



The Government's Response to the Ninth Report of the Committee on Standards in Public Life

PRESENTED TO PARLIAMENT BY THE PRIME MINISTER
BY COMMAND OF HER MAJESTY, SEPTEMBER 2003



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LIST OF RECOMMENDATIONS

CHAPTER FIVE: **MINISTERS**

- R1. (a) Material currently contained in the Ministerial Code which covers departmental and parliamentary custom and practice should be published separately as a Ministerial Handbook.
- (b) The substantive material on issues of conduct should form a new Ministerial Code, which should be defined as having equal weight and authority to the Civil Service Code and the Code of Conduct for Special Advisers.
(page 22)

The Government accepts this recommendation. It agrees with the Committee that Ministers, as leaders of the Executive, have the duty to promote and support the Seven Principles of Public Life. It is in recognition of the importance of the Seven Principles, that the Government reproduced them in full in the *Ministerial Code* issued in July 2001. It also agrees to split the *Ministerial Code* into two documents – one would deal with ethics and the other would cover issues relating to conditions of service and other operational issues such as travel and duty minister arrangements.

These documents will be issued after the next Election.

- R2. The Cabinet Secretary and Permanent Secretaries should have no responsibility for giving advice to Ministers on conflicts of interest arising under the Ministerial Code. (page 25)

- R3. (a) An independent office-holder, called an Adviser on Ministerial Interests, should be established to provide advice to Ministers on compliance with those sections of the Ministerial Code which cover the avoidance of perceived and actual conflicts between their public duties and private interests, formal or otherwise.
- (b) The Ministerial Code should be amended to require an incoming Minister to provide the Adviser on Ministerial Interests with a full list in writing of all interests which might be thought to give rise to a conflict and to provide the necessary information in order for the Adviser's records to be kept up to date.
- (c) The Adviser should consult the Minister's Permanent Secretary about departmental business where necessary to enable the Adviser to ascertain whether a conflict of interest may exist.

- (d) The Adviser should be responsible for maintaining a record of ministerial interests and should keep a note of action taken by a Minister on taking up office.
- (e) The Adviser should publish information and guidance on how Ministers should deal with conflicts of interest under the Ministerial Code.
- (f) The facts of ministerial interests should be published.
- (g) Where unforeseen conflicts arise subsequently during the course of a department's work, the Minister should consult the Adviser over what action might be necessary.
- (h) The Adviser should refer any breach or allegation of a breach to the Prime Minister.
- (i) The Adviser should be appointed by open competition, chaired by the First Civil Service Commissioner, for a fixed, non-renewable term.
- (j) The Adviser should be provided with appropriate resources to achieve his or her task. (page 27)

The Government is grateful to the Committee for its thorough consideration of these issues. The current system for advising Ministers on handling financial and other interests is set out in section 9 of the *Ministerial Code*. Since June 2001, Ministers are required on appointment to each new office to provide their Permanent Secretary with a list of their financial and other interests which could give rise to a conflict of interest.

The Government does not accept the recommendation that the Cabinet Secretary and Permanent Secretaries should have no responsibility for giving advice to Ministers on conflicts of interests arising under the *Ministerial Code*. It believes that Permanent Secretaries are best placed to understand the work of Departments and to advise Ministers on any potential conflicts of interest in relation to Ministers' financial and other interests. No external adviser could be expected to be able to match the understanding of individual Permanent Secretaries in terms of the knowledge of the work of individual departments and the potential for conflict. These are also issues that are ongoing and Ministers and Permanent Secretaries need to be able to discuss and take decisions sometimes at very short notice on the handling of potential conflicts. It is of course for individual Ministers to justify and defend their own actions.

However, the Government accepts the case for appointing an independent adviser to provide Permanent Secretaries and Ministers with an additional source of professional advice as required, especially in respect of more complex issues. Where a Minister's interests are not straightforward Permanent Secretaries should consult the independent adviser either during the course of their discussions or when they have completed them to seek confirmation that the correct course of action has been taken. Any advice from the independent adviser would be private but if an allegation were made it would be open to a Minister to confirm that the handling of the conflict of interest had been confirmed as correct by the independent adviser.

- R4. (a) At the beginning of each Parliament, the Prime Minister should nominate two or three individuals of senior standing after consultation with leaders of the major opposition parties.**
- (b) The names of these individuals should be made public.**
- (c) Should the Prime Minister consider an investigation into an allegation of a breach of the Ministerial Code appropriate, the Prime Minister would invite one of these individuals to conduct that investigation.**
- (d) The individual selected to carry out an investigation should investigate the facts and report his or her findings to the Prime Minister, who would decide on the consequences for a Minister. The report should be published. (page 29)**

The *Ministerial Code* acknowledges that Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards, although he will not expect to comment on every allegation that is brought to his attention.

It therefore follows that it is for the Prime Minister to decide whether a specific allegation needs to be investigated and the means by which any such investigation should be conducted. The Government believes that the Prime Minister needs to retain the right to act swiftly in serious cases and take quick decisions. The Government agrees with the Committee that it must be for the Prime Minister to decide whether an investigation is needed. The Prime Minister does not rule out the possibility of asking individuals outside Government to conduct an investigation into allegations of ministerial misconduct. The Government agrees that anyone invited to take on such an investigation should be "of serious standing" in terms of authority, expertise and independence. But the Government does not believe it is practicable to identify a group of such people possibly several years in advance and without knowing the expertise required or the time commitment

involved for the case in question. The Government believes it must be for the Prime Minister to decide the course of action required on a case by case basis.

R5. The Government should ensure that the Civil Service can expand the training options in place to cover the needs both of newly appointed or promoted Ministers and of opposition politicians shadowing Cabinet posts. (page 30)

The Government shares the Committee's view that training and induction is useful for new and inexperienced Ministers entering Government on a change of administration and for new Ministers appointed during the lifetime of a government. Training for Ministers is provided by the Corporate Development Group in the Cabinet Office. This is designed to complement induction processes provided by individual departments. New Ministers are invited, as soon as possible after their appointment, to induction training run by the Cabinet Office which is designed to introduce them to their role and responsibilities and provide them with the information they need to be effective. The Government shares the view of the Committee that relationships between civil servants and new Ministers are crucial. This is one of the issues covered in the induction training provided by the Cabinet Office and in the initial briefings of Ministers by senior officials within individual departments.

Additional events are arranged in partnership with other units in the Cabinet Office or on commission from other government departments. These events focus on the skills and information Ministers need to undertake their day to day ministerial responsibilities. For example, a recent event covered the management of risk. The events are targeted at junior ministers.

The Government believes that it would not be appropriate for it to provide training for opposition politicians. Any training of opposition politicians should be provided either from existing Short money or separately by the House. This need not, of course, cut across the long tradition of factual briefings by departments for MPs of all parties as set out in the *Directory of Civil Service Guidance*.

CHAPTER SIX: **THE PERMANENT CIVIL SERVICE**

R6. The Civil Service should be established in statute. (page 34)

The Government accepts the case in principle for legislation but any legislation has to compete for its place alongside many other priorities. The Government also believes that much more can be done to implement most of the Committee's concerns without or in advance of legislation. For example, in recommendation 14, the Committee feels strongly that the appointment of the First Civil Service Commissioner needs to be able to carry the confidence of each new Administration. As the Committee acknowledges this can be achieved through consultation with Opposition leaders. Another example is the appointment procedures for public appointments where a rigorous and effective process has been established without legislation. The Government believes that the present arrangements work well but it will continue to reinforce the impartiality of the Civil Service. Once the Public Administration Select Committee's proposals for legislation for the Civil Service have been published, the Government will itself publish a draft Bill, as a basis for further consultation.

R7. The Civil Service Commissioners should have an active role in scrutinising the maintenance of the core values of the Civil Service. (page 34)

R8. The Civil Service Commissioners should monitor the use of both short-term appointments and secondments to ensure that the core values of the Civil Service are not compromised. (page 38)

- R9. (a) The overriding principle of selection on merit, after fair and open competition, should be maintained.**
- (b) The Civil Service Commissioners should continue to be responsible for ensuring that the merit principle is properly applied within the Civil Service.**
- (c) To that end, the Commissioners should be granted powers and facilities to investigate, on their own initiative, and to report on the operation of the Civil Service recruitment system as it concerns the application of the principle of selection on merit.**
- (d) The Civil Service Commissioners should grant further relaxation from the overriding principle of selection on merit only if they are fully satisfied that this is needed for the operational effectiveness of the Civil Service, for example after an investigation using the powers referred to in (c) above.**

- (e) **The present practice whereby one candidate, chosen on merit, is recommended to the Minister should continue for open competition involving outside candidates.**
(page 38)

The Government is committed to maintaining a permanent and impartial Civil Service where selection is made on merit on the basis of fair and open competition. It acknowledges the important role of the Civil Service Commissioners in upholding these principles not only in the context of the recruitment processes but also in respect of their responsibilities for considering appeals under the *Civil Service Code*.

Under the Civil Service Order in Council, the Commissioners already have a duty to audit recruitment by departments and agencies to ensure that they comply with the principle of selection on merit on the basis of fair and open competition. This remit includes monitoring the use of both short term appointments and secondments. There are no plans to alter the Commissioners' remit in respect of these appointments. The Commissioners report on the outcome of their audits in their Annual Report, and we note that in their most recent report published in June, the Commissioners reported that 31 audits were carried out and that the auditors have continued to find that most of those who carry out recruitment to the Civil Service support and practice the core principles.

On the issue of ministerial involvement in the appointment of civil servants, the Government notes that for internal competitions within the Civil Service Ministers are able to make the selection decision from a list of candidates compiled by the Permanent Civil Service as being able to do the job. The Government notes that for appointments which come under the jurisdiction of the Commissioner for Public Appointments, Ministers are again offered a choice from a shortlist of qualified candidates. Some of these appointments are as important, if not more so, than some Senior Civil Service appointments, for example, the Head of the Financial Services Authority.

However, in the case of open competitions for civil service posts with outside candidates, the Minister is given no choice. The candidate recommended for appointment must be the one placed first in order of merit by the selection panel. The Government is not convinced of the bases of these different approaches. An alternative, to give Ministers a constrained choice among candidates judged to be appointable would be consistent with these other appointment frameworks. Independence and integrity of the appointment process would be secured through the permanent Civil Service and the independent Civil Service Commissioners who would decide which candidates would be suitable for appointment to the Civil Service. Only candidates that are above the line and hence meet the test of merit would be offered to Ministers.

The Government will discuss with the Civil Service Commissioners whether these distinctions should continue to be justified at a time when the number of appointments from outside is rising and where appointments to public bodies have been put onto a more formal basis following procedures recommended by the Committee on Standards in Public Life under Lord Nolan.

R10. Principal Private Secretaries should continue to be permanent civil servants and they should have the responsibility for ensuring that the Minister has the full range of governmental advice affecting his or her duties. (page 39)

The Government accepts this recommendation. It shares the Committee's view that the Principal Private Secretary, as the civil servant in charge of the office of a Cabinet Minister has a pivotal role in working with Ministers, special advisers and civil servants. Part of this role is to ensure that the Minister has the full range of advice that is needed in order to carry out his or her official duties. This point is stressed in the *Ministerial Code* in relation to the duty placed on Ministers to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions.

R11. Departments should ensure that the Civil Service Code is used in induction proceedings and in-service training.

(b) The Civil Service Commissioners should advise departments on their promotion of the Civil Service Code and report on their induction and training activities in their annual report. (page 40)

The Government accepts this recommendation. The Government agrees with Baroness Prashar, the First Civil Service Commissioner, on the importance of making the *Civil Service Code* a daily reality. The *Civil Service Code* sets out the responsibilities and rights of civil servants and is part of their terms and conditions of employment. The Code is covered in Cabinet Office run induction training and in training provided at a departmental level. Induction training sessions for new Ministers also cover the *Civil Service Code*. The Government would welcome the involvement of the Commissioners in advising departments on the promotion of the *Civil Service Code* in their induction and training activities. It also agrees to the Commissioners reporting on departments' performance in this area in their annual report.

The Government will take the opportunity of this report to remind departments of their responsibilities in this area.

- R12. (a) The Government should actively establish a register of departmental nominated officers to whom any civil servant may go if he or she believes that he or she is being required to act in a way which is inconsistent with the Civil Service Code.**
- (b) The Civil Service Commissioners should establish and maintain contacts with the departmental nominated officers.**
- (c) Departments should report the number of appeals they handle under the Code to the Civil Service Commissioners so that the Commissioners can publish figures in their annual report. (page 41)**

The Government accepts this recommendation. The Cabinet Office is currently in the process of establishing a register of departmental nominated officers to whom civil servants can go to if they are concerned that they are being asked to act in a way which is inconsistent with the *Civil Service Code*. The Government would have no objection to the Civil Service Commissioners establishing and maintaining contacts with the departmental nominated officers. Nor would the Government have any objection to departments reporting to the Commissioners the number of appeals they have handled under the Code. It would, however, wish to make clear that it believes that it is a measure of the success of the Code that difficult issues are handled in a mature and sensible way through normal line management processes. The number of appeals submitted to the Commissioners will be those that are classed within a department as formal appeals. Concerns raised informally and resolved within normal line management will not normally be recorded.

The Cabinet Office will issue guidance to departments on this.

R13. Paragraph 22 of the Code of Conduct for Special Advisers specifically relating to civil servants should be inserted into the Civil Service Code as soon as possible. (page 42)

The Government accepts this recommendation. The *Civil Service Code* and the *Civil Service Management Code* will be amended to this effect.

R14. The appointment of the First Civil Service Commissioner should be made after consultation with opposition leaders. (page 42)

The Government accepts this recommendation. The First Civil Service Commissioner and the other Commissioners have an important role in maintaining the values of the Civil Service and in ensuring that future Administrations can have every confidence in the Civil Service. The Government agrees that the involvement of the main opposition party leaders in the appointment of the First Commissioner would ensure confidence in the individual, and undertakes to consult them on the appointment in future.

CHAPTER 7: **SPECIAL ADVISERS**

R15. Special advisers should be defined as a category of government servant distinct from the Civil Service. (page 45)

R16. As a category of government servant distinct from the Civil Service, special advisers should have terms of service which preserve the relevant elements from the Civil Service Code, the Civil Service Management Code and the Code of Conduct for Special Advisers. (page 45)

R24. The Code of Conduct for Special Advisers should be updated as appropriate to take account of the change in status of special advisers. (page 52)

The Government believes that special advisers have an important role to play and are part of the long established tradition for widening the advice available to Ministers. The Government shares the view of the then Cabinet Secretary, Sir Richard Wilson, in his evidence to the Committee that special advisers are part of the team in the Department serving government as government, and needing access to papers and internal discussions on the same basis as their colleagues who are permanent civil servants, rather than a political party. For these reasons, the Government believes that special advisers must be civil servants. However, in recognition of the Committee's concerns, the Government will provide greater clarity on their status in the next version of the *Code of Conduct for Special Advisers*, including Ministers' responsibilities in relation to their conduct and discipline.

R17. There should be a single category of special adviser. (page 46)

This reflects the current position. The Government shares the Committee's view that there is one common characteristic shared by all special advisers, namely that they are personally appointed by a Minister.

R18. (a) A clear statement of what special advisers cannot do should be set out in primary legislation.

(b) Special advisers should not:

- (i)** ask civil servants to do anything improper or illegal, or anything which might undermine the role and duties of permanent civil servants;
- (ii)** undermine the political impartiality of civil servants or the duty of civil servants to give honest and impartial advice to Ministers;

- (iii) have any role in the appraisal, reward, discipline or promotion of permanent civil servants;

Subject to R31 on the Prime Minister's Office special advisers should not:

- (iv) have powers to authorise the spending of government money;
 - (v) have any role in the line management of civil servants;
 - (vi) have charge of or any direction over the work of GICS members;
 - (vii) have any other executive powers. (page 48)
- (c) The Code of Conduct for Special Advisors should continue to list the sorts of work a special adviser may do at the request of their Minister.
- (d) The Ministerial Code should be amended to require each Minister to set out in the individual contract for each special adviser the work that adviser is being appointed to undertake. Any significant departure from the sorts of work envisaged in the Code of Conduct for Special Advisors should require the prior written approval of the Prime Minister and should be explained publicly. (page 48)

The Government's position on legislation for the Civil Service is set out in its response to recommendation 6. It believes that any legislation would need to be short and succinct and that the issue of what special advisers can and cannot do is best dealt with in Codes of Conduct rather than on the face of a Bill.

The Civil Service Order in Council and the Code of Conduct govern the activities of special advisers. The Code makes clear that special advisers must act in a way which upholds the political impartiality of permanent civil servants and does not conflict with the *Civil Service Code* which includes not doing anything which would be illegal or improper. With the exception of up to three posts in No10, special advisers cannot have any role in the appraisal, reward, discipline or promotion of permanent civil servants. However, in order to do their jobs effectively and to assist Ministers in the handling of Government business, special advisers need to be able, on behalf of their Minister, to convey instructions and commission work from civil servants, including members of the GICS. The Government does not believe that this represents line management.

The Government agrees with the Committee that the *Code of Conduct for Special Advisers* should continue to list the sorts of work a special adviser may do at the request of their Minister. The Government agrees with the Committee that it is not possible to compile an exhaustive list of what a special adviser can do which would cover all legitimate eventualities. For this reason, it believes that it should continue to rely on the Code of Conduct, which is part of a special adviser's contract of employment, for a description of the duties and responsibilities of special advisers. Therefore, the Government does not believe that individual Ministers need to set out in individual contracts of employment the work that each adviser is being appointed to undertake. The Government believes that this is the right approach. However, it recognises that there would be benefit in amending the *Code of Conduct for Special Advisers* to provide a clarification of the relationships between special advisers and permanent officials. An amendment to this effect is annexed.

R19. The Ministerial Code should be amended to make clear that all Ministers are personally accountable to the Prime Minister and to Parliament for the management and discipline of their special advisers. (page 49)

The Government accepts this recommendation. In its response to the Eighth Report of the Public Administration Select Committee, the Government made it clear that the ultimate responsibility for the discipline of an individual special adviser rests with the Minister who made the appointment. This also applies to the management of individual special advisers. This is on the basis that, unlike other civil servants, special advisers are personal appointments made by individual Ministers. It is, of course, also open to the Prime Minister to terminate employment by withdrawing his consent to the appointment concerned. The Government will make this clear in the next version of the *Ministerial Code*.

R20. (a) The Minister concerned should investigate any allegation that his or her special adviser is in breach of the Code of Conduct for Special Advisers.

(b) Where necessary, it would be possible for the Prime Minister to refer the matter for investigation in the same way as an alleged breach of the Ministerial Code. (page 49)

The Government accepts this recommendation. It follows from the Government's response to recommendation 19 that the investigation of an allegation relating to the conduct of an individual special adviser will be a matter for the appointing Minister. In the first instance, the relevant Permanent Secretary would be expected to investigate and make recommendations to the Minister on any disciplinary action but

the ultimate responsibility for initiating an investigation and disciplining a special adviser rests with the appointing Minister. The Government agrees with the Committee that it is for the appointing Minister to account to Parliament, as necessary, for the outcome and for the action taken in consequence of an investigation.

It also follows that if necessary the Prime Minister could refer an alleged breach of the *Code of Conduct for Special Advisers* to an independent adviser for investigation but for the reasons set out in response to recommendation 4 it will be for the Prime Minister to decide the course of action required on a case by case basis.

R21. An annual statement should be made to Parliament setting out:

- (i) the total number of paid special advisers employed in the year;
- (ii) their names;
- (iii) the Ministers for whom they work or have worked;
- (iv) their particular roles and areas of responsibility;
- (v) the total salary cost by department;
- (vi) comparison figures for earlier years. (page 50)

This mainly reflects the current position. The Government provides regular updates throughout the year on the numbers and names of special advisers and the Ministers for whom they work. It also provides on an annual basis the numbers of special advisers by department and payband and the overall salary cost. As this information is provided on an annual basis it allows comparisons to be made. Definition of the particular roles and responsibilities of special advisers is not straightforward as many will be advising their Minister on political implications across the whole range of the department's work. But where a special adviser has a particular expertise or works mainly in a particular area of the department's work, this will be indicated.

R22. (a) The total number of special advisers should be contained in statute, with an upper limit subject to alteration by resolution approved by both Houses of Parliament.

The issue of legislation is dealt with in response to recommendation 6. However, the Government does not believe that the issue of special advisers can be considered as a numerical issue. The issue is about being transparent about accountability, roles and responsibilities and numbers. The Government also participates in regular Parliamentary debates on this issue.

R29. (b) Pending legislation, there should be a debate on the total number of special advisers that can be appointed within government. (page 51)

It should be for the Government to decide on the overall distribution between departments of the number of special advisers approved by Parliament. (page 63)

The rules on the appointment of special advisers, which are set out in the *Ministerial Code*, are two special advisers per Cabinet Minister or Minister attending Cabinet, other than the Prime Minister. It is for the Prime Minister to approve all appointments and any exceptions to the rule.

There are frequent opportunities for the House to debate the appointment of special advisers but the decision on numbers rests with the Prime Minister.

R23. (a) The Ministerial Code should be amended to make clear that Ministers are personally accountable for the management and discipline of their unpaid advisers in respect of their governmental responsibilities to the Prime Minister and to Parliament.

The Government accepts this recommendation and will make the necessary amendment proposed by the Committee in the next version of the *Ministerial Code*.

- (b) The annual statement referred to in R21 should also include unpaid advisers, stating:**
- (i) the total number of unpaid special advisers employed in the year;**
 - (ii) their names;**
 - (iii) the Ministers for whom they work or have worked;**
 - (iv) their particular roles and areas of responsibility;**
 - (v) comparison figures for earlier years.**

The Government agrees that for unpaid advisers, it will provide a similar level of information to that agreed for special advisers in response to recommendation 21. In responding to Parliament on numbers of special advisers the total should comprise paid and unpaid advisers.

- (c) An unpaid adviser should be defined in the Ministerial Code as anyone who provides, on an unpaid basis, advice to any Minister or represents any Minister in this country or abroad on a recurring or continuous basis.**

The Government shares the Committee's view that Ministers have long sought advice from a large number of contacts outside Government and that there is value in such contacts. These clearly can be helpful for the working of government. Many such contacts will be of an ad hoc and ephemeral nature. However, the Committee argues that where they are of a more substantial nature, their appointment and conduct should be covered by the *Ministerial Code*. Where an adviser is acting on similar terms to a special adviser but on an unpaid basis then they should conduct themselves as if they were a special adviser. However, it should also be remembered that there is a wide range of unpaid advice available to Ministers including advice from members of NDPBs, task forces and other short-term reviews. The Government does not believe it would be appropriate for these advisers to be covered by the *Ministerial Code*.

- (d) The requirement to uphold the political impartiality of civil servants and the requirement not to use official resources for party political activity, contained in the Code of Conduct for Special Advisers, should be included in the letter of appointment for every unpaid adviser.
(page 52)**

The Government accepts this recommendation and the letter of appointment for unpaid advisers will be amended accordingly.

CHAPTER 8: **THE GOVERNMENT INFORMATION AND COMMUNICATION SERVICE**

R25. An Accounting Officer should not hesitate to notify his or her concerns, in accordance with Treasury guidelines for Accounting Officers, where he or she believes that the Minister in charge of the department is contemplating a course of action relating to the operation of the press office which would infringe the requirements of financial propriety or regularity. (page 57)

As the Committee acknowledges, Permanent Secretaries are already obliged to do this.

R26. An individual should only be recruited to a senior post in the GICS where the selection panel has a high degree of confidence that he or she will be a leader in upholding the impartiality of the GICS. (page 58)

Appointment to the GICS is on the basis of fair and open competition and selection on merit and the ability to serve any Administration. The ability to uphold the impartiality of the permanent Civil Service is a key part of the recruitment and promotion processes for GICS posts. The Civil Service Commissioners are always represented on interview panels for the most senior GICS appointments and this is an area that will be subject to rigorous scrutiny. The Phillis review of Government Communications is looking at the role, structure and management of the GICS though as the Committee will be aware the Prime Minister has received the interim report of the Phillis review on the centre and has acted upon its recommendations.

R27. Wherever possible, GICS press officers should speak on the record as “the department’s spokesman/spokeswoman”. (page 60)

This reflects the current position. All contacts between the GICS and the media are conducted in accordance with the requirements of *Guidance on the Work of the Government Information Service* and *The GICS Handbook*. The Handbook makes it clear that press officers should speak on the record whenever possible. Off the record briefings should be exceptional and only when absolutely necessary. The Phillis review of Government Communications is addressing the role of GICS press officers.

R28. The *Guidance on the Work of the Government Information Service* should set out the relationship between special advisers and civil servants. (page 60)

The Government has already agreed to do this. The Phillis review of Government Communications is currently considering these issues and the Government would welcome its views in due course.

CHAPTER 9: **THE PRIME MINISTER'S OFFICE**

- R30. (a) The Ministerial Code should be amended to make clear that the Prime Minister is personally accountable to Parliament for the management and discipline of his or her special advisers.

The response to recommendation 23(a) applies to all Ministers including the Prime Minister.

- (b) The most senior special adviser in the Prime Minister's Office should be responsible to the Prime Minister for ensuring that the day-to-day activities of special advisers appointed by the Prime Minister comply with the Code of Conduct for Special Advisers. (page 63)

This is the current position.

- R31. (a) The existence of two posts in the Prime Minister's Office with executive powers should be a matter for Parliamentary debate and agreement.

The Government has no plans to alter the powers allowing it to appoint up to three executive special advisers in No10, although not all these posts may be used. The Committee will be aware that the new Director of Communications in the Prime Minister's office has been appointed on the basis that he does not have executive powers provided for in the Order in Council. The position on parliamentary debate is set out in response to recommendation 29.

- (b) Special advisers with executive powers should not:
- (i) ask civil servants to do anything improper or illegal, or anything which might undermine the role and duties of permanent civil servants;
 - (ii) undermine the political impartiality of civil servants or the duty of civil servants to give honest and impartial advice to Ministers;
 - (iii) have any role in the appraisal, reward, discipline or promotion of permanent civil servants.

But they may:

- (iv) have powers to authorise the spending of government money chargeable to the Prime Minister's Office;
- (v) have a role in the line management of civil servants in the Prime Minister's Office;

(vi) have charge of or direction over the work of GICS members in the Prime Minister's Office.

The Government agrees with the Committee that special advisers should not ask civil servants to do anything improper or illegal, or anything which might undermine the role and duties of permanent civil servants. Nor should special advisers undermine the political impartiality of civil servants or the duty of civil servants to give honest and impartial advice to Ministers. These points are already stressed in the *Code of Conduct for Special Advisers*. The Government also agrees that special advisers should not have any role in the discipline or promotion of permanent civil servants. However, in order to do their jobs effectively special advisers with executive powers who have responsibility for the line management of permanent civil servants need to have involvement in the appraisal and reward of the civil servants directly in their line management. Where they contribute to any performance appraisals it will always be on the basis that it will be countersigned by a permanent civil servant. They also need to be able to authorise the spending of money from within their budgets. In respect of (vi), the Government has set out its views in response to recommendation 18.

(c) The Prime Minister's Principal Private Secretary should have the responsibility of drawing to the attention of the Prime Minister any concerns that he or she may have about the ability of civil servants in the office to maintain their political impartiality. (page 66)

This is the current position. If the Prime Minister's Principal Private Secretary was concerned about the ability of permanent civil servants in No10 to maintain their political impartiality he would raise the matter with the Prime Minister and the Cabinet Secretary.

R32. *The Guidance on the Work of the Government Information Service* should deal specifically with the issue of media work in the Prime Minister's Office. (page 66)

The Government agrees it would be helpful to deal specifically with the issue of media work in the Prime Minister's office not least to include for departments the approval processes for clearing in advance draft speeches and announcements. The Government's initial view is that it would be more appropriate for this guidance to be set out in *The GICS Handbook* which provides practical guidance to GICS members on dealing with the media and other GICS players within Government. However, it would welcome views on this issue from the Phillis review of Government Communications which is expected to report later in the year.

CHAPTER 10: **SECURING THE BOUNDARIES**

R33. The Government should begin an early process of public consultation on the contents of a draft Bill. The Bill should receive pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. (page 70)

R34. There should be a short Act to cover the Civil Service and special advisers. In particular, this should:

- (a) define the status of the Civil Service;
- (b) include a statutory obligation on Ministers to uphold the impartiality of the Civil Service;
- (c) set out the responsibility of the Civil Service Commissioners for ensuring that the principle of selection on merit is properly applied, together with the ability to make exceptions from that principle;
- (d) set out the Civil Service core values, including the overriding principle of selection on merit;
- (e) grant powers for the Civil Service Commissioners to investigate, on their own initiative, and to report on the operation of the Civil Service recruitment system as it concerns the application of the principle of selection on merit;
- (f) provide for the First Civil Service Commissioner to be appointed after consultation with opposition leaders;
- (g) define the status of special advisers as a category of government servant distinct from the Civil Service;
- (h) state what special advisers cannot do;
- (i) include power for the Civil Service Code and the Code of Conduct for Special Advisers to be given effect as statutory instruments requiring the approval of both Houses of Parliament and amendable by the same procedure;
- (j) state the total number of special advisers, with an upper limit subject to alteration by resolution approved by both Houses of Parliament;
- (k) provide for two special adviser posts in the Prime Minister's Office with "executive powers";

- (l) define special advisers with executive powers by derogation from the restrictions on what other special advisers can do;
- (m) require an annual statement to Parliament on paid and unpaid special advisers. (page 71)

The Government's position on legislation for the Civil Service is set out in response to recommendation 6. The Government will publish draft legislation for consultation. The Government's position on the issues listed above is as set out in the responses to the detailed recommendations.

RELATIONS WITH PERMANENT CIVIL SERVANTS

In order to provide advice effectively to Ministers, Special Advisers should work closely with the ministerial team and with permanent officials, and establish relationships of confidence and trust. Special Advisers may, on behalf of their Ministers:

- (i) convey to officials Ministers' views, instructions and work priorities, including on issues of presentation;
- (ii) seek information and data from officials;
- (iii) commission internal analyses and papers;
- (iv) hold meetings with officials to discuss the advice being put to Ministers.

But Special Advisers must ensure:

- (i) that they do not ask officials to do anything which is inconsistent with their obligations under the Civil Service Code;
- (ii) that their behaviour towards permanent officials is consistent with the standards set by the Department for conduct generally;
- (iii) that they do not issue instructions which would involve the award of external contracts. Nor should they have responsibility for budgets;
- (iv) that while they may comment on advice being prepared for Ministers by officials, they do not suppress or supplant that advice;
- (v) that when commissioning any work from officials they take account of their workload and any priorities Ministers have set.

Where any permanent official has concerns about any request coming from a Special Adviser, they should discuss that concern with the Special Adviser concerned or with their line manager, the Minister's Principal Private Secretary or their Permanent Secretary. If a civil servant feels for whatever reason that he or she is unable to do this then they may wish to raise the concern with nominated officers within the Department or direct with the First Civil Service Commissioner or the Head of the Home Civil Service.

In order to enable Special Advisers to work effectively, Departments may allocate permanent officials to support them. But Special Advisers should not be involved in issues affecting a permanent civil servant's career such as recruitment, promotion, reward and discipline, though their views may be sought as an input to performance appraisals provided these are either written or countersigned by permanent officials.



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