



## The Civil Service Code

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Author: Lucinda Maer

Section Parliament and Constitution Centre

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The *Constitutional Reform and Governance Act 2010* sets out a requirement that there should be a Civil Service Code. The Code must provide that civil servants carry out their duties for the assistance of the administration of the day. These duties must be carried out with “integrity and honesty” and “objectivity and impartiality”.

The current version of the Code was laid before Parliament in November 2010, with an amended version laid in March 2015. Along with defining the key terms from the 2010 Act, it sets out the standards of behaviour expected of civil servants. Civil servants who believe that they are required to act in a way which conflicts with the Code can appeal to departmental managers, and can take complaints to the Civil Service Commission. The Civil Service Commission also has a duty to promote the Code. Separate Codes exist for civil servants working for the Scottish Government, Welsh Assembly Government and Northern Ireland Executive. In March 2015 the Government amended the 2010 Code to require ministerial authorisation before civil service contacts with the media.

The Civil Service Commission also became a body established by primary legislation with the passing of the *Constitutional Reform and Governance Act 2010*. The Commissioners have two main functions: upholding the principle that selection to appointments in the Civil Service must be on merit on the basis of fair and open competition; and hearing appeals from civil servants under the Civil Service Code.

This note provides details of the Civil Service Code and information about the Civil Service Commission, and also sets out the background to the Code.

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**1 The Civil Service Code**

**1.1 The UK Civil Service Code**

The *Constitutional Reform and Governance Act 2010* for the first time made statutory provision for the Civil Service, the Civil Service Commissioners, and a Code of Conduct for the Civil Service. The Civil Service provisions of the *Constitutional Reform and Governance Act 2010* came into force on 11 November 2010.

The current version of the Civil Service Code was laid before Parliament on 11 November 2010 with amendments made on 16 March 2015. The Code states that the Civil Service is an integral and key part of the government of the United Kingdom, and that it “supports the Government of the day in developing and implementing its policies and delivering public services”. It continues, “Civil servants are accountable to Ministers, who in turn are accountable to Parliament”.<sup>1</sup>

The minimum requirements for the Code, as set out the 2010 Act, are that:

- Civil servants must “carry out their duties for the assistance of the administration as it is duly constituted for the time being, whatever its political complexion”;
- Civil servants must carry out their duties with “integrity and honesty”, and “objectivity and impartiality”.

The Code reflects these requirements, stating that:

As a civil servant, you are appointed on merit on the basis of fair and open competition and are expected to carry out your role with dedication and a commitment to the Civil Service and its core values: integrity, honesty, objectivity and impartiality. In this Code:

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<sup>1</sup> [The Civil Service Code](#), As laid before Parliament on 10 November 2010

- ‘integrity’ is putting the obligations of public service above your own personal interests;
- ‘honesty’ is being truthful and open;
- ‘objectivity’ is basing your advice and decisions on rigorous analysis of the evidence; and
- ‘impartiality’ is acting solely according to the merits of the case and serving equally well Governments of different political persuasions.<sup>2</sup>

The Code then provides details of the standards of behaviour required under each of these headings. On 16 March 2015 the Code was amended to include a requirement that civil servants must “ensure” they have “Ministerial authorisation for any contact with the media”. This requirement was added to the section on “integrity”.<sup>3</sup>

The *Constitutional Reform and Governance Act 2010* states that special advisers are not required to carry out their duties with objectivity or impartiality. Special advisors are not able to authorise the expenditure of public funds or exercise any power in relation to management of any part of the civil service.<sup>4</sup>

The Civil Service Code also sets out the standards of behaviour expected of civil servants and the duties of civil service employers. Government departments and agencies have a duty to make their employees aware of the Code and its values. Civil Servants who believe that they are required to act in a way which conflicts with the Code can raise the concern within their Department or Agency. The department or agency must consider the concern and ensure that those who raise such concerns are not penalised for doing so. The Code advises civil servants that:

If you have a concern, you should start by talking to your line manager or someone else in your line management chain. If for any reason you would find this difficult, you should raise the matter with your department’s nominated officers who have been appointed to advise staff on the Code.

If you become aware of actions by others which you believe conflict with this Code you should report this to your line manager or someone else in your line management chain; alternatively you may wish to seek advice from your nominated officer. You should report evidence of criminal or unlawful activity to the police or other appropriate regulatory authorities. This Code does not cover HR management issues.

If you have raised a matter... and you do not receive what you consider to be a reasonable response, you may report the matter to the Civil Service Commission. The Commission will also consider taking a complaint direct...

If the matter cannot be resolved using the procedures set out above, and you feel you cannot carry out the instructions you have been given, you will have to resign from the Civil Service.<sup>5</sup>

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<sup>2</sup> *Ibid*

<sup>3</sup> [Civil Service Code](#), as amended on 16 March 2015

<sup>4</sup> For more information about special advisers, see the Library note, SN/PC/3813, [Special Advisers](#)

<sup>5</sup> [Civil Service Code](#), as amended on 16 March 2015

## 1.2 Scotland, Wales and Northern Ireland

The *Constitutional Reform and Governance Act 2010* also requires the First Minister for Scotland to lay before the Scottish Parliament any civil service code for civil servants who serve the Scottish Parliament, with similar duties for the First Minister for Wales. A Scottish Executive version of the Code was first published in 2006. A revised separate code of Conduct covering civil servants who serve the Scottish Executive was laid before the UK Parliament and Scottish Parliament on 11 November 2010.<sup>6</sup> A Welsh Assembly Government Civil Service Code was introduced in July 2007, reflecting the legal position of civil servants in relation to Welsh Ministers.

The Northern Ireland Civil Service also has its own [Code of Ethics](#), and its own [Civil Service Commissioners](#) who hear appeals under the Code.

## 2 The Civil Service Commission

### 2.1 Background

The Civil Service Commissioners were established in 1855 with their role set out in primary legislation for the first time in the *Constitutional Reform and Governance Act 2010*. The Commissioners currently have two main functions: upholding the principle that selection to appointments in the Civil Service must be on merit on the basis of fair and open competition; and hearing appeals from civil servants under the Civil Service Code.

Commissioners are not civil servants and generally have experience in recruitment and public sector issues. They are supported by civil servants based in the Cabinet Office. The current First Civil Service Commissioner is Sir David Normington. Sir David Normington is the first First Civil Service Commissioner to also hold the post of Public Appointments Commissioner.<sup>7</sup>

### 2.2 Appeals under the Civil Service Code

Since 1996 the Commission have heard appeals from civil servants on alleged breaches of the Civil Service Code. The Commissioners have published three guides that outline its approach in investigating complaints:

- [Civil Service Code – A guide to bringing a complaint to the Civil Service Commission](#)
- [Policy and Procedures to the Civil Service Code](#)
- [A guide to departments subject to a complaint](#)

In 2013-14, 19 new cases were dealt with by the Commission, and two cases were concluded that had been received the preceding year.<sup>8</sup> Of the 21 cases, 15 (71%) were not within the Commission's remit either because they dealt with HR issues or because they were made by individuals who were not civil servants. Two further cases were dealt with satisfactorily by the Department, having first been brought to the Commission and another was passed to another authority for investigation. Of the three cases that were within the Commission's remit and investigated during 2013-14, one case saw the Commission

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<sup>6</sup> The term Scottish Executive, rather than Scottish Government, is in accordance with terms of the Scotland Act 1998.

<sup>7</sup> For more information, see the Library Standard Note, SN/PC/3368, [The Commissioner for Public Appointments](#)

<sup>8</sup> Civil Service Commission, [Annual Report and Accounts 2013-14](#), HC 294 2014-15, 25 June 2014

conclude that the Code had been contravened, one remained under investigation, and the last did not find any contravention of the Code.

The summary of cases, provided in the Annual Report noted that of the 17 complaints only six were within the scope of the Code or made by a named complainant. Of these six, four were advised to go back to their internal review processes, and two remained under investigation at the end of the year.<sup>9</sup>

### **2.3 Triennial Review of the Civil Service Commission, February 2015**

In April 2011 the Cabinet Office announced that all Non-Departmental Public Bodies would have to undergo a substantial review at least once every three years. Lord Wallace of Saltaire announced the publication of the first Triennial Review of the Civil Service Commission in February 2015. He stated that the review had concluded that the functions of the Commission are still required and should be retained as an executive Non-Departmental Public Body.<sup>10</sup> The Review described the Civil Service Code as “an important ethical yardstick against which civil servants should constantly be measured”. Amongst its recommendations, it proposed that the Commission should gather departmental data on the number of internal complaints handled and nature of concerns raised, and use analytics to identify any systemic issues across the Civil Service”.<sup>11</sup> Lord Wallace indicated that the Government would consider the report’s recommendations carefully.

## **3 Background to the statutory Civil Service Code**

### **3.1 Historical background**

Following the acquittal in March 1985 of Clive Ponting, a civil servant accused of breaking S.2. of the *Official Secrets Act 1911* in leaking information on the Belgrano affair to Tam Dalyell, Sir Robert Armstrong, then head of the Home Civil Service issued a note in 1985 entitled "The Duties and Responsibilities of Civil Servants in relation to Ministers".<sup>12</sup> It stated “Civil Servants are servants of the Crown - For all practical purposes the Crown in this context means and is represented by the Government of the day”.<sup>13</sup> Civil Servants who felt that a fundamental issue of conscience was involved were told to consult a superior officer or the Permanent Secretary who could consult the head of the Home Civil Service.<sup>14</sup> The note drew on an unpublished document written in the 1950s by Sir Edward Bridges, and a memorandum prepared by Sir Warren Fisher head of the Home Civil Service from 1919-1939 for a Parliamentary Committee.<sup>15</sup>

The trade union for senior civil servants, the FDA, argued for a Code of Ethics for Civil Servants and produced a draft discussed at its 1986 Conference. Following Ponting, the Treasury and Civil Service Committee undertook an inquiry into the duties and responsibilities of civil servants. Interest was further heightened by the Westland affair of 1986 where there was controversy over publicity given to the actions of individual civil servants. The TCSC report commented “Those whose prime loyalty is to the government of

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<sup>9</sup> *Ibid*, p67

<sup>10</sup> [HLWS270](#) 24 February 2015

<sup>11</sup> Cabinet Office, *A Better Civil Service: Triennial Review of the Civil Service Commission*, December 2014, page 8, recommendation 16

<sup>12</sup> Dep NS 1391 25/5/85 and HC Deb 26/2/85 c.128-30

<sup>13</sup> *Ibid*, para 2

<sup>14</sup> *Ibid*, para 11

<sup>15</sup> "Civil Servants' duty is to Ministers", *Times*, 27 February 1985

the day look to the Crown as a more enduring expression of their position within the constitution".<sup>16</sup>

The possibility of an appeal to the head of the Home Civil Service was introduced into a revised version of the memorandum issued in 1987 following the acceptance of a recommendation on this point by the Treasury and Civil Service Committee Report.<sup>17</sup> The FDA had argued for an independent body for appeals. The revised memorandum was issued<sup>18</sup> following comments from the Treasury and Civil Service Committee, the Defence Select Committee, and the Civil Service unions.

Following a further recommendation by the Treasury and Civil Service Committee<sup>19</sup> the Armstrong memorandum was incorporated into the Civil Service Management Code. The Treasury and Civil Service Committee report in November 1994<sup>20</sup> summarised contemporary thinking on the status of the Armstrong Memorandum and argued for its replacement: It recommended the establishment of a civil service code of ethics (para. 103-107) and an independent appeals procedure based on a strengthened Civil Service Commissioner body (para. 108-112). It also called for a Civil Service Act to provide statutory backing to maintain the essential values of the Civil Service (para. 116). It included a draft Code at Annex 1 of its report, upon which it invited detailed comments from the Government. The Government response published in *The Civil Service: Taking Forward Continuity and Change*<sup>21</sup> accepted the proposal for a new Civil Service Code, and provided a revised version of the Committee's draft as an Annex.

The Nolan Committee (Committee on Standards in Public Life) was established by the then Prime Minister, John Major, in October 1994 to act as an ethical workshop for the public service in the UK. Its first report issued in May 1995 also examined the text of the proposed code, and the planned independent appeal mechanism. Nolan was concerned to ensure that the Code covered circumstances which might loosely be described as 'whistle-blowing' i.e. where a civil servant became aware of a wrongdoing or maladministration by others. It also recommended that departments nominate an official to investigate staff concerns raised confidentially.<sup>22</sup> It recommended that the Civil Service code be introduced without waiting for legislation.

The Government response accepted the whistle blowing recommendations, while rephrasing the terms to reflect a duty to report evidence of criminal or unlawful activity.<sup>23</sup> Staff would not be required to use the confidential channel proposed but officials would be nominated, and guidance incorporated into the Civil Service Management Code. It rejected however recommendations from Nolan for the Civil Service Commissioner to give detailed information about appeals made before them; leaving the nature and extent of reporting up to the

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<sup>16</sup> HC 92 1985/86

<sup>17</sup> HC 92 1985/86, para. 4.16

<sup>18</sup> HC Deb 2/12/87 c.572-575W

<sup>19</sup> *The Civil Service Pay and Conditions of Service Code* HC 260 1989/90

<sup>20</sup> HC 27 Session 1993/94

<sup>21</sup> Cm 2748 January 1995

<sup>22</sup> First Report of the Committee on Standards in Public Life, Cm 2850, Chapter 3 paras. 53-54

<sup>23</sup> Cm 2931 July 1995, Response to Recommendation 23

Commissioners to decide.<sup>24</sup> The Government response invited further comments on its draft of the Code.<sup>25</sup>

The new code came into force from 1 January 1996.<sup>26</sup> The Armstrong memorandum was therefore superseded by the Code which has been incorporated into the *Civil Service Management Code* which was re-issued in April 1996.<sup>27</sup> However, in evidence to the Public Service Committee the Cabinet Office advised that "the Memorandum remains a valuable statement of constitutional principles, and the Chancellor of the Duchy of Lancaster indicated his intention to issue a revision in due course."<sup>28</sup> Such a revision has not appeared.

Thereafter, the text of the Code was not been the subject of controversy. It was revised a number of times before its current, statutory, version, was published in November 2010.

### **3.2 Background to the Civil Service provisions of the Constitutional Reform and Governance Act 2010**

The current impartial British civil service selected on merit dates from the Northcote Trevelyan reforms of 1854.<sup>29</sup> That report recommended that the principles of the merit based civil service be set out in statute. Until the provisions of the *Constitutional Reform and Governance Act* were brought into effect in November 2010, the civil service had been established through royal prerogative powers, set out in Orders in Council.

The Committee on Standards in Public Life reviewed the civil service in its report: *Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service* in April 2003.<sup>30</sup> This followed an earlier review in 2000, *Reinforcing Standards: review of the First Report from the Committee on Standards in Public Life*.<sup>31</sup> The Government responded to the CSPL report in September 2003.<sup>32</sup>

In brief, the Committee on Standards in Public Life (CSPL) recommended a Civil Service Act, following a similar recommendation made in 2000.<sup>33</sup> The Government response recognised the principle for legislation but stated that "any legislation has to compete for its place alongside many other priorities". Furthermore, it argued, much could be done to implement the Committee's recommendations without legislation.<sup>34</sup>

The Public Administration Select Committee (PASC) published a draft bill in January 2004, which attempted to set out the principles of civil service legislation. The Government published its own draft bill on 15 November 2004 attached to a consultation paper, but there was no pre-legislative scrutiny, and the Blair Government did not commit itself to immediate legislation.

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<sup>24</sup> *Ibid*, Response to Recommendation 24

<sup>25</sup> *Ibid*, Response to Recommendation 26

<sup>26</sup> Cabinet Office News Release 28/12/95 'New Civil Service Code comes into force'. The text of the 1996 Code may be found in Library Research Paper 97/5 *The Accountability Debate: Codes of Guidance and Questions of Procedure for Ministers*

<sup>27</sup> Paragraph 11 of the Armstrong Memorandum which deals with an instruction which would give rise to a clear breach of the law has been preserved at para. 7.7.6 of the Management Code

<sup>28</sup> Extract from a letter to the Clerk of the Committee 17/7/96 HC 313 II p.198

<sup>29</sup> Northcote Trevelyan is accessible in Appendix B of the Fulton Report Cmnd 3638 June 1968

<sup>30</sup> Cm 5775

<sup>31</sup> Sixth Report Cm 4557 January 2000

<sup>32</sup> Cm 5964

<sup>33</sup> Cm 4557

<sup>34</sup> Cm 5964

The Green Paper *The Governance of Britain* published a few days after Gordon Brown took office as Prime Minister in July 2007, promised civil service legislation.<sup>35</sup> The *Constitutional Reform and Governance Bill* was subsequently introduced in 2009-10 and received Royal Assent during “wash-up” immediately before the 2010 General Election.

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<sup>35</sup> Cm 7170 July 2007