously held, that office.
- (3) A person may not be appointed as First Commissioner unless he –
 - (a) already holds office as a Commissioner, or
 - (b) is appointed as a Commissioner in accordance with paragraph 3.
- (4) The First Commissioner holds office on such terms as may be determined by the Minister for the Civil Service.
- (5) But a person may not be appointed to be First Commissioner for a period that would exceed the period of his office as a Commissioner.
- (6) No recommendation may be made to Her Majesty to appoint a person as First Commissioner unless the person making the recommendation has consulted all of the following –
 - (a) the First Minister in Scotland;
 - (b) the Assembly First Secretary in Wales;

- (c) the registered leader of the main opposition party;
 - (d) the registered leader of the second opposition party.
- (7) In this paragraph –
- (a) “main opposition party” means the registered party in opposition to Her Majesty’s Government which had the highest national vote at the previous parliamentary general election;
 - (b) “second opposition party” means the registered party in opposition to Her Majesty’s Government which had the highest national vote at the previous parliamentary general election apart from the main opposition party;
 - (c) “registered party” means a party registered in a register of political parties maintained by the Electoral Commission in accordance with section 23 of the Political Parties, Elections and Referendums Act 2000 (c. 41);
 - (d) “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.

Terms on which office held

- 5 (1) The terms on which a person is appointed as a Commissioner or as First Commissioner may include terms about any of the following –
- (a) the payment of remuneration and allowances;
 - (b) the provision of a pension to or in respect of the person appointed.
- (2) The terms on which a person is appointed as a Commissioner or as First Commissioner may impose any requirement on the Commission (including a requirement to make payments to or in respect of the person appointed).
- (3) The Minister for the Civil Service may make arrangements relating to any of the terms on which a person is, or may be, appointed as a Commissioner or as First Commissioner.
- (4) Such arrangements may impose any requirement on the Commission (including a requirement to make payments to or in respect of the person appointed).

Resignation or removal from office

- 6 (1) A person ceases to be a Commissioner if he resigns from that office by giving written notice to the Minister for the Civil Service.
- (2) Her Majesty may remove a person from office as a Commissioner if any of the following conditions is met –
- (a) he is absent from three successive meetings of the Commission without the approval of the Commission;
 - (b) he is convicted of an offence;
 - (c) he becomes bankrupt;
 - (d) he is unfit or unable to carry out his functions as a Commissioner.
- (3) It is for the Minister for the Civil Service to recommend to Her Majesty the removal of a person from office as a Commissioner.
- (4) A person ceases to be First Commissioner if any of the following conditions is met –
- (a) he resigns from office as a Commissioner;

- (b) he is removed from office as a Commissioner;
 - (c) he resigns from office as First Commissioner by giving written notice to the Minister for the Civil Service.
- (5) A person who resigns from office as First Commissioner does not, by that resignation, cease to be a Commissioner.
- (6) In determining for the purposes of this paragraph whether a person has been convicted of an offence –
- (a) it does not matter whether the person is convicted of an offence within the United Kingdom or elsewhere;
 - (b) an act punishable under the law of a country or territory outside the United Kingdom constitutes an offence for the purposes of this paragraph (however it is described in that law).
- (7) For the purposes of this paragraph a person becomes bankrupt if any of the following conditions is met –
- (a) a court in England and Wales makes a bankruptcy order in respect of that person;
 - (b) a court in Scotland awards sequestration of that person’s estate;
 - (c) a court in Northern Ireland adjudges a person bankrupt.

Compensation for loss of office

- 7 The Minister for the Civil Service may require the Commission to pay compensation where –
- (a) a person ceases to hold office as a Commissioner or as First Commissioner, and
 - (b) the Minister thinks that, because of the circumstances in which the person has ceased to hold that office, compensation should be paid to that person.

PART 2

THE COMMISSION

Status of the Commission and its property

- 8 (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.

Powers

- 9 (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.
- (3) Nothing in this Schedule which specifies powers of the Commission is to limit the generality of sub-paragraph (1).

Disclosure of information

- 10 The Minister for the Civil Service may make regulations for the purpose of securing that, in the exercise of the Commission's functions, information is not disclosed to an extent, or in a manner, that is prejudicial to national security or the continued discharge of the functions of the Secret Intelligence Service, the Security Service or the Government Communications Headquarters.

Committees

- 11 (1) The Commission may establish committees.
(2) A committee of the Commission may establish sub-committees.
(3) A person may not be a member of a committee or a sub-committee unless he is a Commissioner.
(4) The Commission may delegate functions to a Committee, and a committee may delegate functions (including functions delegated to it) to a sub-committee.

Procedure and proceedings

- 12 (1) The Commission may regulate its own procedure, and the procedure of its committees and sub-committees, including quorum.
(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.

Chief executive and other staff

- 13 (1) The Commission must appoint a person to be its chief executive.
(2) The Commission must not appoint a person to be chief executive unless the Minister for the Civil Service has approved—
(a) the appointment of that person, and
(b) the salary payable to that person after appointment.
- 14 The Commission may employ other staff.
- 15 Staff of the Commission (including the chief executive) are not to be regarded as—
(a) servants or agents of the Crown, or
(b) enjoying any status, immunity or privilege of the Crown.

Pensions

- 16 (1) Employment by the Commission (including employment as chief executive) is included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 (c. 11) can apply.
(2) Office as a Commissioner is included among the offices to which such a scheme can apply.
(3) Accordingly, in Schedule 1 to the Superannuation Act 1972 (kinds of employment to which a scheme under section 1 of the Act may apply)—

- (a) at the end of the list of “Royal Commissions and other Commissions” insert –
“Civil Service Commission.”;
 - (b) at the appropriate place in the list of “Offices” insert –
“Civil Service Commissioner.”
- (4) The Commission must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to this paragraph in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

Arrangements for assistance

- 17 (1) The Commission may make arrangements with other persons for the provision of assistance to the Commission.
- (2) Arrangements may include the payment of fees to such persons.

Exercise of functions

- 18 The Commission may authorise any one or more of the following to exercise any of its functions –
- (a) a Commissioner;
 - (b) the chief executive;
 - (c) any other member of the Commission’s staff;
 - (d) a person with whom arrangements are made under paragraph 17;
 - (e) any other person.

Exercise of functions by old commission

- 19 (1) During the preparatory period the old commission may exercise, in the name and on behalf of the Commission, any functions conferred on the Commission by this Schedule.
- (2) The “preparatory period” is the period that –
- (a) starts with the day on which this Act is passed, and
 - (b) ends with the day on which section 3 commences.

Financial provisions

- 20 (1) The Minister must pay to the Commission such sums as he may determine are appropriate for, or in connection with, the exercise by it of its functions.
- (2) The Minister may by direction require the Commission –
- (a) not to incur costs and expenditure in excess of a specified amount without his consent;
 - (b) to follow specified procedures in relation to its costs and expenditure.
- (3) A direction under sub-paragraph(2) may relate to all of the Commission’s costs and expenditure, or to costs and expenditure of a specified description.

Accounts

- 21 (1) The Commission must keep proper accounts and proper records in relation to them.

- (2) The Commission must prepare a statement of accounts in respect of each financial year.
- (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.
- (4) The statement must be in compliance with any directions given by the Minister for the Civil Service with the Treasury’s consent as to—
 - (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 for the Civil Service at such time as he may direct.
- (6) The Minister for the Civil Service must, on or before 31 August in every year, send to the Comptroller and Auditor General the statement prepared by the Commission for the financial year that ended on 31 March in that year.
- (7) The Comptroller and Auditor General must—
 - (a) examine, certify and report on the statement sent to him under sub-paragraph (6), and
 - (b) lay copies of the statement and of his report before each House of Parliament.

Reports

- 22 (1) The Commission—
 - (a) must, as soon as practicable after the end of each financial year, prepare a report about the exercise of its functions during that year, and
 - (b) may, in exceptional circumstances, prepare a report at any other time about any matter relating to the exercise of its functions.
- (2) As soon as practicable after preparing a report under sub-paragraph (1), the Commission must give a copy of the report to each of the following—
 - (a) the Minister for the Civil Service;
 - (b) the First Minister in Scotland;
 - (c) the Assembly First Secretary in Wales.
- (3) The Minister for the Civil Service must lay a copy of any report given under sub-paragraph (2) before each House of Parliament.
- (4) The First Minister must lay a copy of any report given under sub-paragraph (2) before the Scottish Parliament.
- (5) The Assembly First Secretary must lay a copy of any report given under sub-paragraph (2) before the National Assembly for Wales.
- (6) Once a report has been given under sub-paragraph (2), the Commission must publish it.
- (7) It is for the Commission to decide how the report should be published.

Documentary evidence

- 23 The application of the seal of the Commission is to be authenticated by the signature of any of the following –
- (a) a Commissioner;
 - (b) the chief executive;
 - (c) any person authorised (whether generally or specifically) for the purpose by a Commissioner or the chief executive.
- 24 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 person who has been authorised (whether generally or specifically) for the purpose by a Commissioner or the chief executive.
- 25 A document purporting to be –
- (a) duly executed under the seal of the Commission, or
 - (b) signed on behalf of the Commission,
- is to be received in evidence and, unless the contrary is proved, taken to be executed or signed in that way.

PART 3

INTERPRETATION

- 26 This Part applies for the purposes of this Schedule.
- 27 Each of the following is a “financial year” –
- (a) the period which begins with the date on which section 3 comes into force and ends with the following 31 March;
 - (b) each successive period of 12 months.
- 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 construed 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.

SCHEDULE 3

Section 17

ANNUAL REPORTS ABOUT SPECIAL ADVISERS

Interpretation

- 1 (1) This paragraph applies for the purposes of this Schedule.
- (2) “Report” means a report produced under section 17.
 - (3) “Reporting period”, in relation to a report, means the period to which a report relates.
 - (4) “Preceding period”, in relation to a report, means any of the following –
 - (a) a period to which a previous report relates;

- (b) the period of one year which ends immediately before the start of the reporting period of the first report;
 - (c) the period of one year which ends immediately before the start of a period determined under paragraph (b) or under this paragraph.
- (5) “Relevant special adviser” means –
- (a) in relation to a report produced by the Minister for the Civil Service, a special adviser appointed by a Minister of the Crown;
 - (b) in relation to a report produced by the First Minister in Scotland, a special adviser appointed by a Scottish Minister;
 - (c) in relation to a report produced by the Assembly First Secretary in Wales, a special adviser appointed by him or an Assembly Secretary.

Names of special advisers

- 2 A report must give the name of each person who was a relevant special adviser during the reporting period (or any part of that period).

Information about each special adviser

- 3 (1) The report must state which minister appointed each person who is named in the report as a relevant special adviser in accordance with paragraph 2.
- (2) The information required by sub-paragraph (1) must be given whether the person named in the report was appointed during or before the reporting period.
- (3) Where a person holds two or more appointments as a relevant special adviser during a reporting period, the information required by sub-paragraph (1) must be given in relation to each appointment.

Total number of special advisers

- 4 A report must give the total number of relevant special advisers that there were –
- (a) during the reporting period, and
 - (b) during each of the five preceding periods immediately before the reporting period.

Total salaries of special advisers

- 5 (1) A report must give this information –
- (a) the total amount payable for salaries of relevant special advisers during the reporting period;
 - (b) such comparisons of that amount with corresponding amounts for preceding periods as the person producing the report thinks appropriate.
- (2) A report produced by the Minister for the Civil Service must also give this information –
- (a) the amounts by department that make up the total given under sub-paragraph (1)(a);
 - (b) such comparisons of those amounts with corresponding amounts for preceding periods as the Minister for the Civil Service thinks appropriate.

Other information

- 6 A report may give any other information that the person making it thinks appropriate.

SCHEDULE 4

Section 22

MINOR AND CONSEQUENTIAL AMENDMENTS

Parliamentary Commissioner Act 1967 (c. 13)

- 1 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation) insert at the appropriate place –
“Civil Service Commission”.

House of Commons Disqualification Act 1975 (c. 24)

- 2 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified for membership of the House of Commons) insert at the appropriate place –
“The Civil Service Commission”.

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 3 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified for membership of the Assembly) insert at the appropriate place –
“The Civil Service Commission”.

Government of Wales Act 1998 (c. 38)

- 4 In section 34 of the Government of Wales Act 1998 (staff), in subsection (3) after “by or under” insert “the Civil Service Act 2004 or”.

Scotland Act 1998 (c. 46)

- 5 In section 51 of the Scotland Act 1998 (the Civil Service), in subsection (3) after “by or under” insert “the Civil Service Act 2004 or”.

Freedom of Information Act 2000 (c. 36)

- 6 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices that are public authorities) for “The Civil Service Commissioners” substitute “The Civil Service Commission”.

SCHEDULE 5

Section 23

REPEALS AND REVOCATIONS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Superannuation Act 1972 (c. 11)	In Schedule 1 “The First Civil Service Commissioner”.
House of Commons Disqualification Act 1975 (c. 24)	In Part 3 of Schedule 1 “Civil Service Commissioner”.
Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Part 3 of Schedule 1 – (a) “Examiner or member of a board of interviewers appointed by the Civil Service Commissioners.”; (b) “Examiner for entrance examination to, or member of a board of interviewers for entrance to, the civil service of Northern Ireland”.
Diplomatic Service Order in Council 1991	The whole Order in Council.
Civil Service (Management Functions) Act 1992 (c. 61)	Section 1(5).
Diplomatic Service (Amendment) Order in Council 1994	The whole Order in Council.
Diplomatic Service (Amendment) Order in Council 1995	The whole Order in Council.
Civil Service Order in Council 1995	The whole Order in Council.
Civil Service (Amendment) Order in Council 1995	The whole Order in Council.
Civil Service (Amendment) Order in Council 1996	The whole Order in Council.
Civil Service (Amendment) Order in Council 1997	The whole Order in Council.
Civil Service (Amendment) Order in Council 1998	The whole Order in Council.
Civil Service (Amendment) Order in Council 1999	The whole Order in Council.
Civil Service (Amendment) Order in Council 2000	The whole Order in Council.
Civil Service (Amendment) Order in Council 2001	The whole Order in Council.
Superannuation (Admission to Schedule 1 to the Superannuation Act 1972) Order 2001 (S.I. 2001/1587)	Article 3 as far as it relates to the First Civil Service Commissioner.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Civil Service (Amendment) Order in Council 2002	The whole Order in Council.
Diplomatic Service (Amendment) Order in Council 2004	The whole Order in Council.

The six consultation criteria

As set out in the January 2004 *Code of Practice on Consultation* produced by the Cabinet Office, this exercise is being conducted in accordance with the following six criteria. Respondents are invited to comment on the extent to which the criteria have been adhered to and to suggest ways of further improving the consultation process.

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Responses, including the names and addresses of respondents, may be made public as part of the feedback to the consultation process unless confidentiality is specifically requested.

If respondents have comments or complaints, please contact the Cabinet Office's Consultation Co-ordinator in the Regulatory Impact Unit, Cabinet Office, 5th Floor, Kirkland House, 22 Whitehall, London SW1A 2WH, Telephone 020 7276 6275; e-mail consultation.policy@cabinet-office.x.gsi.gov.uk

In accordance with *The Code of Practice on Consultation*, this document concludes by setting out the **28 February 2005** deadline for responses.

Written responses (and any queries) should be sent to Nicki Daniels, Cabinet Office, 70 Whitehall, London SW1A 2AS and emails should be addressed to DraftCSBill@cabinet-office.x.gsi.gov.uk .



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