

GOOD GOVERNMENT

Mid Term Review



Recommendations from the Executive Committee of the Better Government Initiative



Better Government Initiative

The Better Government Initiative

The Better Government Initiative is a politically neutral group which was set up in 2005 in response to widespread concerns about the practical difficulties that government today faces as it seeks to run the country against a background of rapid change.

This is the second of our reports containing specific recommendations for improving the processes of government. Some of the 39 recommendations in our initial report *“Good Government”*, published in January 2010 have been implemented, others have not. Much has happened in the intervening years and we are now half way through the fixed term of the first coalition government since the Second World War.

In this report we consider what progress has been made since *“Good Government”* and what remains to be done. We put forward a further 19 recommendations for improvements in government in the widest sense, including both the actions of the Executive and its relationship with Parliament. We believe that the changes we recommend, which would cost relatively little and have a big impact on people’s lives, are all the more necessary in a period of well-nigh unprecedented economic and financial challenges.

The report has been prepared with the advice and assistance of Sir Paul Britton, Lord Butler, Sir Geoffrey Chipperfield, Roger Dawe, David Faulkner, Sir Tom Legg, Paul McQuail, Sir Nick Monck, Sir Richard Mottram, Sir David Omand, Peter Owen, Alice Taylor, Sir Hugh Taylor, and Phillip Ward.

Our thanks are due to the Institute for Government for providing a venue for our discussions and to The Constitution Society for assisting with the publication of our reports and providing both financial and administrative support.

Sir Christopher Foster
Chair, the Better Government Initiative

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Website: www.bettergovernmentinitiative.co.uk

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Contact: info@bettergovernmentinitiative.co.uk

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Executive Summary

The Better Government Initiative¹ is a politically neutral group set up in 2005 with the aim of improving the processes of government. Our concern is not with the political aims and objectives of the parties, but with the quality of the information and methods of consideration they use when in government to decide what detailed policies to adopt and how best, and at what cost, they can be implemented. This is not a technocratic concern; incompetent decision making has too often wasted billions of pounds and subjected the British public to poor service delivery.

Our work covers government in the broadest sense, including the interaction between the Executive (Ministers and officials) and Parliament. Our initial proposals were set out in our report *Good Government*², first published in January 2010, which contained 39 specific recommendations on policy formation, Cabinet and the centre of government, Parliament and legislation, the delivery and organisation of government services and the civil service. This follow-up report reviews developments in government since then and assesses progress made in the directions recommended in *Good Government*. Its main purpose is to urge all those interested in better government to press for further action.

Since the publication of our previous report there have been major changes in the political environment, most notably the election of the first coalition government since the Second World War and the well-nigh unprecedented intensification of economic and financial pressures on government. It is all the more important during a period of prolonged deficit reduction to devote effort to improving the conduct of decision making, the interaction between Parliament and the Executive and the management of ongoing activities. Most of the measures we propose in this report would add little or nothing to the costs of government and, if implemented effectively, would have a big impact on people's lives.

Our main conclusions on what has been done so far under the Coalition to achieve the recommendations in *Good Government* are set out in each section of this report. Good progress has been made in some areas such as more effective Cabinet government, the implementation of the proposals of the Select Committee on Reform of the House of Commons³ to strengthen scrutiny by Select Committees, and the move away from micro-management by the centre of government and departments. In other areas we remain concerned. These include poor and rushed preparation of policies, which then have to be reversed, slow progress on agreed standards for legislation, and the lack of adequate monitoring arrangements and strategies for rapid action to deal with the failures which are almost certain to arise with the early rush of changes in service delivery arrangements on so many fronts.

The report is divided into four main sections dealing with Cabinet and policy making, legislation and Parliament, delivery and organisation and the civil service.

In recent years a number of voices have been raised in favour of relaxing the traditional form of Cabinet government and making greater use of a dynamic "strong leader" approach. The section of our report dealing with Cabinet government and policy making sets out why the tradition of reaching decisions on government policy through collective ministerial consideration remains essential. It has the practical advantage of access to a wider range of experience and provides a safeguard against the accumulation of too much power in the hands of one individual in a country where there are few constitutional restraints. Strong leadership is a key requirement for a successful administration, but it should not be exercised without the knowledge and consent of Ministerial colleagues.

Whatever process of decision making is used, sound policies will not result unless Ministers have full information, based on rigorous analysis, of the need for change, the options for action and the

1 Further information about the group can be found on our website at <http://www.bettergovernmentinitiative.co.uk>
2 <http://www.bettergovernmentinitiative.co.uk/sitedata/Misc/Good-government-17-October.pdf>
3 The "Wright Committee" report: <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmrefhoc/372/37202.htm>

costs, risks and other effects of carrying them out. We urge that explicit standards should be set, and strictly applied, for the preparation of new policies including legislation.

Parliament has an important role to play in reinforcing good government through the effective scrutiny of policy proposals, legislation and the delivery of public services. We welcome the progress made through implementing the Wright Committee proposals and establishing the Backbench Business Committee, but more should be done. Parliament should establish and agree with the Executive clear standards for the preparation and publication of bills, including the material to be presented to Parliament as an aid to scrutiny when a bill is introduced. We hope that this approach will be vigorously pursued by the House of Commons Political and Constitutional Reform Committee in its forthcoming report.

Particular problems have arisen over many years in ensuring that first-session bills following a change of government are fit for purpose. This has in large part been due to the very limited last-minute access to civil service advice available to the opposition between the calling of a general election and their arrival, if successful, in government. While the timing of elections was not known in advance that was inevitable. Now that we have fixed-term Parliaments it should be possible to plan ahead and provide better and more structured support to opposition parties as is already done in Scotland.

With coalition governments, which are predicted to become more frequent, the problems are compounded by the need to draw up an agreement between the parties, work on which can only begin after the results of the election are known. It is essential for the agreement to be carefully prepared, in particular avoiding unforeseen difficulties that might arise in combining policies that had not previously been considered together. If necessary the first Queen's Speech of the new Parliament should be largely confined to statements of policy on the areas to be tackled with the detailed legislative programme set out later and based on a thorough understanding of the issues.

In the sections of the report on the delivery of policies by the civil service and other public sector bodies our main concerns are about stability and clarity. The Government's restraint towards altering the structures of government departments has been welcome. By contrast the treatment of departments' delivery partners seemed rushed and ill thought through; the Public Bodies Act cut a swath through arms-length bodies, some like the Audit Commission with important functions. Many of the problems associated with the implementation of the NHS reforms, where the Government clearly set off on the wrong foot, might have been avoided if our proposals had been followed. A particular concern is that while the Government's commitment to "localism" in service provision is welcome in principle, there is no clarity about how extreme departures from broadly accepted national standards are to be avoided and how failure by local delivery bodies is to be handled.

Good government is crucially dependent on the quality of the civil service. Much attention has rightly been focused in recent years on the need to improve the technical competence of the civil service in areas such as project management. But the importance within our constitutional arrangements of impartial civil servants who are able to provide stability and continuity under governments of different political persuasions must not be overlooked. We are uneasy that the proposal in the Government's Civil Service Reform Plan to increase ministerial involvement in civil service appointments could have unforeseen and far reaching consequences, at the extreme a return to patronage and a heightened risk of corruption.

An immediate practical concern is that the rate of turnover in some parts of the civil service among the senior grades is now at unsustainable levels; in the Treasury it has reached an annual rate of about 30 per cent. This leaves many departments with a serious deficit in the knowledge and skills gained over the years by operational experience and careful succession planning. A coherent strategy for the recruitment and training of the civil service workforce is urgently required.

The detailed recommendations in the report are as follows.

Cabinet and Policy Making

- R1: There should be a fuller and more prescriptive statement than that provided in the Ministerial Code about the requirements for collective decision taking and the way in which departments should engage with the Cabinet Committee system. The Prime Minister and Deputy Prime Minister should make it clear to colleagues that they support the statement and will require the Cabinet Secretary to ensure that it is applied when new policies are submitted for approval.
- R2: The Government should establish explicit standards for the preparation of new policies, significant machinery of government changes, major projects and new regulations covering:
- ◆ a clear definition of the problem to be addressed and the available options for action;
 - ◆ appropriate consultation, in particular with those who will be responsible for delivery;
 - ◆ an analysis of the costs, benefits and risks;
 - ◆ a full description of how the proposal will work in practice and the intended effects;
 - ◆ and insist that they are followed by departments. Published guidance to Ministers should set out how the requirements are to be interpreted.
- R3: The Treasury should have the responsibility of checking that departmental Impact Assessments for proposals with significant expenditure consequences are fully compliant with established requirements and, where relevant, take due account of the implications for taxation. When the proposal involves new legislation the Treasury's opinion should be published when the bill enters Parliament.

Legislation and Parliament

- R4: The Political and Constitutional Reform Committee should include in its forthcoming report a strong recommendation, preferably including a draft text, for the introduction of explicit standards for legislation similar to those in Annex C of this report; agreement should then soon be reached between Parliament and the Government on the content and implementation of those standards and the Parliamentary machinery for monitoring them.
- R5: The Government should give a pledge to restrict the legislative programme to a size compatible with full Parliamentary scrutiny.
- R6: Arrangements should be made to provide opposition parties with sufficient access during the run up to a general election to the resources within government necessary to ensure that, if they are elected, any bills they introduce in a first session will be prepared to a high standard.
- R7: When a coalition is formed enough time should be allowed, as is usual in many nations, for the coalition agreement to be constructed on a sound basis. Civil service advice should be available throughout the negotiations. The first Queen's Speech of the new Parliament should be largely confined to statements of policy on the areas to be tackled, with the detailed legislative programme set out separately and later when a thorough understanding of the issues has been reached.
- R8: We endorse the Liaison Committee's recommendations in their recent (November 2012) report on Select Committees that departmental Select Committees should increase their focus on aspects of the department's work that improve public services and value for money and expect to take evidence from Ministers and Permanent Secretaries on these topics.

R9: The Back Bench Business Committee should continue to have a separate existence after the establishment of the House Business Committee.

Delivery and Organisation

R10: The Treasury Select Committee should regularly monitor the success of the Treasury in maintaining its capacity to perform its core functions through the implementation of the strategy it proposed for reducing excessive staff turnover following *The Review of HM Treasury's Management Response to the Financial Crisis*.

R11: There should be greater clarity about the principles underlying the “tight/loose” approach in relationships between departments and the centre of government. To avoid building an over-centralised system, “tight” controls should be relinquished after an initial period when alternative ways of monitoring resource use are established. The advice of departments’ non-executive directors should be sought.

R12: An early task for the Departmental Boards must be to put clear plans in place for every department, in particular indicating what strategic outcomes are expected and where, within diminished resources, standards of service will be reduced, maintained or increased.

R13: Departmental reporting of activities should be strengthened so that costs and value for money/productivity are broken down by service and distinguish on a consistent basis between “Whitehall” and other functions.

R14: It would be helpful to incorporate into programme and project management procedures formal sign off and change management protocols designed to produce greater clarity about the roles and responsibilities of officials and Ministers.

R15: The Government should prepare a published strategy for the implementation of localism setting out:

- ◆ which service standards and decisions (for example on projects of national importance) will remain the responsibility of national government;
- ◆ for the remainder, what minimum standards will be set to reflect national priorities (and if appropriate how additional resources will be provided to authorities which are unable to meet them);
- ◆ what action will be taken if required standards are not achieved;
- ◆ what information is to be provided to enable local electors to make informed judgements about the provision of services.

The Civil Service

R16: It is essential in the interests of good government, including the avoidance of corrupt practices, for the Civil Service Commission to maintain its focus on ensuring that the values of integrity, honesty, objectivity and impartiality set out in the Civil Service Code are effectively embedded and to rebut any suggestion that maintenance of these values can be characterised as obstruction.

R17: Ministers should take care to ensure that the conduct of their special advisers conforms with the Cabinet Office Code. When special advisers are appointed their role, the policy areas in which they will work and their expertise and experience should be published.

R18: A coherent workforce strategy for the civil service should be prepared which indicates the numbers of people with different skills likely to be required, where it is expected they will be

needed and how they are to be recruited and trained. Account should be taken of the need for stability in appointments and improved training and succession planning so that departments can “grow their own timber” by strengthening officials’ knowledge and continuity of experience.

R19: We look to the Civil Service Commission to view with considerable caution the proposals in the Civil Service Reform Plan on Ministerial involvement in civil service appointments bearing in mind the dangers of cronyism and party-political bias that could arise in a return to appointment by patronage.

Cabinet and Policy Making

Cabinet government

We believe that Cabinet government is the best system of government for our country. Collective decision making on major issues, with the Prime Minister acting as first among equals, is one of the most important features of our unwritten constitution.

There are at least six reasons why collective decision making is appropriate:

- ◆ **it supports the principle of collective responsibility** whereby all Ministers defend the Government's decisions even if they argued for something different in private – particularly relevant for a coalition government;
- ◆ **it avoids presidentialism** – an important constitutional consideration in the UK, which lacks the formal separation of powers that in most systems of presidential government provides an essential safeguard against the concentration of too much power in the hands of one person;
- ◆ **it supports joined-up policy-making:** some of the most difficult and intractable problems straddle the responsibilities of a number of departments; experience shows that the necessary connections are more likely to be made, and the consequences of proposals in one policy area for policies which are the responsibility of other departments are more likely to be recognised, if decisions are taken collectively;
- ◆ **it provides an opportunity for challenge:** decisions taken collectively are more likely to be soundly based than those taken by a single Minister - even the Prime Minister;
- ◆ **it draws on the experience of all senior Ministers:** taking decisions collectively can take advantage of the wider political savvy of Ministers who are not directly involved in handling the issue;
- ◆ **it strengthens cohesion:** decisions taken collectively are more likely to encourage collaborative working within government than those which are not.

At a purely practical level we believe that the important decisions made by government will be of better quality if they are taken collectively on the basis of well prepared papers giving Ministers all the relevant information. The Cabinet and its sub-committees exist for this purpose.

For all these reasons decisions made collectively are more likely to be good than those taken by Ministers acting alone or with a few like-minded colleagues. We are conscious of the potential disadvantages of the collective approach – the risk that the need to satisfy the majority will result in “lowest common denominator” decisions - but the answer to that is strong leadership from the Prime Minister and his senior colleagues, not “sofa government”.

After the publication of *Good Government*, we were accused by some of trying to return to a long-ago golden age when the Cabinet took all the decisions. That is not our aim. The Cabinet itself has long since ceased to be primarily a decision taking body but has become a body that takes a strategic and tactical overview of the Government's business. Most decisions are best taken by the Cabinet's sub-committees. This is not to say that issues should not be discussed informally between Ministers before they come to a Cabinet Committee: that has always happened and should continue.

Our views on the way in which the Cabinet should operate are set out in Annex A to this report. We believe that important decisions are best made collectively through a well-developed and sophisticated system, which has applied in the UK for most of the last century, in which all Ministers can participate to some degree and of which the Cabinet itself is just a part. Side-stepping the Cabinet system is something which Prime Ministers should do only in exceptional circumstances.

Biographies and other published sources make it clear that the Blair and Brown Governments - especially the former - did not use the Cabinet system as their main decision taking mechanism.

Because Cabinet business is necessarily carried on in private it is difficult for those outside government to comment authoritatively on the way the Cabinet currently operates. Nevertheless there are strong indications of a revival of collective decision taking under the present Coalition Government as described in “The Politics of Coalition”, by Robert Hazell and Ben Yong of the Constitution Unit, which is based on interviews with Ministers and senior civil servants during the first 18 months of the new Government.

The Cabinet Committee structure has been rationalised, with a chairman appointed to each committee from one political party within the Coalition and a deputy chairman from the other. Several committees are chaired by the Prime Minister or Deputy Prime Minister. There is a Cabinet Committee to settle disagreements about the coalition agreement, though this seems to have met infrequently. On the other hand, many Cabinet Committees, especially the Home Affairs Committee (which has traditionally served as a clearing-house for much of the Government’s domestic policy) and the National Security Council, have evidently met regularly.

The Government’s 2010 spending review was carried out collectively, with key decisions taken by a Cabinet Committee - the so-called ‘Star Chamber’ - reverting to the pre-1997 practice. And the Cabinet itself seems again to have become a key forum for the oversight of Government business. These changes are in part the result of having a coalition which, if it is to be successful, requires strong formal arrangements to allow both constituent parties to share information, discuss policy development and participate in the main decisions. Nevertheless, the Government deserves credit for adopting them.

The present Government, like its predecessors, uses informal mechanisms as well as the formal Cabinet Committee machinery. Thus, the Prime Minister and Deputy Prime Minister are said to meet regularly to discuss major issues, as are Oliver Letwin MP and David Laws MP (both Ministers of State, Cabinet Office with responsibility for policy coordination). There are also meetings of the Prime Minister, Deputy Prime Minister, Chancellor and Chief Secretary in the so-called “Quad”. There appears to be some degree of formality about the arrangements for the “Quad” in that the meetings are usually attended by officials, are minuted and are tied into the Cabinet system. All of this seems to us to be sensible so long as the meetings of such groups do not become a substitute for consideration by Cabinet and its committees.

There appear nevertheless to have been some cases where these arrangements have not worked properly and these illustrate the hazards for government, especially a coalition, of not adhering rigorously to the rules for taking decisions. On a number of occasions Ministers of one party or the other have floated publicly proposals not cleared with their colleagues, only to have them repudiated by the other party. In other cases, though proposals have been submitted to the relevant Cabinet committee, they seem not to have been fully explained or too little time has been allowed to explore and understand the implications.

Under recent Governments the two occasions when collective decision taking has been most under threat have been the Budget and the party conference. Budget secrecy is no justification for Chancellors to announce initiatives on non-tax policy without proper consultation with their colleagues. Nor is the understandable desire of all senior ministers to announce eye-catching new policies at the party conference a justifiable reason for failing to consult properly. Initiatives created and announced in haste and without adequate exploration of their consequences are likely to come to grief and have often done so.

In *Good Government* we recommended that there should be a published statement setting out the duties of Ministers and the Cabinet Secretariat in the preparation and submission of proposals to Cabinet or its committees. Some progress has been made. The Ministerial Code sets out in general terms the circumstances in which Ministers should seek collective agreement. The guidance for departments on Cabinet Committee procedure issued by the Cabinet Office and the guidelines on public consultation adopted by the previous Government contain elements of the approach we recommended. All of these documents are reflected in the *Cabinet Manual* published by the present administration. However no clear and prescriptive statement of the kind we advocated has yet been published. We continue to believe that this should be done. Material in the Cabinet Office guidance, such as the amount of time colleagues should be given to comment on proposals which are cleared in writing or the deadlines for the circulation of papers before meetings, is often ignored by departments and would have far more force if it were specifically referred to in the Ministerial Code. In the final analysis, however, what matters most is that the Prime Minister and Deputy Prime Minister should make it clear that they expect such guidance to be followed, that they will support the Cabinet Secretary in enforcing the rules, and that they themselves will observe them.

R1: There should be a fuller and more prescriptive statement than that provided in the present Ministerial Code about the requirements for collective decision taking and the way in which departments should engage with the Cabinet Committee system. The Prime Minister and Deputy Prime Minister should make it clear to colleagues that they support the statement and will require the Cabinet Secretary to ensure that it is applied when new policies are submitted for approval.

Policy formation

Improvements in the mechanics of collective consideration will not however ensure that policies are well founded if the options presented to colleagues are poorly prepared. In *Good Government* we made a number of recommendations designed to ensure that standards of policy making by government substantially increased the chances of successful outcomes: effective consultation, proper use of evidence and research, clear justification of the preferred proposals, careful estimation of costs, benefits and risks and systematic evaluation and reporting of results. Full advantage should be taken of modern policy analysis tools such as randomised evaluations and behavioural insights.⁴ We endorse the view that it is “often worth trying different policy options [for achieving a given objective] and evaluating them rigorously ... many objections boil down to a single point: how can we justify trials if we already know the answer? But we often know less than we realise”⁵.

It is hard to judge at this stage in the Coalition Government’s life how far its approach to policy-making will meet the criteria we set out in *Good Government*. Major legislation, presumably because of its complexity, seems to be particularly prone to poor communication, especially across the coalition, and the problems are compounded by the relatively small numbers of Ministers available to the minority coalition partner. The Coalition Government’s approach is likely to be most severely tested where what is needed is to reach understanding and then agreement over complex legislative proposals that raise detailed organisational and administrative issues. The account given by Nicholas Timmins⁶ of the way in which the Government’s health reforms were mediated between the coalition parties and reflected in the coalition agreement is a particularly stark example of the bad consequences for government of poor decision taking.

4 See for example National Institute Economic Review No. 219: Policy Evaluation in a Time of Austerity

5 Tim Harford, FT Magazine 18/19 August 2012

6 in *Never Again: The Story of the Health and Social Care Act 2012*

All new Governments expect to forge ahead with the implementation of the proposals in their manifestos without seeing the need for testing the alternatives by full consultation, taking the view that the electorate has already approved their plans. This Government has implemented a particularly ambitious programme. Some of its proposals would clearly have benefited from more thorough preparation and testing. Its extensive reforms of the health service are a notable example. Other examples are the decision to abolish the Audit Commission, which had not previously been signalled and which was announced without any clarity about how its functions were in future to be discharged; the proposals for a high speed railway line (HS2) to Birmingham and the North, where there has been inadequate exploration of alternatives, inadequate justification of the chosen option and a rushed consultation; legislation for the reform of public bodies, which was ill thought-out and consequently had a difficult passage through Parliament; and the Localism Bill where too little attention was paid to issues of responsibility, accountability, and other aspects of practicality.

While it is understandable that a new Government should wish to get ahead quickly with its programme there is a risk that inadequate preparation will produce poor outcomes and that the Government's own credibility will suffer. The difficulties which some of the Government's policy proposals have encountered, resulting in some cases in the need to change or reverse course, might have been avoided with more thorough preparation. We look to the Coalition Government to aim for higher standards of policy preparation for the remainder of this Parliament and to seek to establish as a norm the advance publication, for the benefit of Parliament and the public, of the details of a proposed policy change and the reasons for adopting it.

R2: The Government should establish explicit standards for the preparation of new policies, significant machinery of government changes, major projects and new regulations covering:

- ◆ a clear definition of the problem to be addressed and the available options for action;
- ◆ appropriate consultation, in particular with those who will be responsible for delivery;
- ◆ an analysis of the costs, benefits and risks;
- ◆ a full description of how the proposal will work in practice and the intended effects;

and insist that they are followed by departments. Published guidance to Ministers should set out how the requirements are to be interpreted.

The standards must be applied from the beginning in the development of new policies so that fresh information can shape emerging decisions at a stage when it is possible to alter course without accusations of "u-turns".

Impact Assessments

In principle, several of the improvements in policy making we are seeking should already be achieved through the preparation of Impact Assessments (see Annex B) which are intended to identify the full financial, fiscal and other effects of policy change. They are now ubiquitous, required by European and domestic rules to be prepared for all projects with significant expenditure implications or affecting the public in other ways. Guidance on the ground they should cover is clearly set out in the well-thought out Green Book and Magenta Book produced by the Treasury.

Regrettably, the reality is far different from the original intention. The production of Impact Assessments has largely become a bureaucratic cottage industry turning out documents of little value that conform to the letter of the rules but add little or nothing to the understanding of the issues.

For minor policy developments this is not too serious a problem. But, with some honourable exceptions, the same approach is being adopted for policy changes with major effects, including projects of national importance. In some cases the clear intention of the Impact Assessments that have been produced is not to provide the evidence needed to reach a decision but to justify a decision already taken.

R3: The Treasury should have the responsibility of checking that departmental Impact Assessments for proposals with significant expenditure consequences are fully compliant with established requirements and, where relevant, take due account of the implications for taxation. When the proposal involves new legislation the Treasury's opinion should be published when the bill enters Parliament.

The role of the Treasury in policy formation

The Treasury has traditionally carried out a valuable challenge role in the development of policies by discussing with departments how their objectives might be achieved more efficiently and economically. During the previous administration the Treasury ventured beyond challenging departments' proposals and increasingly took the lead in policy development. That degree of intervention was dangerous: the Treasury lacks the expertise of individual departments in their specialist fields and the heavy emphasis on policy development risked diverting Treasury officials from their vital focus on economic management and expenditure control and securing value for money. The dominance of the Treasury also risked undermining the accountability to Parliament and Cabinet colleagues of departmental Ministers.

Fortunately this practice now seems to have ended and departments have resumed the initiative in policy development. The pendulum should not, however, swing too far in the other direction. The arrival of the new more sharply focused management boards (discussed later) in departments and other public bodies could be seen as a reason for relaxing Treasury involvement. That would be a serious mistake. The Treasury's external perspective and focus on expenditure control and value for money provide an essential counterweight to the optimism bias that naturally builds up in departments whose primary concern is the delivery of services and the pursuit of new policy ideas. It must retain its classic function of questioning departments' expenditure proposals to establish the plausibility of estimated costs, benefits and risks with the right to require that its views are represented in all papers submitted to Cabinet committees.

A more immediate concern, again discussed later, is that the sharp reduction in numbers in the Treasury and the high turnover in senior Treasury staff will hamper its capacity to carry out these and other vital roles.

Legislation and Parliament

In *Good Government* roughly half the recommendations were about securing agreed standards for the preparation of major policy initiatives, in particular those requiring legislation, and improving the relationship between the work of Parliament and the Executive. This followed mounting concern under successive Governments about the excessive quantity and poor quality of legislation and about weaknesses in Parliament's ability to hold the Government to account, in the interests of the nation as a whole, through effective scrutiny of the Executive's proposals. That concern has not been assuaged by the legislative record of the Coalition Government as it moved forward very rapidly and on many fronts simultaneously. Our earlier recommendations therefore remain very relevant.

Standards for legislation

A description of our recommendations on legislative standards is attached as Annex C. They deal with the preparation process for bills, building on our proposals on policy development discussed earlier, the accompanying documents to be provided to Parliament, and how a Parliamentary Legislative Standards Committee, supported by Parliamentary officials, might carry out its initial appraisal of a bill. Our proposed standards require the bill and its accompanying documents to cover fully:

- ◆ the purpose of the bill and the reason why new legislation is needed;
- ◆ a statement of the options considered and their costs, risks and intended benefits;
- ◆ a report on consultation including evidence from the front line and any resulting decisions;
- ◆ how the proposal will work in practice;
- ◆ a description of the intended effects in terms suitable for post-legislative scrutiny.

Regrettably the Government has made virtually no progress in this area; the recent update of the Cabinet Office guidelines on legislation took no account of the BGI recommendations. Parliament, however, has been more receptive. The Commons Liaison Committee responded positively by asking the Political and Constitutional Reform Committee to take the lead in considering the issue of legislative standards and the Parliamentary procedure for monitoring them in association with the Procedure, Public Administration and Public Accounts Committees. The Leader's Group on Working Practices in the House of Lords also took up our proposals. The Political and Constitutional Reform Committee has received ten written submissions and taken oral evidence three times (including from the BGI⁷). Now that Parliament has taken the initiative the Government will need to respond. The effects would be beneficial both to the Government, whose business managers would have a powerful tool for ensuring that legislation proposed by departments was fit for purpose, and Parliament whose reputation would be enhanced by more sharply focused and effective scrutiny.

R4: The Political and Constitutional Reform Committee should include in its forthcoming report a strong recommendation, preferably including a draft text, for the introduction of explicit standards for legislation similar to those in Annex C of this report; agreement should then soon be reached between Parliament and the Government on the content and implementation of those standards and the Parliamentary machinery for monitoring them.

Our other recommendations for improving legislation and its scrutiny included:

- ◆ publication of bills in draft for pre-legislative scrutiny;
- ◆ some cross-membership of pre-legislative scrutiny and public bill committees;
- ◆ the size of the legislative programme as a whole to be compatible with full Parliamentary scrutiny;
- ◆ the provision of full information (and if possible draft regulations) on any proposed powers to make secondary legislation;
- ◆ effective post-legislative scrutiny.

7 The BGI written evidence is BL 07, published on the PCRC website. The BGI also gave oral evidence (Lord Butler and Nick Monck) on 21.6.12

Despite undertakings by Government and many recommendations, including our own, that pre-legislative scrutiny of bills should be the norm there will be only a marginal increase in the number of bills so considered in the second session of the current Parliament. Of 19 bills in The Queen's Speech only eight will have been published in draft, including two published in the previous session and the Banking Reform Bill (which is receiving pre-legislative scrutiny, including a call for written evidence, by the Parliamentary Commission on Banking Standards). Pre-legislative scrutiny will only realise its full potential if the procedure is taken seriously by both Government and Parliament.

There has so far been no move to introduce cross-membership between pre-legislative scrutiny and public bill committees.

The arrangements for post-legislative scrutiny introduced by the last Government are in operation and departments are mostly producing reports three to five years after legislation. Select Committees have however so far done little to take advantage of this potentially important tool for learning lessons from the past and applying them to future proposals.

Legislative scrutiny cannot be effective if a torrent of fresh legislation overwhelms Parliament's capacity to consider it. Although both the Prime Minister and the previous Leader of the House of Commons were known to be in favour of restricting the legislative programme to a size compatible with full Parliamentary scrutiny there has been no pledge from the Government to do so. The time required for effective scrutiny would be reduced if our recommendations on legislative standards were followed: less time would be squandered in correcting avoidable defects in bills presented to Parliament and the scrutiny process itself would be more efficient.

R5: The Government should give a pledge to restrict the legislative programme to a size compatible with full Parliamentary scrutiny.

First-session bills

Particular difficulties arise in the first session after a general election when a new Government of a different political complexion arrives. The Government will naturally feel that it must press ahead and set its stamp on the administration through the introduction of new legislation to fulfil its manifesto commitments, but under present arrangements opposition parties' access to government resources after a general election is called is far too limited to enable them to carry out the thorough preparation required by the standards. Now that we have fixed-term parliaments, however, it should be possible to plan ahead and limit that problem by arranging for opposition parties to have greater access before the election to policy advice and drafting capacity as is already done in Scotland.

R6: Arrangements should be made to provide opposition parties with sufficient access during the run up to a general election to the resources within government necessary to ensure that, if they are elected, any bills they introduce in a first session will be prepared to a high standard.

The difficulties of preparing good quality legislation for the first session will be compounded if a coalition is being formed. In that case the legislative programme will be based on a variety of election promises combined in a way that cannot be accurately predicted before a coalition agreement is struck. The negotiation of a coalition agreement is a complex and challenging task which should not be rushed. It provides opportunities as well as challenges. At a very basic level, it can help to weed out some of the less well-considered elements in each of the coalition partners' policy portfolios. It can also bring together the insights and experiences of different parties in fruitful combinations that neither alone would have been able to pursue. But that cannot be done in haste.

If our previous recommendation of granting opposition parties access to government resources is followed each party's proposals will be well constructed. But combined policies will need equally thorough preparation, with the benefit of expert civil service advice, which cannot start until the composition of the coalition is known.

In European countries where coalitions are commonplace negotiations typically take six or seven weeks. There was some nervousness following the last election that the markets, with no experience of coalition negotiations in Britain, might regard them as a period "without a Government". However the fears proved unfounded, a clear precedent has now been set, and this should not be considered a plausible argument for undue haste in any future negotiations.

R7: When a coalition is formed enough time should be allowed, as is usual in many nations, for the coalition agreement to be constructed on a sound basis. Civil service advice should be available throughout the negotiations. The first Queen's Speech of the new Parliament should be largely confined to statements of policy on the areas to be tackled, with the detailed legislative programme set out separately and later when a thorough understanding of the issues has been reached.

Strengthening the rights of Parliament and the position of Select Committees

Other groups of recommendations on Parliamentary matters in *Good Government* were about meeting the right of Parliament to:

- ♦ receive advice on fiscal sustainability;
- ♦ receive earlier and better information about tax changes, spending reviews and changes in the machinery of government.

There has been progress on the availability of independent advice to the Commons about fiscal sustainability as a result of the creation, after careful Parliamentary scrutiny, of the independent Office for Budget Responsibility (OBR). The OBR publishes an Economic and Fiscal Outlook at the time of the budget and the autumn statement and a Fiscal Sustainability Report once a year in July.

The Government has given several undertakings on tax, including on consultation and publication of Finance Bill clauses (other than changes in rates and allowances and avoidance measures) at least three months before a bill is introduced into Parliament. The Treasury Committee monitors the implementation of these undertakings and the chair has pointed out that they were not fully observed on the Oil and Gas Supplementary Levy in 2011.

There have been no changes by the Government yet in the Parliamentary handling of spending reviews or the annual approval of spending estimates. The BGI recently gave evidence which is relevant to this to the Liaison Committee's enquiry into the powers and effectiveness of Select Committees (see Annex D, taken from the Liaison Committee's website). Our proposals focused on their work on improving public services and enhancing value for money, particularly in a prolonged period of deficit reduction, and were intended to convey that the principal objective should be to hold ministers and officials accountable for the public services experienced by households and enterprises.

Our aim is to clarify the tasks of Select Committees and make them more vivid and of greater political interest. We suggest that departmental Select Committees should usually take evidence from Secretaries of State at the beginning of each session about what they intend to achieve in the next twelve months and follow this up with a further session at the end of the period. We also propose that Committees should expect Permanent Secretaries to give evidence (as they already do for the Public Accounts Committee in their role as Accounting Officer) about their personal

responsibility for the appraisal of programmes and projects and to disclose departures from the prevailing guidance on making investment decisions.

R8: We endorse the Liaison Committee's recommendations in their recent (November 2012) report on Select Committees that departmental Select Committees should increase their focus on aspects of the department's work that improve public services and value for money and expect to take evidence from Ministers and Permanent Secretaries on these topics.

Recommendations in *Good Government* on Select Committees covered:

- ◆ the election of chairs and members;
- ◆ the creation of Backbench and House Business Committees;
- ◆ the ability of Select Committees to present more of their reports to the House and to propose substantive motions;
- ◆ increases in Select Committees' powers and staff and in the pay of their chairs.

There has been clear progress on the first three of these, notably as a result of the implementation of the Wright Report on Reform of the House of Commons⁸.

A Back Bench Business Committee has been created and has been operating successfully with Natascha Engel MP as chair. "Back bench time" has been defined and used in ways decided by the Committee. There have been debates on subjects that front benches did not want discussed. Select Committee reports have been presented and substantive resolutions put down and passed in the Chamber. The Committee itself has reported on experience so far⁹ and a forthcoming report by the Procedure Committee is also expected to comment. Without waiting for either report the Government pressed ahead with amendments to standing orders to ensure that membership would be apportioned on a party basis. The chair is still elected by the whole House, however, and Natascha Engel MP has been re-elected. The Back Bench Business Committee has proposed that the provision of back bench time should be made more predictable.

The Coalition Government is committed to setting up a House Business Committee, which would make decisions or recommendations about time other than backbench time, in the current session. A House Business Committee could strengthen Parliament by increasing the transparency of decisions currently taken through "the usual channels" and not formally recorded. Experience suggests, however, that the Whips may gain control of it, so it is crucial that its creation does not damage the gains achieved by setting up the Back Bench Committee.

R9: The Back Bench Business Committee should continue to have a separate existence after the establishment of the House Business Committee.

There has also been clear progress with the existing arrangements for Select Committees. Chairs are now elected by the whole House and members by parties. This has enhanced the status of Select Committees and several of them have made good use of this. A striking example of their new influence was the carrying without a vote of a motion backed by the PASC and signed by 18 Select Committees chairs proposing that the Prime Minister's adviser on Ministerial Interests should be empowered (either informally or preferably statutorily) to institute his own investigations. This welcome improvement in the status of Select Committees may however prove to be a temporary phenomenon if they focus too much on topics of interest to the media rather than the more mundane but vital tasks that only Parliament can perform such as holding the Government to account through the close scrutiny of Departmental Plans and performance.

8 <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmrefhoc/1117/111702.htm>

9 The Work of the Committee in 2010-12 <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmbackben/1926/192602.htm>

Another example of an enhanced back bench role was the setting up of the Parliamentary Commission on Banking Standards with the support of all three front benches. It is chaired by Andrew Tyrie MP (Chair of the Treasury Select Committee) and has members from both Houses. Its task is to report on the professional standards and culture of the UK banking sector, taking account of regulatory and competition investigations into the process for setting LIBOR rates and of lessons about corporate governance, transparency, and conflicts of interest. The Government's decision to use a Parliamentary Commission to undertake this work is a welcome step towards redressing the balance which, in recent years, has arguably swung too far in the direction of extra-Parliamentary inquiries.

There has been no action on our recommendations for an increase in the powers and staff for Select Committees and higher pay for their chairs to encourage a career in holding the Executive to account through Parliamentary scrutiny. We continue to attach importance to these recommendations and are concerned that without establishing this alternative career path for MPs the initial enthusiasm generated by the reforms so far may wither.

Delivery and Organisation

In *Good Government* we were concerned to improve the working relationships between departments and their service providers and the corporate governance of departments. Our recommendations focused on clarifying roles and accountabilities and on ensuring that those taking decisions or managing programmes had appropriate skills and knowledge available to them. Since our report the Coalition Government, led by the Cabinet Office, has been very active in this area.

Structural Change

Substantial machinery of government changes can have a large impact on expenditure and on the delivery of services to the public – hence our view that they should be as carefully prepared and presented as other major policy changes. There has been a welcome reduction in tinkering with the departmental structures since the election reflecting a recognition that such changes are disruptive and an unnecessary complication at a time when departments are being required to make significant reductions in staff.

While the basic structure of core departments has remained largely unchanged, the same is not true of many of their delivery partners. The Government introduced early legislation¹⁰ for the abolition or restructuring of a large number of arms-length bodies. In doing so they did not meet the standards we have advocated for the preparation of legislation, especially with respect to consultation and Impact Assessments. The legislation had a difficult passage and was heavily amended. It is too early to say what the balance of costs and benefits has been from the reorganisations involved. This is especially true of the changes being made to the NHS where both governance structures and delivery arrangements will change significantly.

The advent of the Coalition Government saw a reduction in unforced Ministerial reshuffles. This too was welcome. It allows Ministers to develop their background knowledge and expertise in their subject and perhaps encourages them to make policies in the knowledge that they may still be there to be accountable for the results. The recent ministerial reshuffle, however, was very extensive with most of the major departments seeing the majority of their ministers replaced and several retaining only one of the previous ministerial team. As with previous reshuffles this is presented as refreshing the ministerial team but it injects significant disruption into the development and implementation of policies in a way that would not be contemplated in the business sector.

Capability

There has also been a worryingly high turnover of personnel in some parts of the civil service. Figures compiled by the Institute for Government show significant turnover rates in many departments with particularly high annual rates for the Cabinet Office and Treasury. The figures do not separately identify what is happening in the senior civil service, but we know that some Departments have experienced wholesale change at senior levels, including their Permanent Secretaries. We share the concern of Lord Browne, the Government's lead non-executive director, about the lack of succession planning evident in the management of these changes.¹¹

Furthermore the turnover figures only count those leaving departments and not internal movements, which we believe also to be unusually high. Some of this is no doubt an unavoidable consequence of restructuring following large reductions in staff, but the impact on departmental memory and the knowledge levels within teams and the damage to established working relationships with service providers and external advisers will be significant and could have serious consequences for the effective development and implementation of the Government's policies.

We are particularly concerned by the high turnover in the Treasury. The country needs a stable, confident and knowledgeable Treasury team to make sure that limited national resources are used

¹⁰ Public Bodies Act 2011.

¹¹ Interview to Civil Service World 13 August 2012

effectively and in line with the Government's priorities. While the Treasury may not be a typical organisation, its high turnover is no doubt driven by the same issues as in any other. *The Review of HM Treasury's Management Response to the Financial Crisis*, published in March 2012¹², stated that (partly because of the Treasury's decision to lead by example) Treasury officials are now the lowest paid in Whitehall and that uncompetitive salaries and limited career progression are the key reasons cited by staff who leave. It concluded by recommending that the Treasury should develop a strategy to limit its annual turnover of senior staff to 15 to 20 percent.

R10: The Treasury Select Committee should regularly monitor the success of the Treasury in maintaining its capacity to perform its core functions through the implementation of the strategy it proposed for reducing excessive staff turnover following The Review of HM Treasury's Management Response to the Financial Crisis.

The three rounds of capability reviews of departments started in 2005 have now been completed. Analysis by the Institute for Government¹³ suggests that while there was a noticeable improvement, especially in delivery capability between the first and second rounds, little overall improvement was shown in the final round. These reviews are now to be replaced under the Civil Service Reform Plan with Departmental Improvement Plans led by the new Departmental Boards (see below).

Relations between Departments and the Centre

We have watched with interest the development of relationships between the centre of government and departments. As noted earlier the return to more structured collective discussion seems to allow departments and their Ministers to return to an appropriately active role in policy discussions. But this welcome development has been accompanied by a stronger role for the Centre in the way in which business is done. This has been described to us as a "tight/loose" approach in which certain activities are identified for strong central control. Examples include the creation of high salary posts, use of management consultancy, the management of departmental properties and the procurement of some goods and services. For other activities it is left to departments to achieve the best value for money.

We can see the advantages in, for example, government making best use of its overall purchasing power or promoting more common back office services, including IT, if it saves money and allows sensible restructuring and shared working in the future. However, these advantages need to be balanced against the benefits of departments being able to make their own judgements about how best to use their resources to deliver policy outcomes. It will ultimately be harmful to service delivery if the divide between central and departmental control is whatever the Centre wants it to be on any particular day. Once the initial period of adjustment has been completed some of the existing "tight" controls, for example over staffing levels and accommodation could be loosened. Work on improving management information may offer ways of holding departments to account for their use of resources while giving them the flexibility to deliver. Departments' non-executive directors will be able to give useful advice on achieving an appropriate "tight/loose" balance.

R11: There should be greater clarity about the principles underlying the "tight/loose" approach in relationships between departments and the centre of government. To avoid building an over-centralised system, "tight" controls should be relinquished after an initial period when alternative ways of monitoring resource use are established. The advice of departments' non-executive directors should be sought.

12 http://www.hm-treasury.gov.uk/d/review_fin_crisis_response_290312.pdf

13 <http://www.instituteforgovernment.org.uk/blog/4645/the-end-of-capability-reviews-long-live-dims-and-dips/>

Departmental Boards

A significant and welcome central intervention in Departmental governance has been the restructuring of Departmental Boards along the lines discussed in *Good Government*. These are now chaired by Ministers, have new and senior non-executive members and a clearer focus, as we suggested, on the delivery of departments' programmes and major projects. The initial round of non-executive director appointments has been excellent and they are already beginning to make an impression. However we note that they are drawn almost exclusively from the business world and while we expect them to bring much valuable business experience to bear not all of that will be directly transferable to the public sector. We hope that subsequent appointments will also take account of the need for a broader range of skills, for example science or economics, as appropriate to departments.

A novel feature of the new arrangements is the role of the lead non-executives in each department and their links to the Government's overall lead non-executive Lord Browne of Madingley. While this could lead to tensions and the creation of a "subsidiary company" mentality, we have seen no signs of this in the early days of the new arrangements.

The first annual report produced by Lord Browne on the work of the new Boards is commendably open about the progress made and the framework within which non-executives will make their contributions. We support the priorities set for the current year looking at the capability of boards and departments, the management of major projects and improving management information. If progress can be made on each of these, departments will have been strengthened. It is too soon to judge whether these arrangements can deliver all the benefits suggested; much will depend on the attitude of Ministers to playing a more active role in the management of their departments and the staying power of the non-executives in the unfamiliar environment of Whitehall.

The intention, as shown in the "Transparency" website¹⁴, to be open about the activities and progress of departments is currently undermined by the variable and largely non-strategic documents that are provided. We welcome the Coalition Government's emphasis on better management information but we are concerned that, in government decisions on resource allocation, analysis of the scope for and consequences of cuts in resource provision is at too high a level and not rigorously based on analysis of the relationship between inputs, outputs, outcomes and benefits in individual services. The Border Agency and the Border Force may provide interesting case studies here. Similarly, large reductions have been made in budgets for the Whitehall policy machine but it is unclear what Ministerial expectations are of activities that can and should be stopped.

With the ending of what was considered to be an excessive reliance on targets there has been a shift in Government thinking towards policies intended to enable outcomes to be achieved rather than dictate what the result should be. In principle this move away from micro-management is welcome, but it is important not to lose sight of the fact that the ultimate test of a policy of enablement is what is actually achieved. If there is no improvement in outcomes, the policy is a failure.

R12: An early task for the Departmental Boards must be to put clear plans in place for every department, in particular indicating what strategic outcomes are expected and where, within diminished resources, standards of service will be reduced, maintained or increased.

We note that the new non-executive directors are developing their own management information systems in order to get a good understanding of what is going on in their departments; they have found the traditional Parliamentary accounts unfit for running a business. If that is the case for non-executive directors who have regular close access to departmental officials at all levels it seems unlikely that Parliamentary committees will derive much value from the material.

14 <http://www.number10.gov.uk/transparency/>

R13: Departmental reporting of activities should be strengthened so that costs and value for money/productivity are broken down by service and distinguish on a consistent basis between “Whitehall” and other functions.

As noted above the Boards will also be expected to take responsibility for Departmental Improvement Plans including their expenditure implications. The non-executive directors will have a constructive part to play in this and it will be important for the Boards to be given the freedom to decide how they fulfil this responsibility alongside their other priorities; rigid central prescription will prevent them from creating plans relevant to the needs of their individual departments.

A further issue concerns the implications for Parliamentary accountability of the new Board structures. In *Good Government* we discussed the accountabilities of Ministers and Permanent Secretaries for policy and delivery. It is open to question how the introduction of a more prominent role for non-executives and their direct links to the lead non-executive at the centre might affect those accountabilities. We have argued in evidence to the Political and Constitutional Reform Committee for the accountability of the Permanent Secretary to Parliament as Accounting Officer to be maintained and broadened to cover many of the wider capability issues which the Boards will be considering. We think that it follows that, as now in relation to expenditure decisions, Permanent Secretaries should have the right to require and rely on written directions from Ministers where they are in disagreement with any proposed action.

We have also noted the interest in the Public Accounts Committee and elsewhere in Parliament for senior officials more generally to be held directly accountable for their handling of major projects and programmes. Officials are accountable for the quality of their work to their Permanent Secretary and their Ministers, both of whom are answerable to Parliament. We do not therefore see the case for Select Committees to be empowered to require direct accountability, in the sense of personal responsibility, from individual officials other than Permanent Secretaries in their role as Accounting Officers.

We do, however, acknowledge the frustration that can arise in Select Committee hearings when it is not clear whether failure is the result of poor policy design or poor implementation. It is not easy to disentangle accountabilities. Policy design in Whitehall is normally collaborative between ministers and officials and there are many benefits to be had from using this approach rather than customer/contractor systems which have been tried in other countries with mixed results. Nevertheless in the proposed upgrading of project management arrangements in Whitehall there would be advantage in requiring better documentation of key design decisions and changes to them in the way that industry-standard project management systems use routinely. This would help to ensure that the consequences of change are identified before decisions are made as well as helping to disentangle accountabilities later should things go wrong.

R14: It would be helpful to incorporate into programme and project management procedures formal sign off and change management protocols designed to produce greater clarity about the roles and responsibilities of officials and Ministers.

With the advent of the new Departmental Boards greater clarity and rigour will be needed over how costs, benefits and risks are estimated and how “optimism bias” can be countered. It would be helpful to have all party support for the new Boards but that may, in practice, depend on how successful they are in maintaining the line between management and policy. The code of practice provided for them suggests that the Boards should not concern themselves with policy, but with Ministers and senior officials on the Boards as well as the non-executives it may be difficult to avoid cross over given the Boards’ understandable and unavoidable interest in the resource implications

of policy changes. The Boards should not hesitate to give firm advice when they foresee difficulties with the practical implementation or resource implications of policy proposals.

As noted above, Board membership has so far been largely confined to people with a business background who have little experience of the way public sector bodies operate. To do their job effectively they will need direct access to staff within the department who can brief them on aspects of its work with which they are not familiar.

Relations with Service Providers

In *Good Government* we were concerned with promoting more productive relationships with service providers and in particular with ensuring effective feedback between those developing policies and programmes and those delivering them. This will be even more important as departments seek efficiency savings through out-sourcing. In addition to the skills issues for the civil service in specifying and managing out-sourced contracts ways must be found to involve out-sourced suppliers in policy development without putting them in a dominant position that is damaging to competition.

We are concerned that the high levels of personnel change in departments and agencies mentioned above are damaging established working relationships and militating against good communication with providers. We anticipate that some departmental officials may try to cascade activities they can no longer resource to agencies or other providers that are themselves being squeezed. It will be essential for there to be effective mechanisms for strategic dialogue between departments and their providers to agree on required outcomes and ways of monitoring them.

Localism

An issue that was not covered in *Good Government* but which adds complexity to discussions about organisation and delivery is the Coalition Government's commitment to "localism": the devolution of powers and decision making closer to the point of delivery for many services including health and education. We have, for example, recently seen agreements for informal consortia of local authorities - City Regions - to take on a number of responsibilities previously delivered directly by central government agencies.

We are in principle strongly in favour of increased "subsidiarity" in service provision, but it is inherent in this approach that there will be variations in the nature and substance of the services offered to the public in different parts of the country since it actively encourages the joining up of central and local agencies to develop services responding to specific local priorities. Taken to extremes this can result in widespread dissatisfaction and the familiar complaints about "postcode lotteries". The Government should act in advance to ensure that it is not taken by surprise, drawing on lessons learned from effective evaluation of the trials which have been announced.

R15: The Government should prepare a published strategy for the implementation of localism setting out:

- ◆ **which service standards and decisions (for example on projects of national importance) will remain the responsibility of national government;**
- ◆ **for the remainder, what minimum standards will be set to reflect national priorities (and if appropriate how additional resources will be provided to authorities which are unable to meet them);**
- ◆ **what action will be taken if required standards are not achieved;**
- ◆ **what information is to be provided to enable local electors to make informed judgements about the provision of services.**

The Civil Service

None of the measures discussed so far will be effective unless the civil service is up to the task. That is not just a matter of technical competence but also the character of the service and the role it plays within our constitutional arrangements in helping to ensure that governments act with propriety and in conformity with the law. This role includes ensuring that the resources of the state are not used for party-political purposes or improperly in other ways and that citizens are treated impartially in their dealings with government. That requires officials to be prepared to stand up robustly for proper governance and has on occasion led to friction with some Ministers and some special advisers. The ability to discharge this role should be an important factor when considering the recruitment and development of civil servants, the importance of the civil service values, and the need for objective and impartial standards to be applied in civil service appointments.

Embedding the Civil Service Values

The Northcote Trevelyan reforms were introduced to replace a civil service recruited through patronage and promoted by “Buggins’ turn” with a cadre of administrators selected on merit through competitive examinations. The previous arrangements were an invitation to corruption and sloth. The reforms produced a civil service with a world-wide reputation for professionalism and integrity. Modern Governments have recognised the benefits that these reforms brought and they are now formalised in a written code of conduct¹⁵ that sets out the values to which civil servants must adhere. The previous BGI report emphasised the importance of embedding these values of integrity, honesty, objectivity and impartiality as a continuing task. As Oliver Letwin MP (Minister of State, Cabinet Office) said in a recent speech at the Institute for Government “we need civil servants who will give well informed fearless advice.” The Civil Service Commission’s approach is focused on working with departments to ensure civil servants know about the Civil Service Code and how to raise concerns under it. Awareness is now being tracked in the annual Civil Service Survey.

R16: It is essential in the interests of good government, including the avoidance of corrupt practices, for the Civil Service Commission to maintain its focus on ensuring that the values of integrity, honesty, objectivity and impartiality set out in the Civil Service Code are effectively embedded and to rebut any suggestion that maintenance of these values can be characterised as obstruction.

Roles of the Civil Service

Before the 2010 General Election, Conservative shadow Ministers said that they wished to create a more constructive relationship with the Civil Service. The Coalition Government’s record in office has not lived up to these expectations. There has been briefing against the Civil Service, sometimes designed to shift the blame for policy and delivery failures. There has been speculation about the desirability of moving to a much smaller “core” Civil Service - one senior and influential adviser apparently saw no role for the Civil Service beyond implementing the priorities in the Coalition Agreement. The Coalition Government’s formal views on the future of the civil service were set out in “The Civil Service Reform Plan”¹⁶ published in June 2012.

Our previous report identified four main roles performed by the Civil Service:

- ◆ supporting the decision making process;
- ◆ contributing to effective policy making with close attention to factual accuracy;
- ◆ resourcing and performance management of public services delivered by others;
- ◆ the direct delivery of some services and revenue collection.

15 <http://www.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf>
16 <http://www.civilservice.gov.uk/wp-content/uploads/2012/06/Civil-Service-Reform-Plan-acc-final.pdf>

Unsurprisingly there is overlap between our analysis and the Government's Reform Plan which itself focuses on three roles:

- ◆ operational delivery;
- ◆ advising on policy and supporting Ministers;
- ◆ Implementing programmes and projects.

We welcome the emphasis on operational delivery. Too often in discussion about the Civil Service there is inadequate recognition of the diversity of its roles. The Civil Service is equated to its "Whitehall" element, and even then the perspective and experience of the reformers is usually a view from the centre with little recognition or understanding of the roles of departments.

We also support the Government's focus on the importance of project and programme management. The failure of the civil service to learn the lessons of the examples of good and practice in a number of National Audit Office reports, including the importance of continuity in the appointments of Senior Responsible Officers and project managers, is a matter of some concern. But we are not convinced by the underlying message that project management in the public sector is systematically worse than in the private sector. In the light of the recent Olympic and Paralympic Games, for example, it is clear that public and private sectors are both capable of project management of a very high order. Equally both sectors can show instances of significant failure. As both sectors increasingly work together it has to be acknowledged that where contracts are let to the private sector and there is a failure of delivery much of the responsibility must rest with the contractor. Problems will be dealt with more effectively if this is recognised.

The emphasis placed by the Government in the Reform Plan on the need to strengthen the commercial and financial skills of the civil service as more government services are commissioned from the private and third sectors is also clearly justified. The reputation of the civil service has been seriously damaged by the need to cancel the award of the West Coast Main Line franchise because of flaws in the way the procurement was conducted.

The collapse of the West Coast Main Line franchising process and concerns about the competence of the Transport department have also prompted wider comment that reflects other themes in our report, notably the importance of sound evidence-based policy analysis and stability and continuity in implementation. Commentators have questioned the underlying case for the Government's policy of much longer franchises, including the ability of both Government and operators to handle the uncertainty and risk they involve. Questions have been raised about the impact of rapid staff reductions, including senior staff, and restrictions by the centre on the employment of consultants. Discussion of Ministerial and official accountability and responsibility for the problems that have arisen has also drawn attention to the turnover in top posts. Since the Coalition came to power, the Department for Transport has had three Secretaries of State and four Permanent Secretaries (including one acting appointment). Over a somewhat longer time scale, the department has had eight Secretaries of State and six Permanent Secretaries since it was re-established as a separate entity in 2002.

Strengthening the Civil Service role in the management of decision making

The previous BGI report drew attention to the impact of "sofa government" under Tony Blair at 10 Downing Street and Gordon Brown at the Treasury. Subsequent revelations in memoirs and quasi-memoirs have substantiated this concern, which if anything appears to have been understated in our first report. The demands of coalition government appear to have strengthened the formal machinery for decision making. The Reform Plan has little or nothing to say about this Civil Service role, other than one or two references to "Sir Humphrey" and "Yes Minister". (Such references might be more illuminating and relevant if they focused on and drew lessons from the modern day

equivalent of “Yes Minister” - “The Thick of It” - which paints a very different picture of Civil Service influence.)

Our continuing concern is that decision making should be properly conducted in terms of evidence gathering, factual accuracy, objective analysis, the taking and recording of decisions in a structured way, their implementation, and subsequently the evaluation of whether objectives were achieved cost effectively. Decision making in government is complex and needs to be supported by an expert and politically impartial staff committed to effective and efficient process. We believe that this is a key civil service role, which needs to be properly recognised in thinking about training, development, and career paths.

Policy development

Perceived policy failures have led to renewed interest in how policy is made and communicated, the respective roles of Ministers, civil servants and special advisers, and the need for the centre to take on a stronger steering and monitoring role. There are suggestions that more policy development might be outsourced. We would emphasise four considerations:

- ◆ the benefit of Ministers and officials working together on an iterative basis in policy development;
- ◆ the value of civil service experience in meeting the requirements of Parliamentary and public accountability;
- ◆ the cardinal importance of developing policies in ways which from the outset integrate consideration of, and expertise in, how they will be delivered;
- ◆ the need to consider all potential options for achieving the desired objective and wherever possible to resist the urge to opt for legislation.

Accordingly we welcome much of the discussion in the Reform Plan, which echoes these, as well as other, themes. We agree that the Civil Service should not be seen as having a monopoly of advice, and should itself be outward looking, seeking new approaches from think tanks, academia, and international experience. The Reform Plan sees a role for civil servants as “policy managers”, which we agree is important – not least to avoid undue reliance on outside bodies that may have a vested interest. But the role of the Civil Service goes well beyond policy management. Government is highly complex and covers a range of subjects whose handling requires depth of subject knowledge linked to an understanding of effective levers and likely challenges in implementation. In many areas high quality outside expertise is available, but government also needs in-house expertise with the capacity to test and integrate where appropriate outside views. “Policy” civil servants should be expected to have such subject matter expertise, which has important implications for how they are developed and career managed.

Clarifying the roles and constraining the number of special advisers

Our previous report sought greater transparency over the roles, knowledge and experience of those appointed as special advisers and constraints over the numbers of, or budget for, special advisers. There is now more frequent reporting on numbers, in line with more openness generally on civil service numbers and costs, which we welcome. The number of advisers has grown, as more have been employed in support of the Liberal Democrat capability within the coalition, but total costs remain lower than under the previous Government.

Issues around adviser numbers have proved controversial for this as for the previous Government. Under the Ministerial Code Cabinet Ministers, with the exception of the Prime Minister and the Deputy Prime Minister, may generally appoint no more than two special advisers. There is anecdotal evidence of pressure to circumvent this restriction by employing what are effectively political appointees in civil service roles, something also not unknown under the previous Government. The case of Adam Werritty, who had no official role but described himself as an adviser to the Defence Secretary, also drew attention to risks that Ministers might try to circumvent constraints on numbers in other ways (it is also striking how outsiders appeared to value access through an intermediary of this kind even though he had no official status).

The close involvement of the Culture Secretary's adviser Adam Smith in commercially highly sensitive issues relating to BskyB, which may or may not have been an isolated case, suggests that Ministers may need to take greater care in ensuring that the behaviour of their advisers fully conforms to the code of conduct published by the Cabinet Office with the authority of the Prime Minister¹⁷.

Despite the Werritty and Smith cases, there is an emerging conventional wisdom that part of the solution to the Government's difficulties over what are perceived in some cases to be half-baked and politically naïve policies and poor delivery is to employ more special advisers, particularly but not exclusively at the centre, to check up on departments. We have strong doubts about the wisdom and likely success of this approach. If Ministers' own limitations are preventing them from detecting policy pitfalls we doubt whether advisers of the current type who generally have a similar background to their Ministers and far less experience will be of much help. Similarly, if delivery is the problem they usually have little or no relevant managerial experience.

We welcome much of the analysis in the recent Public Administration Select Committee (PASC) report on special advisers, "Special advisers in the thick of it"¹⁸, and look forward with interest to the Government's response. We support the recommendations for proper induction and training and for greater transparency over the roles of special advisers and the policy areas in which they work. We agree with PASC's conclusion that "the crucial question is not simply the number of special advisers but whether the case can be made for the payment of each individual from the public purse ... ; the need for those tasks to be undertaken by a personal appointee rather than a permanent civil servant; and the person's qualifications and ability to undertake them." These should be seen as demanding tests and we therefore hold to our earlier view that the information disclosed about special advisers should include their expertise and previous experience. .

R17: Ministers should take care to ensure that the conduct of their special advisers conforms with the Cabinet Office Code. When special advisers are appointed their role, the policy areas in which they will work and their expertise and experience should be published.

Numbers of political and personal advisers do however also impact on the way government is conducted and we would have serious concerns about significant further increases at the centre or in departments. We therefore regret that the Committee did not take up the proposal submitted by Lord Butler¹⁹ that "political" special advisers should no longer be classified as civil servants but should be treated as party staff and financed by the extension of "Short money". Expert advisers could then be appointed on merit under procedures supervised by the Civil Service Commission.

17 <http://www.cabinetoffice.gov.uk/sites/default/files/resources/special-advisers-code-of-conduct.pdf>

18 <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpublicadm/134/13402.htm>

19 <http://www.parliament.uk/documents/commons-committees/public-administration/Combined%20written%20evidence%20SPADS.pdf>

Developing a strategy for civil service recruitment and careers

We agree with the proposition in the Government's Reform Plan that "the Civil Service employment offer is more than just pay and pensions". There are non-pecuniary benefits in much Civil Service work, but after allowing for this there remain substantial differences, not all one way, between rewards in the civil service and those in the wider economy at different levels, for particular skills, and in labour markets in different parts of the country. Disparities between civil service and market rewards are particularly marked at more senior levels, but there are also issues in specialist areas and amongst more junior managers.

This lack of coherence would matter less if the Civil Service were still being recruited as a separate cadre as in the original Northcote-Trevelyan model. But other considerations have since come to the fore. The present Government, for example, rightly wants to strengthen programme and project management skills, and more generally to ensure the Civil Service has commissioning and commercial skills to match the best private sector companies. These goals cannot be met if the Civil Service is divorced from the wider economy in terms of the remuneration needed to ensure it has the skills needed to do the job with shrinking numbers.

We note that the Government Lead Non-Executive Director has raised the question of the impact on talent management of constraints on public sector pay and recruitment. This may helpfully raise the profile of the issue with Ministers, but experience of the handling of these matters by a number of administrations, in much less fraught economic circumstances, leads us to doubt whether they will be rigorously tackled. Nevertheless if Ministers want the civil service to recruit talent externally at all levels, then in the medium term it will be necessary to develop remuneration policies that take more realistic account of the wider market.

R18: A coherent workforce strategy for the civil service should be prepared which indicates the numbers of people with different skills likely to be required, where it is expected they will be needed and how they are to be recruited and trained. Account should be taken of the need for stability in appointments and improved training and succession planning so that departments can "grow their own timber" by strengthening officials' knowledge and continuity of experience.

Ministers' role in civil service appointments

The convention of appointing civil servants on merit on the basis of fair and open competition has now been given statutory force in the relevant sections of the Constitutional Reform and Governance Act 2010. Our previous report drew attention to the tension between understandable ministerial concerns over their ability to influence the choice of staff working for them and the requirements of a system based on a politically-impartial civil service. We recognised that Ministers have for many years played a role in certain appointments and the value of a dialogue between Ministers and Permanent Secretaries over staff performance and matching people to posts. But we were concerned at the risk, if this were taken too far, that Ministers and favoured officials would team up and follow each other around the system and that conformist behaviour in relation to Ministers would be reinforced at the expense of objective advice. The risk of recruiting individuals with a partial approach to how policy is implemented could also be increased.

Against this background we have noted with concern Action 11 in the Reform Plan that "In order to reflect Ministers' accountability to Parliament for the performance of their departments, we will strengthen their role in both departmental and permanent secretary appointments." The Plan recognises that "Ministers already have involvement in the recruitment process but we believe there is a case to go further." For our part we see considerable risk to the political impartiality

of the Civil Service and its arguably already enfeebled capacity to “speak truth unto power” and ability to serve succeeding Governments of a different political complexion if Ministers were to go beyond their present involvement in Permanent Secretary appraisal and become directly involved in decisions on appointments.

R19: We look to the Civil Service Commission to view with considerable caution the proposals in the Civil Service Reform Plan on Ministerial involvement in civil service appointments bearing in mind the dangers of cronyism and party-political bias that could arise in a return to appointment by patronage.

Strengthening knowledge, skills and experience in the Civil Service

In our previous report we stressed the need to follow through the Professional Skills for Government (PSG) programme and to give much more attention to succession planning so that departments have the necessary specialist skills, experience and corporate memory. We note with wry amusement the decision in the Reform Plan to bring PSG to a close because it has “run its course”. No evidence or evaluation is offered. We doubt that the underlying goals of PSG have “run their course”. It sought to develop the professional skills of staffs engaged in policy development and operational delivery, to develop professionally-accredited staffs in corporate areas, and to provide parity of esteem between different career groupings and pathways to the top for individuals irrespective of their original route of entry into the Civil Service. Much of this agenda has at best been only partially implemented.

In our judgement PSG has also not developed as originally envisaged in two important respects. The importance of sector knowledge as part of the professional expertise of policy staffs was lost, as was the emphasis on developing depth of knowledge at the beginning of a civil service career. There was also no continuity in rolling out and administering PSG. We recognise that there are useful developments in the Plan, including the commitment to continuous professional development, and wait with interest to see how far the replacement for PSG will meet its unfulfilled objectives.

We support the further evolution of the Civil Service so that it is more outward-looking, professional and open as necessary to bringing in new talent at all levels. Positioning the service in this way brings with it challenges and risks as well as benefits. Being market facing ultimately requires a coherent approach to remuneration. More movement in and out brings with it increased risks of corruption and a heightened need to inculcate and sustain Civil Service values. The drive for more Ministerial involvement in appointments could lead to a return to patronage and cronyism. The absence of effective succession planning has left some departments with little or no corporate memory. None of these outcomes is inevitable. Our recommendations are designed to sustain a high performing, politically impartial Civil Service which is recognised as an asset crucial to the success of the country.

Annex A:

Collective decision taking and the role of the Cabinet

The publication of the memoirs of several of those involved in the Blair administration prompted media discussion about the nature and effectiveness of Cabinet government, an issue on which the Better Government Initiative had commented in *Good Government*. Some of these memoirs argue that, in the present circumstances of recurring crises and intense media pressure, Government is most effective if carried on by a strong Prime Minister, seconded by chosen staff. BGI disagrees, believing that, on balance, important decisions are best taken collectively by Government and the Cabinet itself should have a part - but only a part - to play in this. This annex states briefly the case for collective decision taking by government and considers how this is best organised, in particular the place of the Cabinet itself in such a system. It also considers whether there should be exceptions.

The case for collective decision taking

There are at least six reasons why important Government decisions are best taken collectively:

- ♦ **collective responsibility:** all British Governments since the early 19th century have adhered to the convention of collective responsibility in which all Ministers defend the Government's decisions even if they argued for something different in private. The convention has become an important part of our constitution. If it is to work, there must be a mechanism for members of the Government to participate in its key decisions;
- ♦ **avoiding presidentialism:** we do not in the UK have a presidential system of government and the Prime Minister, not being directly elected, is formally *primus inter pares* amongst his colleagues. The power of the Prime Minister, whatever the formal position, depends on his or her ability to convince their party that they will ensure its re-election. In some circumstances, he or she could do this so successfully that they will marginalise any competitors and accrue to themselves exceptional power which could be used for personal advantage or to retain power indefinitely. The practice of Cabinet government reduces this risk and is especially important as the UK lacks the formal separation of powers which in most systems of presidential government (including, most notably, the USA) provides an essential safeguard against the concentration of too much power in the hands of one person;
- ♦ **joined-up policy making:** the major policies that affect the business of only one department are few. Public policy is inter-connected and the actions of one department can have an impact on the responsibilities of others. Often the interactions are not obvious. Also some of the most difficult and intractable social problems straddle the responsibilities of a number of departments. These connections are more likely to be made if decisions are taken collectively: indeed, our system of collective decision taking is designed *inter alia* to provide a safety mechanism to identify collateral effects of proposals of which the originating department may not have been aware and it frequently does this;
- ♦ **the need for challenge:** no one has consistently good judgment and we are all influenced by our own experience and prejudices. We all make mistakes. Decisions taken collectively are more likely to be soundly based than those taken by a single Minister - including by the Prime Minister. This does not mean that all decisions have to be taken collectively or that those that are will invariably be better than those that are not, merely that bringing several minds to bear on the more important decisions is likely to produce a better outcome;
- ♦ **a wider range of experience:** the experience and political savvy of a wider group of senior members of the Government may bring to light issues that are overlooked by those who are sharply focused on policy implementation;
- ♦ **cohesion:** Governments which take decisions collectively are more likely to be cohesive than those which do not. This does not mean that such Governments will be cohesive, still less that they will be successful, but merely that cohesion is more likely to be achieved if the more senior Ministers have had an opportunity to influence the Government's decisions.

Giving proper effect to collective responsibility is especially important in a coalition Government where increased trust and cohesion are critical to a successful administration.

The scope of collective decision taking

The Ministerial Code (May 2010) provides that two kinds of issues should be put to the Cabinet or its Committees for decision:

- “a. questions which significantly engage the collective responsibility of the Government because they raise major issues of policy or because they are of critical importance to the public;*
- b. questions on which there is an unresolved argument between departments.”*

The same formulation was used in preceding documents, including ‘Questions of Procedure for Ministers’.

This requirement has been interpreted in the last decade or more as meaning that Ministers should seek their colleagues’ agreement, through the Cabinet Committee system, to any significant change of policy, including those affecting only the Minister’s own department. The text of all White and Green Papers and of other important consultation documents or statements of new government policy should be cleared with colleagues. Draft primary legislation and any proposed government amendments should be similarly cleared. Once a policy has received clearance, questions arising from its detailed implementation need not be cleared so long as the proposals are consistent with the principles agreed at the outset.

The modus operandi of Cabinet Committees

Most policy decisions are taken, or at least ratified, by a Cabinet Committee: this has been true of all modern administrations, without exception. A Minister obtains collective agreement by writing to the Chairman of the relevant Committee (or, exceptionally, to the Prime Minister as the Chairman of the Cabinet) with copies to other members of the Committee. Clearance is usually obtained by correspondence.

For the more important issues a meeting of the Committee may well be needed, to which the originating Minister submits a paper. Rarely, other affected departments may also put in papers. If there are cost implications, the Treasury should be given the opportunity to set out its views in writing. In the case of particularly complex issues affecting several departments, the Cabinet Secretariat may also submit a paper, in effect an annotated agenda for the meeting.

If an issue is important or controversial a Minister will do best to take colleagues with him from the outset, seeking an early discussion on the overall approach to be adopted before developing detailed proposals rather than springing a fully worked-up proposition on them shortly before the intended date of announcement.

If a Cabinet Committee cannot agree the matter may be put to the Cabinet for decision (on the recommendation of the Chairman and with the approval of the Prime Minister). In practice it has been more usual for the disputed issue to be settled by the Prime Minister.

These rules are often breached, usually because a department omits to clear a proposal before announcing it or seeks clearance only at the last moment. The reason is often that the Minister wishes to ‘bounce’ his colleagues. Policing the system requires vigilance by the Secretariat and a willingness on the part of the Cabinet Secretary to take significant breaches up with the relevant Permanent Secretary. The system works best if the Prime Minister and Deputy Prime Minister make it known to Ministers that they expect them to observe the rules and do so themselves.

Role of the Cabinet

The Cabinet itself has not operated as the chief decision taking body of any Government since the 1960s or 1970s. This recognises that government has become too complicated for all decisions to be made or even ratified by one body (though the Cabinets of some other countries which organise government on the Westminster model do purport to ratify all decisions taken at subordinate levels in their systems). Also the Cabinet has grown in size to the point where it would be neither effective nor efficient to attempt to use that body to take many decisions. Including non-Cabinet Ministers with attendance rights, Cabinets since 2000 have consisted of 25-30 people. Attempting to accommodate the views of so large a group would certainly result in impossibly long meetings and would tend to produce watered-down or lowest-common-denominator policy.

Rather the Cabinet, where it has worked well, has provided a forum where the most senior Ministers can:

- ◆ consider the broad thrust of the Government's strategy;
- ◆ discuss topical domestic issues on which the Government needs to take a position;
- ◆ discuss progress of the Government's business in Parliament;
- ◆ note decisions on the more important policy issues taken by Cabinet Committees or elsewhere;
- ◆ consider developments in foreign affairs;
- ◆ decide the content of the legislative programme;
- ◆ decide the amount and allocation of public expenditure; and
- ◆ be informed of the content of the Budget and Autumn Statement.

Cabinet is therefore a place where the senior members of the Government can discuss strategy and tactics and where they are kept informed about important developments in domestic and international affairs, including developments in the Government's own policies. It should give overall direction to the Government, with extensive input from the Prime Minister himself. It also helps to give the Government coherence and cohesion.

Although Cabinet is no longer primarily a decision taking body, it does take some decisions. It notes and implicitly ratifies important policy decisions taken elsewhere in the system and may, exceptionally, change them. It is available - but is not often used - to settle issues which Cabinet Committees have not been able to resolve. It usually takes the final decisions on the legislative programme and on public expenditure, though both matters will have been the subject of intensive prior discussion in Cabinet Committees.

All Prime Ministers have used Cabinet to take some key decisions which were of particular sensitivity and for which it was politically necessary for the Prime Minister to have the formal support of the whole Cabinet. One would expect the Cabinet to discuss and decide - not just to ratify - the most important matters of domestic, economic and foreign policy, albeit that such issues will be few in number and will generally have been subject to prior discussion outside Cabinet (since no Prime Minister would want to go into full Cabinet consideration of an important issue without reasonable certainty about the outcome).

Exceptions

Formally, the only major exception to the requirement that important policy decisions need collective clearance is tax policy, decisions on which are for the Chancellor, consulting the Prime Minister. Even in the case of tax changes, some consultation with colleagues is normal where the change in question affects their policy interests but this is done bilaterally, not collectively.

Sometimes an exception has to be made in crises or in other cases of urgency or sensitivity. In these cases one would expect the Minister to consult the Prime Minister and the Chairman of the relevant Cabinet Committee - together with the Chancellor if there are cost implications - and if the issue is important to write to colleagues collectively after the event for information or to validate what has been done. In national crises the Prime Minister, perhaps acting with a few colleagues, must have the freedom to take rapid decisions outside the normal Cabinet system.

Crisis apart, are Prime Ministers justified in taking important decisions outside the framework described in this paper - deliberately keeping an issue away from their colleagues? Most modern Prime Ministers have done so to some degree and it would be unrealistic to expect that this should never happen because one cannot “take the politics out of government”. There may be issues of such sensitivity that the Prime Minister does not wish to risk consideration in Cabinet or Cabinet Committee. If the Government is prone to leaks, as most are from time to time, this may be especially understandable. There may be other difficult issues in respect of which the Prime Minister is clear about the approach needed but on which the Government is divided and the dynamics of discussion in a body as large as the modern Cabinet would make it hard to get a firm decision. In either case the Prime Minister might feel justified in dealing with the issue outside Cabinet. But even in these cases one would expect him to consult his most senior colleagues; and this approach should be the exception, not the rule.

Rather than taking sensitive decisions outside the system, it is of course open to a Prime Minister to use the system to drive through controversial proposals. It has been normal for Prime Ministers to chair some of the key Committees of the Cabinet in order to be able to exercise influence or control on issues of the greatest importance to the Government. Some Prime Ministers have used *ad hoc* Cabinet Committees with a carefully selected membership to tackle specific issues, chairing some of these themselves (Wilson and Thatcher both made extensive use of these). This seems a preferable approach to the wholly informal arrangements discussed in the previous paragraph even though it may be used to exclude the majority of the Cabinet from participating in a decision.

Conclusion

This annex has attempted to describe briefly the case for collective decision taking by government and the role played by the Cabinet itself. It will be seen that we do not regard the choice as being between, on the one hand, a style of government in which all important decisions are made by the Prime Minister and those around him and, on the other, one in which the Cabinet makes the decisions. Rather we believe that important decisions are best made collectively through a well-developed and sophisticated system - which has applied in the UK for most of the last century - in which all Ministers can participate to some degree and of which the Cabinet itself is just a part. We believe that the Prime Minister has a pivotal role to play in this system. We recognise that all Prime Ministers have found it necessary to take some key decisions by other means. We believe, however, that side-stepping the Cabinet system is something which Prime Ministers should do only in exceptional circumstances.

Annex B:

Impact Assessments

Impact Assessments (IAs) assess the need for and likely impact of proposed government policies and projects. They are too often poorly done.²⁰ Among the shortcomings of IAs accompanying legislation²¹ are:

- ♦ a shortage of options considered - often only the preferred option is presented;
- ♦ failure to quantify some or all costs and benefits;
- ♦ optimism bias in the estimation of costs;
- ♦ failure to report on the outcome of consultation and the adjustments made because of it.

The application of IAs has been much expanded since they became mandatory for legislation, regulations and other significant policy, administrative and organisational changes. Since 2006 the law requires their preparation to accompany all bills entering Parliament. The Department for Business, Innovation and Skills has made arrangements to oversee and check on their preparation for both European and UK regulations.

Guidance on the standards to be met is set out in the Green Book and Magenta Book produced by the Treasury. The Green Book states that “all new policies, programmes ... and projects, whether revenue, capital or regulatory, should be subject to comprehensive assessment, wherever it is practicable, so as best to promote the public interest.” It identifies policy and programme development, new and replacement capital projects, the disposal of assets, relocation of facilities and operations, the specification of regulations, and major procurement decisions as requiring a similar approach. A sensible generalisation would be that IAs should be provided for all changes likely to have a noticeable impact on public expenditure. This is comparable to what an efficient private firm with good financial management would expect to do.

While other information is required to be included – for example on race and disability – IAs are principally applications of cost-benefit analysis. Treasury guidance in the Green and Magenta Books is supplemented by manuals for individual departments and the EU. Departments vary in their past use of IAs. They are usually better done for investment projects, or for example the development of a new NHS treatment or purchase of a drug, than for a new laws or other major policy, administrative or organisational change where the issues may be more complicated.

The primary reason for the use of IAs in preparing legislation is to stimulate the development and assessment of satisfactory evidence for and against a proposed law. Such evidence often requires substantial knowledge, consultation with users and those in the front line who will implement the policy, and innovative thinking and sometimes investigation and research.²² A further reason is to get a realistic, well substantiated idea of how much implementation of the new law would cost which will itself help to encourage investigation of different ways of meeting requirements.

As also require determining what the significant benefits of a policy will be and to whom they will accrue. Many departments have tried and tested ways of valuing different kinds of benefit. Though there may be arguments about the detailed values given, what in practice matters most is whether benefits are predicted to exceed costs by a sufficiently substantial margin. The IAs accompanying Bills entering Parliament often seem to be deficient in such information. Making soundly-based, defensible estimates of benefits and costs and then calculating and publishing the relevant benefit cost-ratios in IAs preceding or accompanying the Bills would help parliamentary, public and expert understanding.

20 See for example National Audit Office, *Assessing the Impact of Proposed New Policies*, Report by the Controller and Auditor General, Session, 2010-1, 1st July, 2011.

21 Of the 50 Bill IAs the NAO reviewed in 2011 almost half considered only one option. There were failures in the quantification of costs, particularly of options, and of benefits. Frequently the work had been started too late and not all the important consequences of a change were considered.

22 An example is the IA prepared for the Academies Bill, 2010, which had content similar to that once found in white papers. It ends by promising further work on the impact of the Bill.

IAs should also contain an estimate of a proposal's net fiscal impact forecasting its effect on public expenditure and, where relevant, tax revenue. Done well, IAs will help administrations to realise their fiscal policies and avoid being surprised by the size of the deficit. Current experience shows how important it has become to learn how to control public expenditure and fiscal deficits. The outstanding exception to the Eurozone's present problems is Germany, which already has an effective IA system and has gone so far as to make IAs subject to judicial review.

Notwithstanding the differences of opinion about what economic and political arguments should determine British and European economic policies, in British circumstances there is much to be said for giving the Treasury the responsibility for questioning and checking departmental IAs for new laws and for its opinion to be published when a bill enters Parliament.

Annex C:

BGI Proposals on Legislative Standards

The production of legislation involves three stages:

- ♦ preparatory work by a government department to establish the best means of achieving the underlying policy objective, culminating in detailed instructions to Counsel;
- ♦ the drafting of a bill by Parliamentary Counsel turning the instructions into a form capable of precise legal interpretation;
- ♦ Parliamentary scrutiny and amendment of the bill to prepare it for final enactment.

Our concern is with the first and third stages: setting standards for preparatory work on policy development that will ensure that the instructions to Counsel are capable of being turned into high quality legislation and providing Parliament, as an input to the scrutiny process, with an explanation of how those standards have been applied.

The Political and Constitutional Reform Committee's call for evidence on ensuring high standards in the quality of legislation elicited criticisms of the excessive quantity and low quality of legislation from several sources. More recently, the answer to a Parliamentary Question from Lord Butler²³ shows that part or all of 77 Acts from 15 Departments that were passed in the 2005-10 Parliament have not been brought into force. This casts additional doubt on the adequacy of current standards and current arrangements.

There is no single cause of this longstanding problem and changes are needed both in Parliament and in government. It is surprising and damaging that there is currently no agreement between Parliament and the Executive about the standards for preparation of legislation presented to Parliament or for the accompanying information. We believe that an initiative from Parliament would strengthen the hand of those in the Government who do what they can, within current arrangements, to raise the quality of draft legislation. Our proposals go with the grain of improvements currently in progress.

The most useful initiative for Parliament at this stage would be to propose explicit standards and to seek agreement with the Executive. For that to happen there needs to be a text for discussion and we have proposed that the Political and Constitutional Reform Committee's forthcoming report should include one.

Our recommendations on legislative standards build on our general proposals on policy development. We recommend that when a bill is presented to Parliament either the bill itself or accompanying documents must include:

- ♦ a clear description of the purpose of the bill defining the problem to be addressed;
- ♦ an explanation of why new legislation, rather than the use of existing powers is necessary;
- ♦ an analysis of costs (including net fiscal costs), benefits, and risks of different options for achieving the declared purpose (as the already required Impact Assessments are intended to do); and a declaration that the analysis complies with the standards set in the Treasury Green and Magenta books;
- ♦ a record of the consultation that has been undertaken and a certificate that it complies with Cabinet Office guidelines;
- ♦ an explanation of why the proposed option has been chosen;
- ♦ a description of the intended effects in terms that can be used in post-implementation evaluation;
- ♦ a full explanation of how the proposal will work in practice, identifying responsibility for delivery and resources;
- ♦ when there are powers to make secondary legislation, an explanation of their purpose and the governing principles, providing a draft order as an example whenever possible.

23 <http://www.theyworkforyou.com/wrans/?id=2012-01-31a.313.1&s=speaker%3A13347#g313.2>

We envisage that when a bill is presented to Parliament it should be accompanied by a memorandum from the responsible department providing a full description, with evidence, of how these requirements have been met. The bill and memorandum would then be considered by a Parliamentary Legislative Standards Committee which would report to the House on whether the bill was ready for consideration. It would of course be for Parliament to decide what precise form this committee should take: for example should there be a single committee serving both Houses or two separate mechanisms?

To make good use of the committee's time, the bill and memorandum would first be examined by officials, possibly the House of Commons Scrutiny Unit, who would advise the committee on the accuracy and adequacy of the explanations provided.

These arrangements would need to be mirrored within government. The machinery is already to hand in the form of the Parliamentary Business and Legislation (PBL) committee of the Cabinet whose remit could be amended to refer to its responsibility for ensuring that the standards have been applied when approving draft bills for introduction. The change would need to be supported by new requirements in the Cabinet Office Guidance on Legislation, which at present seems to say very little about the quality of bills or responsibility for it.

For these reforms to work effectively it would be essential for the scope of the standards to be agreed between Parliament and the Executive and for the Prime Minister and the Deputy Prime Minister to let it be known that they will back PBL's decisions.

The existence of effective Parliamentary scrutiny on the lines described above would greatly strengthen the hand of those within government seeking to secure high standards in the legislation presented to Parliament and we would expect that the need for the Parliamentary Committee on legislative standards to recommend that consideration should be deferred would rarely arise.

In exceptional circumstances bills may need to proceed to an emergency timetable that would preclude fulfilment of all the required standards. In such cases the memorandum should explain why the normal requirements could not be observed and describe the measures taken – for example the inclusion of a “sunset clause” - to limit the risk of any lasting damage.

Recommendations 5 and 6 in the main report suggest ways in which difficulties in applying rigorous standards to first-session bills after a general election in which a party (or parties) different from the outgoing administration is returned might be lessened now that the timing of the election is known long in advance.

Annex D:

BGI evidence to the Liaison Committee on the powers and effectiveness of Select Committees

Much of English political history has been about parliament winning control over taxation and public expenditure. Yet it is common to hear disappointed reactions to parliament's use of its powers and the contribution to it made by departmental select committees (SCs).

This note contains some suggestions from the Better Government Initiative (BGI) which are designed to strengthen the contribution of the departmental SCs. The BGI's 2010 report *Good Government* made wider recommendations about SCs (e.g. on enhancing their ability to present reports to the House and to propose substantive motions when they do so; and raising pay of the chairs), but this note deals with two specific issues relating to the quality and delivery of public services.

Clarifying the core tasks and making them more specific

The 10 core tasks currently assigned to SCs were set out in 2002. This note is concerned with the matters covered by tasks 5-7, i.e. "the expenditure... and the administration of the department". These include examining

- ◆ expenditure plans and outturn of the department, its agencies and principal NDPBs;
- ◆ the department's Public Service Agreements, the associated targets and statistical measurements employed; and
- ◆ monitoring the work of ... Agencies, NDPBs, and regulators

In addition Tasks 1-2 mention the department's "policy proposals" and "emerging policy", Task 4 mentions "any specific output", and Task 9 mentions "implementation ... of major policy initiatives".

In our view these tasks give the SCs very extensive scope to enquire into the work of Departments but a decade on they are both out of date; for example, public service agreements (task 6) are no longer in force; and they are expressed abstractly without a clear sense of underlying purpose. In our view it would be timely to revise the core tasks and express them more directly in terms of the public services to which they relate.²⁴ The serious aim of this revision would be to help convey that the work of the SCs is for the most part not about "bean counting" or the micro management of Departments but about holding Ministers and Officials accountable for the public services, in the broadest sense, experienced by households and by enterprises, nearly all funded by taxes or user charges.

Each SC should, as now, be able to cover the whole range of services delivered by the department itself, any agencies and NDPBs (non-departmental public bodies), its regulators and any other associated public bodies.

Within this broad field, we suggest the main focus could be briefly defined on the lines of:

- a public service output and outcomes;
- b the expenditure used to achieve those outputs and outcomes
- c the relation over time between a. and b. , and hence value for money (vfm)

These topics will always be of great importance for people's lives, the economy, and politics. But they are particularly so in a lengthy period of deficit reduction. The SCs can aim to illuminate the implications of changing expenditure levels and priorities for:

²⁴ Public services would include all departments' spending, including, for example defence, the FCO, the arts, and in the case of the DWP the transfers it distributes in the form of cash benefits. It could also include the public costs and benefits of regulatory activity

- a the quantity and quality of public service outputs;
- b the identification of gains in efficiency, whether by changing the method of delivery or by other means, with most scope for reducing the impact on service users; and
- c the distributional effects of the choices made.

From this concern with the outcome of spending and investment decisions SCs would be able to examine:

- ◆ how performance in practice relates to stated policy objectives and operational plans,
- ◆ the choices made in the use of available funding,
- ◆ the evidence relied on for current monitoring of performance and value for money; and
- ◆ make recommendations for longer term decisions about changing programmes, adopting new methods of delivery, new investments and the use of both regulation and deregulation.

By using such information from departments SCs can help to raise the profile of these highly topical questions and to hold the executive to account for the quality and rigour of its work on them.

SCs could do this under the existing Core Tasks. But our impression is that, with a few exceptions, they have not done so in the last 2 years. We believe that clarifying the tasks by making them simpler, more vivid, and more specific in the ways we have suggested should help to enhance SCs` performance.

The chances of success would be increased if proposals by the Hansard Society - that SCs should publish strategic plans for their work, consult about them and report more fully on their achievements - were simultaneously put into effect.²⁵

They might also consider the working and possible extension of agreements made between spending departments and the Treasury which act as incentives to effective use of tax-payers` money (commonly described as “earned autonomy”).

The Role of Permanent Secretaries and other accounting officers in explaining departmental spending decisions; programme and project management.

Traditionally Permanent Secretaries and other Accounting Officers have seen their principal relationship with Parliament as lying with the Public Accounts Committee. Their responsibilities, however, go well beyond issues of regularity and propriety. Accounting Officers, notably Permanent Secretaries, have personal responsibility for:

“selection and appraisal of programmes and projects: using the Treasury`s Green Book to evaluate alternatives and good quality project and programme techniques ... to track and where necessary adjust progress ...”²⁶

We suggest that departmental SCs should expect Permanent Secretaries, as now with the PAC, to give evidence about current performance and planned programmes and projects backed by the Government. They should take responsibility for the quality of the advice given by their departments on the key approaches²⁷ considered and assumptions used in the appraisals, any inadequacies in the evidence relied on, perhaps due to an absence of evaluations of past projects or of pilots of

25 “Reviewing Select Committee Tasks”, Alex Brazier and Ruth Fox, Parliamentary Affairs Vol 64 No 2, 2011 pp354-369

26 Managing Public Money para 3.3.3

27 These should include legislation, regulation and expenditure. In principle they should also include so called “tax expenditures” but they raise different accountability issues with respect to the Treasury.

new ones. While we would not suggest SCs become embroiled in second-guessing management decisions, they should be able to satisfy themselves that proper processes are in place for appraising policies and investments and expect to be informed where there are significant departures from established procedures like the use of the Treasury Green or Magenta Books.

The NAO and PAC would continue their usual work, concentrating on past performance.

We believe that one benefit of this would be a cultural change in departments leading to greater attention being given to the quality of project and option appraisal both by those undertaking them and by Permanent Secretaries who would take a greater interest in ensuring that their department had the necessary processes and the skills in place. They would be likely to do this, if they anticipated a tougher challenge from SCs and expected to face this challenge themselves. These changes would also be likely to improve the quality of information in the public domain.

It would be consistent with these suggestions for the SC to be able to go beyond throwing light on the specific expenditure decisions and having the ability in a few cases to make a report recommending that the relevant Request for Resources should be reduced or perhaps even rejected.

Conclusion

We invite the Liaison Committee to consider our suggestions for:

- a clarifying and making more specific the core tasks of departmental SCs on public services: the quantity and quality of their outputs and outcomes, their funding, value for money and the department's information for monitoring current performance and for making longer term decisions, notably about efficiency gains, including new methods of delivery, and new investments; and
- b encouraging departmental SCs to rely more on evidence from permanent secretaries and other accounting officers, who are personally responsible for the appraisal of programmes and projects; and to seek information about departures from established practices for example in the making of investment decisions.

THE BETTER GOVERNMENT INITIATIVE

The Better Government Initiative was formed as a response to widespread concerns about the practical difficulties which government today faces as it seeks to run the country against a background of rapid change. The BGI aims to canvass the widest possible range of views, and to publish concrete recommendations which will be of practical interest not only to all three major parties, but also to the public more widely.

Website: www.bettergovernmentinitiative.co.uk

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Contact: info@bettergovernmentinitiative.co.uk