

GOOD GOVERNMENT

Reforming Parliament and the Executive

**Recommendations from the Executive Committee of
the Better Government Initiative**

www.bettergovernmentinitiative.co.uk
Email: chrisfoster30@btinternet.com
helenadjurkovic@hotmail.com

The Institute for Government has been glad to assist the Better Government Initiative, whose aims are complementary to its own, by publishing this report as well as providing a venue for their discussions. The views expressed in the report are, of course, the BGI's own.

Sir Michael Bichard
Director, Institute for Government,
January, 2010

Contents

Overview

Chapter 1: The Present Situation

Principles

What Has Gone Wrong

Ever Growing Activities of Government

The Influence of the Media

A State of Confusion

Chapter 2: Policy Formation

The Need for Effective Consultation

Justification of Policy Decisions

Assessment of Risk

The Use of Evidence and Research

Systematic Evaluation of Success

Chapter 3: The Centre of Government

The Advantages of Collective Responsibility

Principles for the Conduct of Cabinet Business

Post-implementation Review of Policy Outcomes

Dealing with Cross-cutting Issues

A Better Balance between the Centre and Departments

Avoiding Unnecessary Change in the Machinery of Government

Chapter 4: Legislation

Principles of Good Legislation

Reducing the Volume of Legislation

Better Preparation and Pre-legislative Scrutiny

Impact Assessments

Careful Examination of Secondary Legislation

Chapter 5: Strengthening Parliament

Setting the Standards for Presenting Major Proposals

Effective Parliamentary Scrutiny of Legislation

Comprehensive Parliamentary Assessment of the Effects of Legislation

Parliamentary Scrutiny of Fiscal Policy, Tax and Public Spending

Parliamentary Handling of Changes in the Machinery of Government

Chapter 6: Delivery and Organisation

Better Commissioning and Performance Management of Service Delivery
A More Strategic Relationship between Departments and Service Providers
Clarifying the Roles of Ministers and Officials
Increasing the Expertise of Ministers and Departments

Chapter 7: The Civil Service

Roles and Character of the Civil Service
Strengthening the Civil Service Role in the Management of Decision Making
Clarifying the Civil Service Role in Policy Development
Embedding the Civil Service Values
Clarifying the Roles and Constraining the Number of Special Advisers
Developing a Strategy for Civil Service Recruitment and Careers
Ministers' Role in Civil Service Appointments and Performance Management
Strengthening Knowledge, Skills and Experience in the Civil Service

Annex A: Draft Ministerial Guidance on the Conduct of Cabinet Business

Annex B: Management of the Government's Legislative Programme

Annex C: Illustrative Parliamentary Resolution on Thorough Preparation of Government Proposals

Annex D: Some Civil Service Statistics

List of Recommendations

Overview

The need for reform of our governance is urgent. The world financial crisis and the threats posed by climate change provide a global context with grave implications, not yet fully understood, for the United Kingdom. The expenses scandal has increased public suspicion and disillusion with both government and Parliament. Decline in voting levels and in membership of political parties provides clear evidence of loss of confidence in the instruments of government.

There are many proposals for constitutional reform – for example fixed Parliaments, fewer MPs, election of the House of Lords - which might lead to better government. Our remit, however, is to suggest improvements to the procedures and practices of the executive and Parliament. This report makes specific proposals for reform in Parliament, in relations between Parliament and the executive, and in the executive's policy-making and delivery which, taken together, can improve the quality and effectiveness of government.

Chapter 1 discusses the factors that have brought us to the present unsatisfactory position. Chapter 2 examines the processes of policy formation and explores how they can be strengthened to increase the likelihood of successful outcomes. Chapter 3 describes how a rebalancing of the relationship between the centre and government departments can take full advantage of the expertise and resources that are available. Chapter 4 suggests arrangements for improving the quality of legislation. Chapter 5 discusses improvements in other aspects of the work of Parliament, in particular its ability to hold the government to account. Chapter 6 deals with ways of organising and managing public services for better and more effective delivery and policy implementation. Finally, Chapter 7 considers the role of the civil service and its relationship with ministers.

Chapters 2 – 7 include specific numbered recommendations for change (brought together in a single list at the end of this report). All of them will make a significant difference, but some are particularly important if we are to have better legislation and policies that work and command respect. In particular we draw attention to:

- basing policy on evidence and front-line experience (R3);
- reducing the involvement of the centre of government in departments' operations to the necessary minimum (R8);
- minimising and justifying changes in machinery of government, delivery structures and appointments (R9);
- checks by the relevant Cabinet Committees that proposals for legislation meet required standards (R10);
- a legislative programme no bigger than Parliament can scrutinise (R12);
- implementing the main recommendations of the Committee on Reform of the House of Commons from the beginning of the next Parliament (R16);
- setting explicit standards for preparation of Bills and other major proposals (R17);
- parliamentary oversight of compliance with such standards (R18);
- better opportunities for Select Committees to present reports and propose substantive motions (R21);
- reinforcing skills for the commissioning and performance management of services (R29);
- strengthening departmental governance (R31);

- management of the processes of decision-making by impartial civil servants who have an opportunity to provide advice which receives fair consideration by ministers (R34, R35 and 37);
- implementing the Professional Skills for Government programme (R39).

Although we have highlighted these key recommendations, we believe that a programme of reform implementing the full range of proposals in this Report will be more effective than introducing a few of them piecemeal. They are closely connected and some of them are interdependent. The restoration of public confidence in both Parliament and government requires a comprehensive transformation on the broader lines this report describes.

The BGI is a politically neutral group comprising mainly former senior public servants with extensive experience of the processes of government.. Although we are not politicians we have at every stage discussed the issues with politicians and people in government concerned with constitutional renewal, both on working parties and at four conferences. Among others, we have worked with the Conservative Democracy Task Force, the Liberal Democrat Better Governance Group and advisers to the Prime Minister on governance issues.

The material that underlies our proposals, in particular reports of working parties and conferences, is available on our website: www.bettergovernmentinitiative.co.uk.

We are grateful to Lord Steinberg, Lord Haskins, PricewaterhouseCoopers, Sir David Garrard and Lord Sainsbury of Turville who at various stages supported our conferences and working parties and met our administrative costs.

Sir Christopher Foster (Chair)
Lord Butler
Sir John Chilcot
Sir Geoffrey Chipperfield
Roger Dawe
Helena Djurkovic
David Faulkner
Sir Tom Legg
Paul McQuail
Sir Nick Monck
Sir Richard Mottram
Sir David Omand
Peter Owen
Phillip Ward

Chapter 1: The Present Situation

Principles

The main argument in this report is the need for government and Parliament to adopt and consistently follow a set of common principles for the formation and delivery of policy and the preparation and scrutiny of legislation. Those functions are at the heart of good government and they depend on the effective and harmonious functioning of the different parts of the state – especially, for the purpose of this Report, the executive and Parliament (see Sir David Omand *Improving the working of Central Government and its relationship with Parliament*, 2006)¹.

There are some underlying values – integrity, transparency, objectivity, accountability, responsibility - and some more practical principles. The principles are:

- thorough and objective analysis of the problem to be dealt with and the issues to be resolved;
- factual accuracy so far as it can be achieved;
- full and open consultation, to which Parliament and the Public have an opportunity to contribute;
- options to be identified and explained, together with the expected benefits and costs;
- an explanation of the reasons for a preferred choice;
- thorough preparation and effective Parliamentary scrutiny of legislation where it is needed;
- reviews of the outcomes actually achieved;
- all of the above to be transparent and open to public and Parliamentary scrutiny.

Those principles have not always been followed. As the executive's practices and attitudes have developed in recent years in administrations of both parties, some seem to us at odds with such principles of parliamentary democracy.

Such practices and attitudes may tend to appear in democratic states in which there is no separation of powers and a single party with strong discipline normally commands a majority of votes and gets its way by using that majority on standing orders and timetabling as well as on specific legislative votes. In states where this combination prevails – rather unusual among well-established democracies – new rules, hurdles and conventions are needed, in the interests of better government, to roll back present practices and to prevent them from recurring.

Ruling executives may of course successfully resist changes of the kind we suggest. But in the present unusual climate of opinion the BGI considers it very worthwhile to specify what some of these changes might be. It is also possible that at some time in the future no single party will command a majority of votes in the Commons. Executives may then depend on formal or implicit coalitions and some parties may even make changes of the kind we propose a condition of joining a coalition or supporting a minority government.

¹ www.bettergovernmentinitiative.co.uk

What Has Gone Wrong

Over the last 20 years, the public and the media have come to regard several events as notorious examples of bad government: the Community Charge (now remembered as the Poll Tax) in 1990, the Dangerous Dogs Act 1991, the failure of the Child Support Agency, the Hunting Act 2004, the story of the Millennium Dome. More complicated failures have resulted from the constant changes of policy and legislation and the constant stream of new, centrally-directed initiatives which have affected areas such as education, health, social care and criminal justice over a period of 20 years. Policy failures have often been cumulative as one new initiative and one Act of Parliament has followed another on the same subject.

Other examples on a smaller scale regularly come to notice through the reports of the National Audit Office and the Public Accounts Committee of the House of Commons or the Audit Commission. They typically involve objectives or timescales which are impossible to achieve, serious underestimation of costs and unrealistic expectations of the use of technology. Such mistakes can never be avoided altogether, but the proposals in this report, which include consultation over practicality, should make them less likely.

There have of course been successes as well. By most measures the country is more prosperous than it was 20 years ago. More specific examples include the introduction of electronic service delivery in the driver, vehicle and operator agencies², the roll-out of the Job Centre Plus Network³, and the transformation of the Department of Work and Pensions through its Reorganisation and Modernisation Programme⁴. Features which have contributed to their success included careful phasing, thorough consultation and research, an understanding of the roles of stakeholders, stable core project management teams, and recognised ownership and accountability on the part of senior management.

The public's perception of the country's future prospects includes concern about government's ability to manage successfully major issues affecting the economy, energy, climate change, the environment, the introduction of a National Identity Card, the preparations for the Olympic Games in 2012, and the accuracy and possible misuse of data bases containing personal information. It is sceptical about the quality of government's analysis and decision-making on a range of subjects where the evidence may be uncertain, the analysis complicated and the outcomes hard to predict, and where short-term political considerations may conflict with the country's long-term interests.

Ever Growing Activities of Government

Government is probably now more active than it has been at any time since the 1940s. Until the 1970s, changes in working practices enabled governments to respond more or less adequately to the increased workload while observing the principle of collective cabinet responsibility and

² Report by the Comptroller and Auditor General, HC 204, Session 2007-2008.

³ Report by the Comptroller and Auditor General, HC 346, Session 2007-2008.

⁴ Department for Work and Pensions (2008) *An analysis of the productivity of the work of the Department for Work and Pensions*, London: Department for Work and Pensions.

maintaining a reasonable level of parliamentary scrutiny. Failures when they occurred were failures more of policy than of process.

New factors have come into play since then. Constituency business has taken an increasing share of MPs' time. Estimates suggest that 40% of MPs' and 25% of ministers' working time is spent on constituency business. The result is that they can give less time to the formation and justification of government policies and to the preparation and scrutiny of legislation. Another factor is the pace of ministerial changes. Even a successful ministerial career is usually short. Most ministers return to the back-benches after no more than three years, during which many have had more than one ministerial post. They have only a short time to gain experience of the issues their department faces before they embark on policy change.

Governments have tried at various times to reduce the extent of their involvement and control (the Conservative government in the 1980s), or to increase it in the interests of effectiveness and responsiveness (the Labour government since 1997). There is now a constant tension, within both government and the opposition parties, between the pressure for greater centralisation and the demand for decentralisation.

The search for solutions through the reform of public services has become the subject of an extensive literature. Criticisms⁵ include:

- the effects of perverse incentives and unintended consequences of targets and performance indicators;
- confusion and loss of expertise resulting from frequent changes of policy or organisation and movement of staff to meet new demands;
- loss of direction as one initiative is laid on top of another, or 'trialled' and 'rolled out', distracting attention from ordinary business;
- excessive bureaucracy in prescribing new systems or procedures, often in unnecessary detail;
- a 'tick-box' culture in which complying with the rules replaces responsible judgment and individual discretion.

The Government has acknowledged some of those criticisms and is working to resolve them, for example through a greater focus on strategic outcomes, a less prescriptive approach, and a stronger emphasis on collaboration between services and across sectors. But more has to be done to improve the quality of policy formation and decision taking and to provide for more effective accountability to Parliament and the public.

The Influence of the Media

Ministerial responses to the media have brought further changes. Television and then blogs on the internet provided new forums for news and comment. Newspapers stopped reading, digesting, reporting and commenting on papers, reports and speeches sent to them. They ran down their correspondents and reporters with specialist knowledge. They no longer analysed government

⁵ See for example Sir David Omand, Professor Ken Starkey and Lord Victor Adebawale (2009) *Engagement and Aspiration: Reconnecting Policy Making with Front Line Professionals*, London: Cabinet Office.

publications. None of the daily newspapers now informs its readers of the business of Parliament in any systematic way.

The new media, no longer in most circumstances able to offer constructive criticism, required an unceasing flow of media releases. They became critics of government, demanding instant policy changes announced in media releases and statements at press conferences.

Government's constant efforts to dominate the news and silence the opposition led the opposition to retaliate in kind, and both had the effect of reducing the standing of government. Even in Parliament, the three main parties came to be driven by a media-facing agenda. Focus groups were used heavily, often steered by the pollsters to give the answers which they thought the media or politicians wanted.

A State of Confusion

Ministers effectively deprived themselves of important sources of wisdom and advice, not least from the civil service itself. Their greater involvement in how public services should be delivered led to the substitution of political for professional or managerial judgement, a loss of professional leadership, and the politicisation of large areas of public business. The result was that almost any problem became political, and the need to score or refute political points became more important than the need to resolve the problem itself. Governments have claimed that the focus of their policies has been on practical outcomes and effective means of achieving them, but their greater concern has often seemed to be with appearances and presentation.

The media's increasing appetite for policy initiatives has been a prime source of the high volume of often ill-thought out legislation. A short distance sometimes separates a media release from a policy statement that triggers the preparation of a Bill. A consequence has been that a higher proportion of Bills now enter Parliament incomplete, poorly explained, and requiring substantial amendment. That situation not only wastes scarce parliamentary time but also increases the likelihood that the resulting statute will need amending because it has proved unsatisfactory, or in some instances unworkable. Some parts of many Bills receive little or no attention in the Commons.

Chapter 2: Policy Formation

A government's success depends ultimately on the formation and delivery of its policies. The essential tasks are to identify the problem, to set out the issues and state them clearly, to specify the effects which the policy is to achieve, and to decide on the best means of achieving them. Considerations which go into the formation of policy may be based on scientific evidence, professional judgment, social or political values, or even political opportunism. They should be brought together and put before ministers in a way that is coherent, intelligible and impartial, so that they can be assessed and given weight according to the criteria which are appropriate for each one. One kind of judgment – political, scientific, professional, managerial – should not be confused with another, or presented as having an authority which it does not possess.

Policy formulation needs to take account of the international dimension, which can have an impact even on issues which appear domestic. Governments have over almost four decades of UK membership of the European Union become used to considering some issues in European terms, though Europe has tended to become somewhat marginalised in Whitehall's thinking in recent years, a trend which needs to be reversed. A major challenge now is for Governments to set its policies within the context of globalisation: the recent recession and banking collapse has shown vividly how important this is. This requires long-term, strategic thinking.

The need for a new policy can arise from any of several factors - public demand, the need to respond to events, a call for greater economy efficiency and effectiveness, a political need for government or for a political party to maintain its credibility or retain the initiative. Political judgment will define issues and the general direction in which action is to be taken. But that judgment is part of a process which takes place over time, and which may be complex.

Departments should establish the facts, drawing on any relevant statistics, economic or other social science evidence, financial and management information, and previous history and experience. In some instances they will have commissioned an independent review from an acknowledged expert, or there may have been a report from a departmental committee or even a royal commission. The report and the government's response to it may already have been widely discussed. If not, and sometimes in any event, the government will need to undertake a process of consultation.

- **R1: Departments should ensure, and Ministers should insist on, consistently high standards of policy formation.**

The Need for Effective Consultation

The government has published a check list of the criteria covering the procedures to be followed when consultation takes place⁶, but there are some broader principles which should also inform good practice.

The usual method has been to publish a consultation document, traditionally known as a green paper. Other methods may be more suitable in some circumstances, but the essential features are that the problem to be addressed should be described and analysed, its likely future course if no corrective action is taken predicted and possible corrective proposals made known at a sufficiently early stage for the public and Parliament's reaction to them to influence government's final decision. The available options should be identified, with their risks and their social, economic and financial costs and benefits, so that there can be debate and the government can judge the best way forward before taking a final decision. The language should be of a kind that the average, non-expert citizen can understand. Departments should seek the views and advice of those who have something to say – providers, users, stakeholders, communities.

Departments should make clear the status of the consultation and what purpose it is intended to achieve (not the same as the purpose of the policy itself). They should indicate any questions to which they particularly want answers or on which are most open to influence, but questions

⁶ Cabinet Office (2000) *Code of Practice on Written Consultation*, London, Cabinet Office.

should not be framed to obtain the answers they would like. Those who will be directly affected, including those on whom the department will rely for delivery, should feel that they have been part of the process by which the policy has been formed, and that they have been heard even if they do not agree with the outcome. Parliament, in particular the relevant select committee, should wherever possible have an opportunity to contribute, especially if legislation is likely to follow. No-one should be excluded on the grounds that their views may be critical, that their general position is thought to be unfavourable to the government, or that their views are more or less valuable or legitimate than anyone else's.

Consultation documents should be written objectively, in straightforward, intelligible language and in terms which acknowledge and address the interests of the audiences for which they are intended. It may be useful if they can acknowledge any relevant history and previous contributions on the subject.

Occasional one-off consultation is not a substitute for regular communication or a continuing relationship of mutual understanding. Too much reliance should not be placed on focus groups or questionnaires where questions are frequently framed in simple terms which do not recognise complex situations or the need for difficult choices about priorities. Consultative mechanisms cannot replace representative government.

The techniques and dynamics of consultation, and of lobbying and protest, could change dramatically over the next few years through the use of the internet. Changes enabling people to join together more easily to express collective views could help government to be more open and responsive and improve the quality and democratic legitimacy of decision-making. By the same token, such arrangements could also be used by pressure groups and activists seeking to exercise a disproportionate influence for their own sectional interests; or they could create unrealistic expectations or generate misguided demands if the debate took place at a superficial level without sufficient evidence and information. They could even be abused by government itself.

Governments should be alert both to the full range of opportunities that changing technology presents, and also to the dangers against which they should guard.

• R2: The government's consultation criteria should be expanded to become a more complete guide to good practice. Governments should provide guidance to departments and service deliverers on ways in which consultation techniques can be used to help representative democracy to work reliably and without bias at local and national level.

Justification of Policy Decisions

When the Minister is ready, and the preliminary stages have been gone through, he or she will need to decide on the option that is to be preferred, and then if necessary obtain collective agreement in Cabinet or a Cabinet Committee. That agreement should normally be followed by an announcement in Parliament and the publication of a clear statement of what is intended, traditionally in the form of a white paper.

The statement should provide a detailed account of the government's final conclusions on the policy to be adopted and how it is to be implemented, and preferably explain why the

government has not accepted any widely supported arguments put to it during the consultation process. It should enable parliamentarians and other interested parties groups to have sufficient understanding of any proposed legislation or policy and why it was chosen in preference to other means, with specific information about its social, local or economic effect on different groups. The language may necessarily be technical but it should not be opaque.

Any general philosophy outlined at an earlier stage needs to be refined into the criteria which will govern any secondary or regulatory legislation or individual Ministerial decisions. There is also a need to check the consistency of the Bill with existing UK and EU law as well as with human rights legislation. It is now normal to publish an impact assessment of a Bill or other major policy change at this stage. The material to be published should also describe the basis on which the success or failure of the policy will later be monitored and evaluated.

Assessment of Risk

An assessment of risk will be a necessary part of the policy-making process, but departments' preoccupation with risk should not result in an outlook that is inward-looking, restrictive or defensive. Quantitative statistical methods of assessing risk should be combined with qualitative judgements, and the application of a formula should never be a substitute for the informed exercise of responsible discretion.

Government's task is not only to assess and minimise risk but also to manage uncertainty, and it should do so in ways which are outward-looking, confident and properly informed. For understandable political reasons, governments are more reluctant to accept risk than the private sector, but they should realise that the last one per cent of reassurance they think they need may be bought at considerable and sometimes disproportionate cost⁷.

The Use of Evidence and Research

The capacity of departments to construct and review their policies through the use of structured consultation and expert research and analysis needs to be safeguarded and strengthened. Those with a policy development function should have a strong technical capacity of their own and effective links to academics and practitioners outside government and to overseas experts. They should pay attention both to the lessons of past experience and to long term trends and developments which may be beyond the political horizon of the government of the day. Where political assumptions – for example over the income distribution effects desired – affect the conclusions reached, these should be made explicit.

Departments' research facilities need to be strong enough to give a dispassionate, independent assessment of technical evidence put forward to the department. Departments with a service delivery role should have the capability to undertake regular formal reviews of their service areas.

R3: Policy should be based on evidence and analysis and draw on relevant experience from the front line. Departmental expertise in commissioning and using relevant research should

⁷ Richard Lambert - Police Foundation's John Harris Memorial Lecture on 2nd June, 2009, www.police-foundation.org.uk

be strengthened. Departments should use research not only in setting targets and assessing performance but also in identifying and anticipating longer term trends.

Systematic Evaluation of Success

Once the policy or the legislation has been in place for a suitable length of time, there should be an evaluation of its success in achieving its objectives. If the policy fails to achieve its aims, or the costs are significantly greater or the benefits markedly less than expected, Parliament and the public should have sufficient information available to judge whether the failures are due to the inadequacies of the policy or to unforeseeable events.

The evaluation of policy has become increasingly sophisticated and widespread over the last 20 years, mostly at the instigation of the Treasury. There are some important limitations. Pilot schemes are unlikely to give more than a partial indication of what will happen when the policy is rolled out on a national scale; policies often have multiple objectives which may be of different kinds; and the outcomes may be affected by circumstances or events which are outside the department's control. Different tests and different methods will be needed in different circumstances. Different judgments may be made at different times, so that today's success is tomorrow's failure or vice versa. All that may make it hard to say whether a particular policy has 'succeeded' or 'failed'.

Even so, a commitment to systematic evaluation applies a valuable discipline to the policy making process. It encourages realism in what can be achieved and discourages extravagant claims to success, and by doing so it makes an important contribution to the integrity of the process and to public confidence. The starting point should be the statements about objectives, means and alternatives which the government put forward at the outset. The question 'how will government, Parliament and the public know whether the policy has been a success?' should be asked when the policy is first being formed, and the tests and methods to be used should be decided at that stage.

- **R4: Systematic evaluation should be an established part of policy making, and the tests and methods to be used in assessing the success of the policy should be decided at the same time as the policy itself and published.**

Chapter 3: The Centre of Government

Sir David Omand, Professor Starkey and Lord Adowobale have argued in evidence to the House of Lords Committee on the Constitution that good government requires 'a constructive, balanced relationship in policy making between 'the Centre'⁸ and Whitehall departments. Strategic direction from the Centre on the priorities of the Prime Minister and the Cabinet of the day needs to be complemented by effective departmental capability to formulate policies that are grounded in front-line evidence and departmental experience'

⁸ For the purpose of this Report, the 'Centre' of government is taken to consist of the Prime Minister's Office and the Cabinet Office, the offices and units attached to them, and the Treasury.

Lord Armstrong, Lord Butler and Lord Wilson argued in later evidence to the Committee that the Centre should coordinate, stimulate but not duplicate the responsibilities of departments, be compact enough to allow short lines of communication and provide clear lines of responsibility to ministers. They further argued that the ‘proliferation of units has made the Cabinet Office and No. 10 an over-large and overcrowded area’; and that the lack of clarity over the roles of some of those units causes confusion and tends to compromise the accountability of departmental ministers to Parliament.

In December 2008, the government published its *Guide to Cabinet and Cabinet Committee Business*⁹. The *Guide* sets out in considerable detail the procedures to be followed when policies are put forward for collective approval. It incorporates many of the recommendations in the BGI’s earlier report *Governing Well*¹⁰. It does not however deal with the tests to be applied to the policies themselves or the requirements which ought to be satisfied before approval is given.

The Advantages of Collective Responsibility

Collective responsibility is a long established principle of democratic government in Great Britain. It has been criticised as not allowing ministers to exercise independent judgment, preventing open debate and allowing too much power to civil servants, but those should be seen more as criticisms of the style of a particular administration than of the principle itself. Collective responsibility remains important for maintaining the cohesion and stability of governments, for the proper consideration and coherence of their policies, and for their accountability to Parliament and the nation, as well as to prevent a prime minister - or any other minister – from taking significant decisions, even to go to war, effectively unchecked by their colleagues.

Collective consideration ensures that policy proposals can draw on a wide range of political and operational experience within government. It should also help to ensure that they are based on complete and accurate information and that all relevant considerations have been taken into account. Some decisions will be taken by the Cabinet itself, usually at a meeting but sometimes by correspondence, or by a committee of the Cabinet appointed by the Prime Minister to oversee a particular area of government business¹¹.

Principles for the Conduct of Cabinet Business

Different Prime Ministers and departmental ministers use the Cabinet structure in different ways according to the situation at the time and their personal inclinations. It is not practicable to construct detailed rules on the categories of decisions that must be submitted for collective consideration, whether by the full Cabinet or one of its committees. But a government’s effectiveness and ultimately its credibility depend on its readiness to observe certain broad but clear principles, and to comply with the rules and understandings which regulate the conduct of government business.

⁹ Cabinet Office (2008) *Guide to Cabinet and Cabinet Committee Business*, London: Cabinet Office.

¹⁰ www.bettergovernmentinitiative.co.uk

¹¹ The effectiveness of cabinet committees has often been increased by the appointment of senior ministers to act as strong neutral chairs, avoiding deadlock and ensuring all relevant factors are considered.

The substance of proposals in departmental submissions to Cabinet committees is of course a matter for their secretaries of state. Their presentation should however include all the relevant information, and the arguments and recommendations should be set out in terms that can be readily understood by busy readers who may not be familiar with the subject. Except in circumstances of extreme emergency, submissions should be made in good time and in a thoroughly prepared Cabinet or Cabinet Committee paper which, together with the note of the discussion, will provide a record of how decisions have been reached. That record, together with any associated correspondence, can then be used both to inform future discussion and decisions and as a foundation for democratic accountability.

Some crucial points to be covered in the presentation of proposals for collective consideration at Cabinet or Cabinet committees are:

- an explanation of why action is desirable and any proposed legislation is operationally necessary;
- a range of options, including the option of doing nothing, together with the considerations on which they and the choice between them are based, and their expected benefits and costs;
- a clear statement of the purpose, the intended results, and the risks and uncertainties associated with the proposal, in terms suitable for use as criteria in post-implementation scrutiny;
- an assurance that the proposal has been or will be subject to suitable consultation, which will normally include the publication of green and white papers or their equivalent, especially when legislation is to be introduced;
- an assurance that it is practicable and affordable.

To consolidate good practice in conducting Cabinet business a formal statement should be made re-emphasising the need, recognised in the Ministerial Code, for the Cabinet committee process to be followed for all issues that engage the collective responsibility of the government either because of their importance, or because they cut across departmental boundaries in a substantial way, or because they require significant legislation.

The statement should reaffirm that the heads of the Cabinet Secretariats are responsible for ensuring that ministers are appropriately involved in collective consideration of matters in which they have a departmental interest. It should make explicit the duty of the Cabinet Secretariats to ensure that proposals are fully, fairly, accurately and clearly represented in submissions to Cabinet Committees, and that all members of the Cabinet are appropriately consulted. The arrangements should recognise the need for ministers to contribute constructively on subjects which are outside their departments' direct responsibility and expertise, and to do so as part of a busy schedule which may need to take them away from London¹².

The Cabinet Secretariats should have authority to require amendments to, or reject, papers that do not meet the required standards. The arrangements should be overseen by a strong Cabinet Office minister.

¹² A problem for the conduct of Cabinet and Cabinet Committee business is often the absence of ministers abroad on European or other international business. A solution might be to follow the example of some large international businesses and use secure technology to allow ministers to participate in such meetings when on duty abroad.

Ideally, the statement should have the support of all parties. It should in particular make clear that it is the *personal* responsibility of all ministers, not excepting the Prime Minister, to submit important decisions, normally on the basis of written papers, for collective consideration in Cabinet or Cabinet Committee meetings with a formal record of the discussion and of the decisions taken.

The statement should be published. It could for example be endorsed in a Parliamentary resolution or made available as Ministerial Guidance complementary to the ethical guidance in the Ministerial Code. The Government should explicitly state its intention to adhere to it and its readiness to be held to account by Parliament and the public for any failure to do so.

• **R5: There should be a published statement which sets out the duties of ministers and the Cabinet Secretariat in the preparation and submission of proposals to the Cabinet or to Cabinet Committees. An illustrative draft of Ministerial Guidance is at Annex A. The Cabinet Committee which considers a proposal for a new policy should check that it has complied with the required standards of preparation.**

The same principles should apply to the National Economic Council, the National Democratic Renewal Council and to the specialist committees dealing with security and national defence.

Post-implementation Review of Policy Outcomes

Evaluation is now a normal part of a department's policy making process. For major issues which have been decided at Cabinet level there should be systematic reviews of the results achieved, with the results being reported to the Cabinet or Cabinet committee as appropriate. That review would contribute to and provide a basis for scrutiny by Parliamentary Select Committees.

There are understandable reasons why this has rarely been done in the past – a natural wish to 'move on', the practical difficulties which might be involved in making an accurate judgment, and the embarrassment for the government if the review were unfavourable. Even so, the prospect of a post-implementation review and its eventual findings would provide a valuable discipline both for the Executive and for Parliament and would help to ensure a higher standard of decision-making and a better quality of legislation in the future.

The government has announced in its white paper on post-legislative scrutiny¹³ that it intends to subject new legislation to post-implementation review within three years following its introduction. The review should include a definitive account of the purpose of the policy or legislation, the outcomes actually achieved (including any that were not intended) and the costs actually incurred, all set against those in the original proposal.

• **R6: Departmental post-legislative reports to Parliament should form part of a systematic review of the implementation of policy proposals.**

¹³ Office of the Leader of the House of Commons (2008) *Post-legislative Scrutiny – The Government's Approach* (Cm7320), London: TSO.

Dealing with Cross-cutting Issues

The increasing complexity of government, especially in relation to those policies and programmes where several departments' interests are affected, has important implications for the formulation, implementation and evaluation of policies on cross-cutting issues. Public Service Agreements (PSAs) have become the principal mechanism by which policy is agreed between the Centre and departments and through which that connection is made. Many of the most intractable social problems are of this kind, such as social exclusion and drug misuse. Environmental policy, especially climate change policy is intrinsically cross-cutting. And foreign affairs can also present severe interdepartmental challenges, as in Iraq and Afghanistan. Effective arrangements are needed to manage not only the processes of consideration but also their relationship with the allocation of funds to departments and programmes.

Governments have long struggled to find ways of promoting successful cross-departmental working. The present government has adopted a variety of approaches. In some cases machinery of government solutions may be appropriate. However, changing the machinery of government should be done sparingly for reasons given later in this report and in any event will not provide a solution for most cross-cutting problems.

Other, less disruptive approaches can be used. The classical approach is to place responsibility for oversight on a Cabinet committee, perhaps supported by an inter-departmental officials' group. This is the approach currently used for implementing the PSAs. In each case there is a lead Minister and a lead official (the 'Senior Responsible Officer') who chairs an interdepartmental programme board and is accountable through the Minister to the relevant Cabinet committee. Other approaches are to set up a dedicated unit in the Cabinet Office (as for social exclusion, the third sector and, in the recent past, women's issues) which may be appropriate for issues affecting a number of departments; alternatively, such a unit can be located in one of the departments concerned but reporting to Ministers in different departments. Appointing a Minister to two departments has been tried with some success (as was done recently for digital strategy).

All of these approaches are worth considering, depending on the nature of the issue and how many departments have an interest. Government should however be wary about too great a use of central units. Apart from the risks which arise from over-centralisation, arguably central units have generally been of limited effect because the key Ministers and their departments tend not to take ownership if the lead lies elsewhere.

Whichever option is chosen it is likely to be more effective if there is access to dedicated resources. Pooled budgets have been tried, using a 'dual key' approach, in which the budget can be spent only by agreement between departments (the Surestart budget was a prominent example). Government should use this device more frequently for cross-cutting issues. The present generation of PSAs would certainly have benefited from access to pooled resources.

The way in which PSAs operate is not widely known outside Whitehall. The process of agreeing PSAs should be made more transparent and be more carefully explained to Parliament and the public. Select Committees should take a closer interest in their implementation (though this is hampered by the fact that the committees are themselves organised on department-facing lines).

- **R7: there is a range of mechanisms available to enable departments to work together to tackle cross-cutting issues, including in particular the use of Cabinet Committees to give leadership and exercise oversight. The structure and membership of Committees should be such that they are able to deal effectively with cross-cutting issues, including those covered by PSAs. Governments should be prepared to use pooled budgets more frequently. Select Committees should not allow their department-facing structure to prevent them from addressing cross-cutting issues and PSAs in particular.**

A Better Balance between the Centre and Departments

The Centre has in recent years come to involve itself more closely in the operational activities of departments, with numerous examples of occasions when the Prime Minister's office has called on departments to make announcements or take new initiatives to meet political demands with little time for consultation or discussion. The effect has been to weaken the authority of departments and their ministers in relation to the services for which they have responsibility and to deny them the opportunity to bring their specialist expertise to bear in their areas of responsibility

- **R8: Confidence between the Centre and departments needs to be strengthened, and the Centre's involvement in departments' day-to-day operations reduced to a demonstrably necessary minimum which avoids over-centralisation of decision making and recognises the responsibility of Secretaries of State to Parliament for the actions of their departments.**

Avoiding Unnecessary Change in the Machinery of Government

The creation of new government departments and the joining or dividing of existing departments was once a rare event and not one to be undertaken lightly. When changes took place it was usually at the start of a new administration, as in 1964 and 1970.

Since the 1960s that situation has been seen as an obstacle to progress. Changes in the machinery of government and rapid movements of both Ministers and staff have become increasingly frequent. The justification has been the need for government to respond rapidly to new situations and new priorities, to focus attention more on the issues of the day and less on the functions to be performed, and to deploy staff to the positions where they are most needed. That need will continue, but changes can be disruptive and damaging if their implications and effects have not been fully considered and if they have not been adequately prepared.

Changes must be made at a pace which enables services to adjust. The loss of continuity, stability, expertise, departmental memories and departmental records (as electronic records replace paper files) can become a source of weakness. Changes not only affect the departments directly involved, but also require changes in the structure and composition of Parliamentary select committees and disrupt their programmes of work. The impression has sometimes been given that the purpose of change has been as much to present a new image as to improve the working of government itself.

The House of Commons Public Administration Committee drew attention to those difficulties in its Report on Machinery of Government Changes in 2007 and in its Further Report in 2009¹⁴. Similar considerations apply when significant changes are proposed in the structure of public services or in the demands and expectations which government places upon them.

- **R9: Changes in the machinery of government should not be entered upon lightly or too often. Any proposals for substantial changes in the machinery of government or the structure of public services should be subject to the same principles and procedures as apply to other major changes of policy or legislation. Frequent movement of ministers and senior staff should where possible be avoided.**

Chapter 4: Legislation

There has been too much legislation in recent years, some of it has been unnecessary and too much of it has been badly prepared. This chapter makes proposals designed to reduce the practical difficulties and costs which arise from poorly prepared Acts and the confusion in public services caused by the sheer volume of ill-considered legislation.

The government's *Guide to Cabinet and Cabinet Committee Business* and its *Guide to Making Legislation* set out the procedures to be followed at the various stages of the process from collective agreement through to Royal Assent including the formal tests which have to be satisfied. The Guides do not however deal with the earlier stages of preparation, especially the policies underlying the legislation, judgments about why legislation is needed or the form it should take.

Principles of Good Legislation

Once a policy has been decided and it is time for the legislation to be prepared, the following principles should be observed.

- Legislation should generally be avoided if the objective can be effectively and legitimately achieved by other means, or if the necessary powers exist already. The volume of new legislation should be kept to the necessary minimum.
- Legislation should be operationally necessary and should serve a substantive purpose. It should not normally be used for declaratory or symbolic purposes.
- It should be clearly expressed and unambiguous in its intention. It should avoid leaving areas of uncertainty which are likely to be contested and will have to be interpreted by the courts, possibly over a series of judgments and appeals.
- Any powers which it confers and any offences which it creates, together with the penalties for them, should be proportionate to the harm they are intended to prevent and restricted to the purpose for which they are intended.

¹⁴ House of Commons Public Administration Committee (2007) *Machinery of Government Changes*. Seventh Report of Session 2006-07, HC672. Also (2009) *Further Report on the Machinery of Government*. Seventh Report of Session 2008-09, HC

- New criminal offences should be created sparingly and only when necessary for the rule of law.
- So far as possible, a Bill should have a clear and coherent purpose or its purposes should be sufficiently connected to justify one Bill.
- A Bill should not duplicate existing legislation or particular powers which are already in force.
- Retrospective legislation should be avoided wherever possible.
- There should be clear criteria for the use of subordinate legislation, and a minister should not be able to amend primary legislation by statutory instrument ('Henry VIII clauses'). Any exceptions should be fully justified and debated.
- Legislation on the same subject in several Acts should be consolidated.
- Bills should normally be published in draft to allow for pre-legislative scrutiny.

The relevant Cabinet Committee should check that all the principles set out above have been observed at the stage when the proposals are brought forward for collective approval. Legislation Committee should make a final check before the Bill is approved for introduction. If the government decides to depart from these principles the reasons should be publicly explained and justified.

• **R10: The Cabinet Committee which considers a proposal for new legislation should satisfy itself that legislation is genuinely needed and that the proposal meets the required standards of preparation and explanation and satisfies the principles of good legislation. Legislation Committee should make a final check at the point when it approves the Bill for introduction.**

Parliament should if possible have an opportunity to consider the proposals when they are still at the consultation stage.

• **R11: Bills should normally be published in draft to allow time for pre-legislative scrutiny and other discussion before they are formally introduced.**

Any changes made between draft and final Bills should be identified and justified.

Legislation should be prepared in sufficient detail for the government not to need to introduce substantial amendments or new clauses. If amendments are needed which introduce new material, or substantially alter the policy first proposed, a fresh statement explaining and justifying the changes and recalculating their impact should be produced in sufficient time to be considered before the legislation is passed.

Reducing the Volume of Legislation

The volume of both legislation and regulation has more than doubled since the mid-1960s¹⁵. The amount of legislation and its complexity need to be reduced to allow enough time for Bills to be properly scrutinised by Parliament, to ensure that they are within the capacity of those who have responsibility for their preparation and drafting, and ultimately to save unnecessary labour and confusion among those who are affected by it or have to administer it. The more rigorous processes governing the development of legislative proposals recommended in this report should of themselves help to reduce the volume of legislation. Tighter standards, however, are probably not enough to achieve a reduction by themselves: for that, government should adopt and announce the aim of limiting new Bills to their essential purposes and to a level compatible with thorough parliamentary scrutiny.

Strong discipline is needed within government to prioritise ministers' bids for new legislation, and Legislation Committee should satisfy itself that the scale of each Session's legislative programme is compatible with effective scrutiny by Parliament.

Detailed proposals on the handling of the Government's legislative proposals are set out in Annex B. Those measures, together with stronger discipline in government and in Parliament, should result in the volume of new legislation being reduced. Major policy proposals that can be implemented without legislation should also be subject to similar disciplines. The Queen's Speech should cover government priorities that do not require legislation as well as legislative proposals.

- **R12: Government should adopt the aim of limiting new Bills to their essential purposes and to a volume compatible with thorough parliamentary scrutiny without automatic guillotining in the Commons. The objective should be that Parliament should do less through legislation but do it better.**

Better Preparation and Pre-legislative Scrutiny

Changes are needed in the executive to ensure that legislation is thoroughly prepared and tested, and that Parliament is allowed enough time for thorough scrutiny. Parliament should insist on the same requirements or standards of thorough preparation as were recommended in Chapter 2 for the procedures to be followed within government itself. Key elements should include:

- an acknowledgement that ministers owe to Parliament a duty of thorough preparation;
- formalised standards of preparation and a list of key requirements;
- a published statement by ministers on how they will ensure compliance with those standards;

¹⁵ Just over 1,000 pages of primary legislation were enacted in 1960; 3,406 pages of legislation, excluding money Bills were passed in 2006 (Philip Norton *Bad Law: A Diagnosis*, Hansard Society 2009). The Public General Acts and Statutory Instruments for 1965 (excluding Consolidation and Rewrites) contained together 7,567 pages. By 2005 the total was about 15,200. Most of the increase took place in the early part of the period. On top of that European legislation, which did not exist in 1965, added 5,583 pages, bringing the grand total to about 20,800 pages or approaching three times the 1965 total.

- publication of Bills in draft early enough to allow sufficient time for pre-legislative scrutiny;
- a certificate from the appropriate Cabinet Office Minister that the procedural requirements have been observed before any Bill is introduced into Parliament.

The details of a policy should so far as possible have been settled before legislation or comparable measures are introduced into Parliament, with the analysis and consultation indicated in Chapter 2 already completed. The policy-making process does not at present involve any systematic engagement with Parliament or parliamentary committees. It should always include consultation, including the publication of all the relevant materials (normally in green and white papers). That should make for more meaningful second reading debates which is where traditionally the policy underlying a Bill has been discussed. Especially where legislation is involved, the relevant select committee should wherever possible be given an opportunity to consider and comment on the proposals, and the consultation period should be long enough to allow the committee time to give them proper consideration. If the subject covers the interests of more than one department, and so of more than one select committee, arrangements should be made for joint consideration to take place.

A strong administrative framework is needed within the executive both to set priorities and to ensure that Bills are thoroughly prepared. The framework should include the following elements.

- There should be explicit and early backing from the Prime Minister and the government as a whole for thorough preparation and for keeping the quantity of legislation to a level that allows effective Parliamentary scrutiny.
 - Legislation Committee (which includes the business managers) should obtain an assurance from the chair of the relevant policy committee that the standards for policy formation discussed in Chapter 2 have been observed; and should estimate for each Bill the amount of parliamentary time needed for thorough scrutiny.
 - The Cabinet Office minister who has oversight of Cabinet Office business should make sure that the procedures have been observed. The Bill when published should be accompanied by a certificate from the minister confirming that they have been observed, with any qualifications that might be necessary and explanations for them; the need for qualifications should be kept to the minimum.
 - When the legislative programme is decided, there should be a statement to the Cabinet that the aggregate time needed for adequate scrutiny would fit within the time available for the proposed programme as a whole.
- **R13: Parliament should insist that Bills are prepared and presented in accordance with formalised standards and procedures that allow time for thorough scrutiny. Before a Bill is introduced into Parliament the appropriate Cabinet Office minister should issue a certificate that these requirements have been observed.**

Impact Assessments

Impact assessments are now generally required for legislative and other proposals within Government where they affect the private sector, third sector and public services. They must be prepared and published when Government Bills are introduced into Parliament and should ideally

be revised when a Bill changes materially. We believe that there should be similar requirements for other policy proposals or proposals for major changes in delivery when these are put to Parliament; and also that it would be an excellent discipline on Government if the document explaining the reasons for machinery of government changes which is now normally deposited in the House were to be accompanied by an assessment of financial and other impacts on departments.

Impact assessments need to be prepared before Government takes a final decision on a policy, not as an afterthought. They should be reflected in the consultation document and/or white paper which normally precedes legislation and in other documents explaining major policies. The assessment should contain the best estimates of costs and benefits that can be made, qualitative as well as quantitative, accepting that making such estimates can sometimes be difficult. The net fiscal impact of a proposal, if any, should be shown - especially important in times of fiscal crises such as these.

It is important that bodies representing the parts of the private sector affected by a proposal should scrutinise impact assessments carefully and challenge departments if the assessments are inadequate. The private sector and third sector can often help a department to improve the quality of a draft assessment. The accuracy of an impact assessment should be capable of being verified by the National Audit Office on behalf of the Select Committee or other Parliamentary Committee concerned and the Committee should reject the assessment if it is inadequate. Select Committees should require departments to carry out retrospective reviews of the cost of major policies for comparison with the relevant impact assessment as a way of improving assessments.

R14: Impact assessments containing estimates of cost-benefit and net fiscal impact of all Bills and major policy or machinery of government changes should be available before they are presented to Parliament. Normally the assessments should be part of the relevant white paper or other explanatory document.

Careful Examination of Secondary Legislation

Primary legislation will usually have to be supplemented by secondary legislation for the implementation of the policy. As a general principle, primary legislation should be restricted to the essential features of a policy, leaving detail and implementation to secondary legislation. Such a principle requires, however, an understanding, at the time the primary legislation is considered, of the principles or criteria which will underlie the secondary legislation. The documentation that should be available during that consideration, should, therefore, be sufficiently detailed to enable legislators to take a view on the likely content of the secondary legislation. When the secondary legislation is tabled, there should be documentation which enables legislators to relate the proposals to the announced criteria.

It is inevitable that secondary legislation will not be able to command the same attention and time in either house as primary legislation. There is, therefore, a danger that it may pass without adequate scrutiny and be shown in the long run to be misguided. It is crucial, therefore, that the criteria which govern it should already have been made clear and that full information is given early enough on how it meets those criteria and how it will work in practice. It is at this stage that many lobbyists and professional bodies who have first-hand knowledge of problems, and

whose views may well be important for successful implementation, will wish to contribute. Documentation at this stage will be essentially technical and extensive, though still in plain English as far as possible.

Although the general principle to be followed is that the essential powers to implement policy should be in the Act, and Statutory Instruments (SIs) should be concerned with less fundamental matters, it is, in practice, impossible to define them more closely, or to attempt to limit the material in SIs. ‘Technical details’ will often raise matters of principle and difficult jurisdictional problems; ‘enabling powers’ will often need to be redrawn in relation to changing conditions; policy and delivery are usually closely interlinked. It is more profitable, therefore, to clarify the principles on which any secondary legislative powers conferred in an Act are to be exercised and how the delivery of any SI is to be scrutinized.

There should be appropriate consultation, the scope of which should where possible be specified in the Bill. When an SI is introduced, there should be a specific requirement to show how it complies with the statement in pre-legislation material.

Scrutiny of secondary legislation should be a major task of both houses of Parliament. Such scrutiny can be hampered by a wide interpretation of what constitutes financial measures. Scrutiny is also hampered by government reluctance to withdraw instruments and relay new ones, especially instruments subject to the affirmative procedure.

A particular concern is the use of secondary legislation to amend past legislation (“Henry VIII powers”). This should be limited to rare essential cases; the reasons should be spelled out in detail and subject to particular scrutiny.

- **R15: When a Bill contains powers to be exercised through secondary legislation, the pre-publication material on the Bill should set out what cases or circumstances any SI is expected to deal with and the principles it should follow. Where possible, drafts of the proposed delegated legislation should be available to Parliament when it considers the Bill.**

Chapter 5: Strengthening Parliament

The recommendations in this chapter are intended to improve the quality of the regular work of Parliament and the Executive and the relationship between them. They are consistent with the aims set out in the green paper *The Governance of Britain*¹⁶ “to rebalance power between Parliament and the Government, and give Parliament more ability to hold the Government to account” and would contribute to the realisation of those aims. They are constitutional in the sense that they would be specifically designed to establish and maintain, over longer periods than a single parliament, processes and practices that will support good government whichever party is in power. They would reduce the risk, inherent in Britain’s unwritten arrangements, that incoming governments might adopt processes that are liable to do lasting damage.

The recommendations are not intended to give government an ‘easy ride’, but nor would they put unnecessary obstacles in its way. The Executive must always have the capacity to take firm and

¹⁶ *The Governance of Britain*, CM7170, July 2007

rapid legislative action when it is needed, but governments must always be subject to the disciplines of democratic accountability as part of their duty to the nation as a whole.

The Wright Committee on the Reform of the House of Commons has now reported, making important and welcome proposals¹⁷. One of its key proposals is that chairs of Select Committees should be elected by the whole House and that thereafter members of the Committees should be elected by secret ballot by each political party.

The report accepts that Ministers should continue to have the first call on House time for Ministerial business, but it recommends the creation of a Backbench Business Committee whose chair and members would be elected. The committee would settle the agenda for backbench business.

The report also recommends the creation of a House Business Committee, which would include backbenchers as well as Government and Opposition. It would be chaired by the Deputy Speaker, elected by the House “with this function partly in mind”. Instead of the current announcement by the Government, the committee would put a motion with a draft agenda to the House which would be votable and amendable subject to the Speaker’s power to select amendments. The committee does not think that in practice there would as a rule be a vote on the agenda.

These proposals are very similar to those we put forward in our earlier report *Governing Well*. They mark an encouraging change of direction after a period in which the executive has introduced automatic guillotining of legislation in the Commons without ensuring that its volume is reduced to allow proper scrutiny in the time available¹⁸. But the report rightly recognises that this is “the start of a process of change that will take more than a Parliament to complete, and on a wider front than that considered here”.

- **R16: As recommended in the Wright Committee report, select committee members and chairs should be elected and Backbench and House Business Committees established, with the changes taking effect at the beginning of the next Parliament.**

Setting the Standards for Presenting Major Proposals.

This report proposes (see Recommendation 13) that standards should be set for the preparation and presentation to Parliament by the executive of Bills (and other major proposals.) The standards would deal in detail with the steps to be taken in the preparation of the Bill and the presentation to Parliament of documents explaining the work that has been undertaken at the same time as the Bill is introduced. The main elements would include a definition of the problem, why legislation is needed, impact analysis of costs (including net fiscal impact), benefits and risks, the intended effects in terms useable as criteria in post-legislative scrutiny and a demonstration of practicability and of the competence and resources available to the deliverer.

¹⁷ “Rebuilding the House”, HC 1117, 24.11.09

¹⁸ Lord Rooker has suggested that when a Bill arrives in the House of Lords it should be accompanied by a certificate listing the clauses and schedules that have not been scrutinised in the Commons (Lords Hansard, 23 November 2009 col.164)

This procedure could be initiated by a resolution of both Houses of Parliament. It is also possible that, if it is committed to reform aimed at better government, the executive could initiate the process. Whoever takes the initiative, it would be vital that executive and Parliament reach a consensus about the criteria for effective working. The executive would also need to amplify the principles by issuing extended guidance on meeting the standards.

- **R17: The standards for thorough preparation and presentation to Parliament of Bills and other major proposals by the Executive should be formalised by a Parliamentary Resolution or a government commitment endorsed by Parliament. An illustrative draft Resolution is at Annex C.**

Parliament would need to monitor these standards. This could be done first during pre-legislative scrutiny of a draft Bill and again when the Bill is presented. A Commons committee should check whether the standards have been complied with before the Bill reaches the floor of the House. If they have not been met, either the committee (or a new “business committee”) should oppose time on the floor being provided.

If the executive has a majority in the Commons it will be able to overrule this recommendation there, though there will be a reputational cost and perhaps some delay. In the Lords the executive is unlikely to have a majority, so the Lords may have a key role in making the standards stick. There should be an explicit and public hurdle of some kind to be overcome if the executive decides to push ahead with a Bill that has been judged by a cross-party back-bench committee to fail the new standards.

- **R18: Parliament should establish a mechanism for monitoring compliance with the standards, perhaps by means of a review by select committees of legislative and other proposals from the Executive before they reach the floor of the House.**

Effective Parliamentary Scrutiny of Legislation

The volume and complexity of legislation, the pressure on the parliamentary timetable, and the fact that Bills are sometimes introduced in an incomplete state so that substantial additions and amendments have to be made while they are before Parliament, have resulted in too many Bills receiving inadequate attention and completing their passage in an unsatisfactory state. The introduction of public Bill committees to replace standing committees in the House of Commons is a substantial improvement in that it enables committees to take evidence, and so too is the increasing use of pre-legislative scrutiny, but the benefits are limited by constraints on time and the uneven pressures which result from the way in which the parliamentary session is structured.

Since members` time available for scrutiny of policy and performance as well as legislation is limited, the efficiency of the processes used for it should be examined. Parliament, preferably in cooperation with the executive, should consider such options as:

- joint planning of scrutiny by Commons and Lords;
- more use of joint committees;

- greater readiness to vary the pattern of committees by reducing their number (as Wright recommends), setting up committees on specific subjects with a limited life and perhaps using sub-committees to examine public expenditure;
- finding ways of fitting pre-legislation scrutiny of a draft Bill and presentation of the Bill into the same session, such as basing the scrutiny on a full description (or drafting instructions) rather than a draft of the bill or perhaps by making more use of carry over;
- reviewing the length of the long summer recess.

Legislative scrutiny would be further strengthened by:

- an undertaking by government to provide full, clear and timely documents justifying legislative proposals;
- agreement in Parliament that committees should be enabled to scrutinise Bills more effectively, for example by developing ways of making best use of the scrutiny capacity available to both Houses, and by including members of the relevant select committee in the membership of public Bill committees;
- changes to the report stage of the legislative process, especially in the Commons, to ensure that new government amendments to Bills receive proper scrutiny and debate;
- an undertaking by government to aim to provide full drafts of secondary legislation before new powers governing them are debated.

Ministers should ensure that the volume of government amendments to a Bill, particularly at report stage, does not prevent proper scrutiny and debate. Pre-legislative scrutiny and better preparation should reduce this problem, but might not remove it. A mechanism is needed for deciding that a Bill, exceptionally, needs more time through recommitment, or even by treating it as an entirely new Bill if the purpose, content and intended effect have changed.

- **R19: Government should co-operate with Parliament to enable scrutiny of legislation to be made more rigorous.**

Changes would also be needed within Parliament to strengthen committees scrutinising Bills, raise further the priority given to scrutiny and make the best use of the capacity available for scrutiny in both Houses. The House of Commons should examine ways of making the scrutiny of Bills more effective, particularly at Report stage if large numbers of new amendments are tabled.

Ideally, Members who are to examine the Bill in a public Bill committee should have become familiar with the issues from earlier discussion at the stage of consultation, for example from the green or white papers which the select committee should already have considered.

- **R20: Arrangements should be made for some continuity of membership between the select committee that has considered the issues at the stage when a policy was being formed (or has examined a Bill in draft) and the Public Bill committee which will consider the Bill in the Commons.**

The House of Commons Modernisation Committee made proposals in 2002 for new ways of nominating select committees¹⁹. More recently a report from the Constitution Unit²⁰ has proposed that there should be a weekly thirty minute slot in the Chamber for the chair of a select committee to introduce a new report, and that committees should be empowered to propose substantive motions for debate and present their own Bills. The appetite of backbenchers for work on select committees is likely to be greater if the influence of committees is strengthened in these or similar ways.

- **R21: Better opportunities should be developed for select committee reports to be presented in the Commons, including provision for committees to propose substantive motions to the House. Select committees should have more effective powers to call for government papers, for example business cases and risk assessments.**

Few select committees manage to deal with all their core tasks. Not all committee members play a full role in the work of their committees. Some of the recommendations in this Report would add to committees' responsibilities. Committee members will need to give greater priority to their committee work. Committee resources will need to be strengthened, in some cases by the appointment of more professional staff, in others by extending the range of other resources on which committees can draw. That might include building on the models of the Scrutiny Unit and the work the NAO already does with committees and perhaps sharing more specialist resources between the two Houses as well as the traditional use of external specialist advisers.

- **R22: The extra pay received by MPs who chair select committees should be increased to at least the amount for a junior minister, or perhaps to the pay of a Minister of State.**
- **R23: The range of skills of staff supporting select committees should be strengthened so as to improve the speed, depth and range of their investigations.**

More use should be made of joint committees of the two Houses than at present, but the decision on their use should be made by Parliament not by the government.

Comprehensive Parliamentary Assessment of the Effects of Legislation

Neither governments nor Parliament has so far made any systematic attempt to review the success of legislation and other policies in achieving their objectives, the costs or savings incurred, or any unintended consequences which can be attributed to them. It is understandable that a government and its supporters in Parliament might prefer to avoid the risk of being reminded of past mistakes or prefer to give priority to things that are 'new', but retrospective review is still a necessary discipline and the benefits of hindsight are not to be discounted. The Government's commitment in its White Paper *Post-legislative Scrutiny – The Government's Approach* (CM 7320) is therefore timely and welcome.

¹⁹ First Report from the Select Committee on the Modernisation of the House of Commons, HC 224, 2001-2002.

²⁰ Meg Russell and Akash Paun (2007) *The House Rules? International lessons for enhancing the autonomy of the House of Commons*: London, Constitution Unit. The Modernisation Committee discussed similar proposals in its 2007 report on revitalising the Chamber (HC 337, 2006-2007).

Exactly how the effectiveness of legislation is assessed will vary from Act to Act. A short, single purpose Act will be easier to assess than, for example, big criminal justice Acts. Committees may decide to concentrate on some aspects of an Act or combine post-legislative scrutiny with a wider inquiry. In either case, effective scrutiny will require consideration of the quality of the material published before the Bill's introduction, including the extent of the foresight shown in any impact assessments associated with it before and during the Bill's passage through Parliament, as well as the government's subsequent memorandum on the Act's effectiveness.

- **R24: Post-legislative scrutiny of Acts by the relevant select committee should become the norm.**

Parliamentary Scrutiny of Fiscal Policy, Tax and Public Spending

There is widespread support for strengthening the means by which Parliament scrutinises the Executive's performance and proposals on fiscal policy and on tax and public spending separately²¹. We make recommendations on each of these aspects.

Over the last 30 years or so Governments have started out with an intention of maintaining a strict approach to fiscal policy (i.e. borrowing) over the medium term but have in practice departed from it. There are many reasons for this, including the technical difficulty of defining a policy that remains clear and consistent through economic cycles, as well as obvious political pressures.

This is a crucial problem that is not easily soluble. But suggestions of two kinds might increase the chance that Parliament could have a stronger influence on these decisions. One suggestion has been that Parliament should receive either advice or at least more timely and relevant information provided by respected professionals independent of the executive²². If the Government of the day had announced a clear policy, the advice would be about how to achieve it and the probability of doing so. If not, advice would be harder, though not impossible, to frame. A simpler proposal would be to give the NAO enough money to commission on behalf of Parliament, say, two documents that would analyse the fiscal record and provide a forecast and a commentary either on the Government's budget proposals or on the effect of a range of possibilities about what the budget would contain in terms of expenditure and tax measures. The criteria for the contracts would be technical. In order to avoid any risk of accusations of politicisation, the NAO should publish the documents without comment.

The timing of the main Parliamentary votes on the budget proposals would need to be revised to allow time for the Government's proposals to be studied and for the advice or additional information proposed above to be weighed and brought to bear. The House of Commons should

²¹ See for example the report of the House of Commons Liaison Committee *Parliament and Government Finance: Recreating Financial Scrutiny*, March 2008, HC 426.

²² Conservative Party (2008) *Reconstruction Plan for a Strong Economy*, London: Conservative Party. This paper proposes an Office for Budget Responsibility. See also Robert Chote *Keeping official fiscal forecasts honest* (November 2009), Institute for Fiscal Studies. This lists some desirable features of an Office for Budget Responsibility as well as some questions about its design.

consider postponing the main debate and the votes on the budget to enable Members to consider the “Red Book” setting out the Government’s budgetary plans before the debate.

- **R25: Ways of providing Parliament with advice about fiscal sustainability in time to allow MPs to absorb it before the main votes on the budget proposals should be considered. The timetable of the budget proposals, the provision of such new advice and the key votes should be reviewed accordingly.**
- **R26: On tax, there should be a genuine Green Budget, separating changes in tax rates from new taxes and providing draft clauses on new taxes, all reaching Parliament at least as early as the present Pre-Budget Report.**
- **R27: As recommended by the Liaison Committee the Government should provide Parliament with more information than it did in 2007 about the framework and themes of the next Comprehensive Spending Review. In the annual process the relevant Select Committees should provide a commentary which the House would have when it considered the Executive’s proposed plans for total spending and its allocation.**

Parliamentary Handling of Changes in the Machinery of Government

Chapter 3 referred to the difficulties which can be caused through changes in the machinery of government and to the need for any changes to be fully considered, publicly explained, and justified. The House of Commons Public Administration Committee has argued that changes should be reported to Parliament with an opportunity for a debate and a vote. The Committee did not accept the government’s view that the laying of a Transfer of Functions order was sufficient²³.

- **R28: Parliament should require from ministers a written explanation and business case for major changes in the machinery of government, with an opportunity for a debate and a vote.**

Similar considerations apply to any major change in government’s relationships with service providers.

Chapter 6: Delivery and Organisation

Government departments have direct responsibility for the delivery of some public services – for example those provided by the department for Work and Pensions, immigration and border control, most prisons – but most public services are delivered by local government, teachers, the police, and other public servants.

²³ House of Commons Public Administration Committee (2007) *Machinery of Government Changes*. Seventh Report of Session 2006-07, HC672. Also (2007) *Machinery of Government Changes, A Follow-up Report*. First Report of Session 2007-08, HC160.

Better Commissioning and Performance Management of Service Delivery

The creation of ‘Next Steps’ agencies has had generally positive results, but not in the way sometimes presented of putting the agencies at arm’s length from both ministers and the centres of departments. There can be confusion over the status of agencies; they are civil service organisations, whose chief executives may be externally recruited but who are also civil servants, and they are part of their parent departments. Agencies need the space in which to get on with delivery free from central micro-interference, whether from the centre of government or the centre of a department, but a sharp distinction between policy and delivery is likely to lead to bad policy development and doubtful benefit for the delivery of services.

The drive for more choice and improved efficiency is likely to lead to more services currently performed by civil servants being outsourced and an increased government focus on strategy, policy development and the commissioning of services in many cases delivered by others. The need to develop contracting skills in the civil service has been recognised for a number of years and considerable progress has been made in developing professional procurement staffs. But too much procurement at national (and local) levels is still done in relatively narrow silos against output specifications. The challenge is to develop broader commissioning of services against outcome specifications and to increase the capacity to manage contracts effectively once let.

- **R29: More attention is required to the skills and qualifications needed at the centre of departments for commissioning and performance managing services from the range of bodies charged with delivery.**

A More Strategic Relationship between Departments and Service Providers

Departments’ relationship with the providers of publicly funded services is essentially that the department sets the strategic direction and the legislative, financial, policy and regulatory framework and has the responsibility to work with the provider to ensure that delivery is in accordance with Ministers’ requirements and within the resources provided. These roles are often performed alongside various forms of local accountability in an uneasy, and often increasingly complicated, relationship. The fact that local government has its own framework for democratic accountability is not always recognised.

Government must clearly hold public services to account for the services they provide and for their use of public funds. Mechanisms for doing so include setting standards and monitoring performance, and the structures can include inspectorates, auditors and regulators. Ministers should not expect to manage services directly or in detail. Accountability can take different forms and need not always involve central government: service providers have responsibilities and should in suitable ways be accountable to their users, partners and stakeholders and to their local and professional communities.

Departments should carry out regular reviews of Non-departmental Public Bodies and other providers to ensure that they have not outlived their usefulness and that there is no overlapping between them. Such reviews could lead to the closures of some bodies and the transfer of functions between them or back to departments.

Service providers need a clear and stable remit, and constant streams of directives and complicated bureaucratic processes are likely to be ineffective and confusing and to have perverse results. Their key responsibility is to perform their statutory functions and give effect to the government's policies effectively and within the resources provided.

There are encouraging signs that all the major political parties recognise the benefits of greater professional and local engagement. Equally this general approach can rapidly come under pressure when difficult issues arise and 'tough' central action is required.

Best practice suggests that the following instruments facilitate the right kind of relationships.

- The department should set out a clear statement annually of the policy priorities and resources allocated, preferably in the context of a three year rolling strategic plan. This should be done well before the operational year begins to enable the service provider to plan ahead.
- The department should provide at the same time annually a statement of the outcomes expected from the resources provided.
- Performance reviews between the department and service provider should be held regularly during the year and at the end of the year.
- Openness, frankness and mutual trust should be maintained at all times between the department and the service provider. It is particularly important for the service provider to keep in touch informally with policy developments and issues within the department, and for it to contribute to developing policies from its experience. It is also important for the department to be aware of and sensitive to any emerging problems.

All of this can be assisted by regular and informal meetings between Ministers and the senior staff in the department and the senior staff of the service provider.

Some lessons from recent experience are that governments should :

- pay more attention to the customers and individual experiences of services, by both providers and users, and listen to their views;
- so far as possible avoid frequent changes in policies or priorities;
- establish and maintain greater trust between all involved in service delivery systems;
- make sure that those providing services are involved in setting objectives and measures of performance;
- focus on the obstacles to effective delivery and action to remove them;
- improve their understanding of the dynamics and relationships involved in service delivery;
- continue their emphasis on good performance management, measurement and information.

Quantified measures of performance have their place and must continue to be used, but their limitations and the means by which they can be manipulated must also be understood.

- **R30: Departments should focus on developing policy and monitoring performance rather than on day to day operations; they should limit the bureaucratic demands which**

they impose on service providers, keep to a minimum the number of staff involved in the process, and respect the providers' professional and managerial judgment.

Clarifying the Roles of Ministers and Officials

A number of NAO/Public Accounts Committee reports have identified the importance of governance if resources are to be utilised effectively and efficiently.

Much effort has gone into trying to clarify the boundaries of ministerial accountability and the division of responsibilities between ministers and officials. The Public Administration Select Committee's report in 2007²⁴ showed the difficulties in seeking to do so. It is not practicable to make absolute distinctions between ministerial and official roles in terms of developing strategy and formulating policy; but there could be benefits in delineating more clearly the roles of ministers and civil servants in departmental management, and clarifying and strengthening the advisory role of non-executive directors.

The guidance document "Corporate governance in central government departments: Code of good practice", issued by HM Treasury in 2005, provides a helpful starting point. The minister in charge of the department is responsible to Parliament for the exercise of the powers of that department; and the permanent secretary/head of the department, as its Accounting Officer, is also responsible to Parliament for the use of public money. Departmental boards and their non-executive directors have advisory roles rather than the accountabilities of a company's board.

The dual personal responsibilities of the minister and the head of the department are we believe valuable for governance in central government, including for propriety and value for money in the use of resources. In terms of the management dimension of the work of a department, the division could be seen as akin to that of the chair of the board and the chief executive in a company. Non-executives were often originally brought in to departments to supply expertise not available in the civil service and tended (though not in every case) to sit on boards chaired by the head of department. The role has since evolved into a stronger challenge function and the company analogy would suggest the minister rather than the head of the department should chair the board.

We see potential merit in this change. Its success is likely to depend upon a shared understanding of their respective roles by the minister and the head of department. The minister's role would be to act as non-executive chair of a board concerned with strategy, business planning, and performance management, not as executive chair of a body micro managing the department. The head of department would be expected to fulfil all the responsibilities of a chief executive, not to act as company secretary. The board should not become involved in the detail of day-to-day policy issues, on which the non-executives, particularly if drawn principally from the private sector, are likely to have little to offer. It would address significant delivery issues on existing operations and performance against budget. Looking to the future, it would concentrate on the portfolio of major programmes and projects, ensuring that programme planning, project management, and delivery models are effective; costs, benefits, timescales and risks are realistically assessed; and that proposed delivery models are appropriate. Below the board the

²⁴ Third report, Session 2006/7 (HC 122).

head of department would chair an executive committee responsible for the management of the department.

Departments operate in a political environment. Hard and fast rules are unlikely to survive all circumstances or the skills and inclinations on ways of working of individual ministers. While there is a case for adopting a two-tier model with a strategy board chaired by the secretary of state, and an executive committee chaired by the head of department, other models should not be ruled out. For example, the board might be chaired by a senior non-executive director, with access to the minister, as already happens for the boards of trading funds and some other executive agencies. Whatever the precise structure, the non-executive directors should have periodic access to the minister in charge of the department on the performance of the management team and on the management of risk by the department.

- **R31: Departmental governance should be strengthened. The roles and access to ministers of non-executive directors should be clarified.**

Increasing the Expertise of Ministers and Departments

In all departments where front-line delivery is through non-civil servants, top teams at Board level and just below now include a mix of those with largely Whitehall experience and others with direct experience of the service concerned. There are considerable differences in the extent of this practice. In some cases (e.g. Health) the service professionals now have much the major role in departmental advice and management. There is a difficult balance to be struck between ‘Whitehall’ and service professional expertise at the centre of departments, which merits more discussion. Ministers need access both to expert advice and to those who can help in the issues of importance to them in strategy and policy formulation and exercising accountability to Parliament, which requires considerable expertise and experience in its own right.

Ministers and their departments need to build better networks involving front-line professionals. This needs to be a two-way process that breaks down stereotypes in both directions. Ministers and officials also need more expertise in effective performance management.

Ministers and civil servants can move too frequently between jobs and subject areas. There has been considerable turnover in the top teams of a number of departments. Records of previous decisions or past events may no longer exist or be easily available. One result of so much change has been a serious weakening of corporate memory with the risk of failure in strategy, policy and delivery.

Ministers’ own experience and expertise can have an important effect on service delivery. The complexity of government and Ministers’ increasing involvement in detail can place Ministers in situations which are unfamiliar to them and for which they do not have reference points that are within their own knowledge or experience. The situation could be improved through training for Ministers before they were appointed, initial training on their appointment, and continuing training and development as in all other professions. In addition, Ministers should stay in their posts for significantly longer periods of time so that they become more familiar with delivery arrangements in the areas for which they are responsible and less inclined to look for quick headlines during the short period in which they are in particular posts. They also need to be clear

about their role in relation to their Permanent Secretaries and other key figures involved in delivery.

- **R32: Special attention should be paid to the maintenance, preservation and accessibility of departmental records.**
- **R33: Ministers and staff taking up new responsibilities or entering new areas of work should gain some understanding of the background and history. Governments should make systematic provision for Ministers' induction and training for the positions to which they are appointed, and provide for more continuity in post.**

Chapter 7: The Civil Service

Roles and Character of the Civil Service

The roles which the civil service performs at present include:

- the management of the decision-making process in government - ensuring decisions are properly taken, disseminated, implemented, and subsequently reviewed in a structured process that involves all with an interest;
- a contribution to effective policy making;
- the direct delivery of some services and of revenue collection;
- a contribution to strategies for, the provision of resources to, and performance management of public services delivered by others (whether other public sector professionals or the private and third sectors).

A recent report for the National Audit Office on good public administration²⁵ identified the main outcomes expected as high-quality services, public confidence and trust, well-informed policy advice, value for money, and stability and continuity. It recognised the importance of values to good government and of other “enablers” such as leadership, skills, performance management, and capacity for change. It concluded that the UK’s public administration compares well with those of countries such as Canada, New Zealand and Sweden, which have public administrations seen as being the most advanced in the world. The research also found a discrepancy between how well UK public administration is seen as performing when benchmarked and how citizens perceive public service results (which may reflect differences in expectations between countries and in the UK a lack of trust in government). Those conclusions might find more general agreement outside the United Kingdom, where this country’s public administration and civil service are more widely admired than they are at home. But it provides a useful context for thinking about the characteristics needed if the civil service is to contribute effectively to good government.

The NAO published the study as part of an Assessment of the Capability Review Programme. Capability reviews (see also Chapter 6) have helped departments to improve leadership, strategy

²⁵ International Comparison of the UK’s Public Administration. Published as part of the NAO’s Assessment of the Capability Review Programme, February, 2009;
www.nao.org/publications/0809/capability_review_programme.aspx

and delivery capabilities, but – as the NAO itself argued - the review process will be even more valuable if there can be clearer links to the actual performance of the organisation, including of its principal delivery agents.

Strengthening the Civil Service Role in the Management of Decision Making

Both the current and previous governments have had concerns over civil service performance. The value of a politically-impartial civil service at the heart of government has been questioned on grounds of competence and commitment. One belief is that Ministers would be more likely to get their policies agreed and put quickly into effect if they were supported by more special advisers, perhaps to the point where the French cabinet system was adopted. Such a development would build on the changes that took place at the centre of government under Tony Blair at 10 Downing Street and Gordon Brown when at the Treasury, and apply them more generally to departments.

The impact of ‘sofa’ government at 10 Downing Street has been reasonably well documented²⁶. There has been less comment on the extent of the role of special advisers at the Treasury, but one effect was that there was little or no point in departments’ seeking to engage the Treasury on major issues at official level. The only effective channels of communication to the Chancellor lay through the special adviser network. Obviously there were some policy successes under this system (for example, independence of the Bank of England); but the track record on economic management, public expenditure planning and control, and financial regulation as well as on public sector change (for example, the introduction of tax credits) has increasingly come to be questioned.

Special advisers have an important role in offering Ministers alternative policy perspectives and in providing links to the party policy machinery and other outside interests. But a politically impartial civil service remains essential for effective policy and decision-making in government, especially in a political system where much of the debate is highly partisan and at a time when there are serious issues over trust. A structured and well managed process, organised by the civil service, is required to ensure that by the time Ministers take final decisions they have before them full evidence, analysis and advice, including on ‘deliverability’ (drawing on front line experience) and on risk, and that decisions are properly recorded and followed up.

- **R34: Effective decision making and implementation are most likely to be achieved if the process in support of ministers is managed by a politically impartial civil service**

Clarifying the Civil Service Role in Policy Development

The idea that the civil service has a monopoly of policy advice is a thing of the past. There is, rightly, an increased role for other sources of advice, whether think tanks, consultants, specialist academics and other experts, or special advisers. Earlier chapters have noted some of the characteristics of effective policy development, delivery, and review. They are more likely to be

²⁶ Butler, R. (2004) *Review of Intelligence on Weapons of Mass Destruction*, Report of a Committee of Privy Counsellors, HC 898, London: TSO.

achieved if management of the policy process is seen as a professional task with its own expertise and experience and if there is a significant voice within the system for objective and politically impartial advice.

There is no guide issued to ministers on best practice in the processes of government. The Ministerial Code provides partial guidance largely from a propriety perspective. Thus the section on ministers and civil servants focuses on ministers' not asking civil servants to act in ways contrary to the Civil Service Code, rather than providing more general guidance on the relationships between ministers and civil servants in the conduct of government business.

Under provision 5.2 of the Ministerial Code 'Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions'. This duty should be expressed more explicitly as 'to give civil servants the opportunity to provide informed and impartial advice on policy and other matters before decisions are taken, and to give fair consideration and due weight to such advice as well as to other considerations and advice'.

- **R35: The Ministerial Code should be amended to contain an explicit duty to give civil servants the opportunity to provide informed and impartial advice before decisions are taken and to require ministers to give such advice fair consideration and due weight. That principle should be given parliamentary force, alongside the reciprocal obligations of the civil service set out in the Civil Service Code.**

Within such guidance, ministers will have different views about how business is to be conducted in terms of detailed process. Success depends on maintaining frank, confident relationships based on mutual trust and therefore confidentiality. Present ministers and all the major parties support this approach in principle but it is less clear how far in practice they are interested in engaging with objective advice and evidence. Providing candid advice has always been a difficult and potentially risky task for the civil service. There are suggestions of a loss of confidence amongst civil servants that this is a part of their job.

Embedding the Civil Service Values

The civil service values of integrity, honesty, objectivity and impartiality are important and are not to be taken for granted. The health and success of organisations depend upon culture and values as well as structures and processes. The Civil Service Commission has carried out important work with departments to seek to ensure the values of the service are embedded and observed. This is a continuing task.

- **R36: The values of the civil service are important and need to be embedded. The Civil Service Commission should have power itself to initiate inquiries into the working of the Civil Service Code and other matters, and should not be limited to reacting to complaints or require the government's agreement before doing so.**

Clarifying the Roles and Constraining the Number of Special Advisers

The present arrangement is for the minister concerned to appoint his or her special advisers (for departmental ministers with the approval of the Prime Minister), and their appointment ends at the end of the administration or when the appointing minister leaves the government or moves within it. The adviser's future is therefore inextricably linked to that of the minister and the process by which he or she is appointed may reinforce strong mutual loyalty. One manifestation of this can be for the adviser to claim knowledge of the minister's wishes and the mantle of his or her authority to the point where on occasion advisers at the centre have effectively been directing the actions of accountable ministers in departments - without any authority to do so. A second arises particularly in the media role where an adviser can in effect be the champion of his or her minister at the expense of the opposition or colleagues within government. It is very difficult to justify such activity being funded by the taxpayer.

Little definition is currently provided of the roles of individual advisers. A breakdown by salary band is provided (usually released just as the House rises for the summer recess), but there is a strong case for greater transparency over roles and the knowledge and experience of those appointed.

Concern expressed over the number of special advisers is sometimes met with a facile comparison between their number and the total size of the Senior Civil Service (SCS), as though advisers and the generality of the SCS were equivalent in terms of access to and influence with ministers. Numbers of advisers have roughly doubled under Labour. There has been little discussion of the impact of the growth being concentrated at the centre of government. For example, when last reported there were 24 advisers at No.10, with a number receiving salaries equivalent to civil service directors and directors general. Few would deny that continued growth would further weaken the management of decision-making and the policy process. There is a strong case for constraints on the budget for special advisers or on numbers in departments and at No10 as we have argued previously

- **R37: There should be greater transparency over the roles, knowledge and experience of those appointed as special advisers, and constraints over the number of or budget for special advisers.**

Developing a Strategy for Civil Service Recruitment and Careers

A number of commentaries on the deficiencies of the civil service continue to assume that its senior posts are filled by 'generalists' recruited on the Northcote-Trevelyan model of a civil service career for life. In fact many senior posts are now filled by open competition and there has been a considerable influx of new people in each area of the civil service, including at the top levels.

The selection of statistics at Annex D²⁷ gives a sense of the size of the service, its rapidly growing management cadre, and how posts are filled at more senior levels. Some of the growth in

²⁷ Drawn from figures provided to Andrew Tyrie, M.P. by the House of Commons library.

more senior management numbers may reflect ‘grade drift’, perhaps partly reflecting weak management systems but also operating market-facing recruitment with pay out of line with the market - whether in comparison with the private sector or significant parts of the wider public sector. One (undesirable) way out may have been to regrade jobs to a higher level that attracts the higher pay needed to compete.

The balance between developing top talent internally and bringing in new people has been looked at periodically - in a major Efficiency Unit report in 1993²⁸, again in the late 1990s, and recently in a review chaired by Sir David Normington²⁹. As the Efficiency Unit report noted, there is no magic formula for the appropriate balance. Organisations bring in people from outside when they face skill shortages, or want people with a different culture, or to attract back people who have left earlier, or to widen their search for equal opportunities reasons.

Between a fifth and a quarter of those joining the Senior Civil Service in the past four years have been external recruits, but the percentage recruited externally has been significantly higher at the more senior levels. The result is that, as the Normington report says³⁰ “as many as 43% of current Directors General have been recruited from outside the civil service”. This reflects a number of factors including the drive to improve operational management and to “professionalise” finance, human resources, and IT functions.

In any outside organisation, external recruitment on this scale would probably be seen as signifying a serious and sustained failure in personnel policy. It risks weakening of corporate memory where it may matter most, in top management. The Better Government Initiative welcomes the recommendation in the Normington Report that “a workforce strategy for the SCS should be developed”.

The civil service continues to recruit some of the most talented graduates in the country through its highly-competitive fast stream entry schemes (candidates having a likelihood of success of less than 3%). It is unlikely that the attraction of the civil service could be sustained if the service were to continue to fill so many top posts externally.

Ministers’ Role in Civil Service Appointments and Performance Management

It is understandable that Ministers under the pressure of their own sometimes ruthless ‘up or out’ system, or at risk in their job for matters going wrong deep in the organisation, may feel frustrated and seek to have a larger influence on recruitment and promotion. In other walks of life the ability of a leader to choose, assess and reward his top team is seen as fundamental to success, whereas in government there is a clear separation between Ministerial and civil service roles.

The present system already provides for some Ministerial involvement both in consultation over senior recruitment and in the dialogue between Ministers and the Permanent Secretaries over the performance of individuals and matching people to posts. This dialogue is important, while recognising that ultimately these must be decisions for the Permanent Secretary and, at the top

²⁸ Career management and succession planning study, Efficiency unit, Cabinet Office 1993.

²⁹ Senior Civil Service Workforce and Reward strategy, November 2008.

³⁰ *ibid*, paragraph 2.14

level, for the Head of the Home Civil Service within the framework of a politically impartial system based on merit.

It would be dangerous to go beyond that for three broad reasons. First, recruitment and promotion on merit rather than by patronage, must be the right way to fill public appointments. Second, although there are recent examples of apparent matching of Ministers and top officials with experience of working together such partnerships have had a limited lifespan because of the volatility of Ministerial appointments. A more widespread adoption of such an approach would risk more civil service volatility as civil servants followed their Ministerial patrons around the system. More fundamentally, a stronger sense of Ministerial involvement in recruitment and promotion would run the risk of reinforcing conformist behaviour, whereas departments and the prospect of better outcomes are likely to benefit from more, not less, robust debate.

Attempts to delineate tightly the respective responsibilities of ministers and officials are fraught with difficulty, particularly if the purpose is to apportion blame publicly. Ministers' frustrations over the extent to which civil servants are held accountable for weak or poor performance are entirely understandable. This is not simply a ministerial issue. Many civil servants are themselves frustrated by the failure of the performance management system to identify and tackle weak and poor performance. Present civil service culture and processes are far too tolerant of mediocrity.

- **R38: Ministerial involvement in the recruitment and selection of civil servants should continue on the present basis rather than be extended; more needs to be done by the civil service to tackle poor performance at all levels.**

Strengthening Knowledge, Skills and Experience in the Civil Service

Part of the civil service's effort to fill gaps in its skills has been to improve the training and development of staff through the Professional Skills for Government (PSG) initiative. Over time, this should improve the supply of internal candidates with currently scarce professional skills, provided that some of the most talented recruits choose professional training and career paths in these areas. But it will require a significant shift in the perceived worth of different career paths away from the traditionally glamorous 'policy' track.

PSG emphasises the need for knowledge of the subject matter of an individual government department and its broad policy area alongside generic skills in policy making, analysis of evidence, etc. Civil servants can move too frequently between jobs and subject areas. There has been considerable turnover in the top teams of a number of departments. One result of so much change has been a serious weakening of corporate memory with the risk of failure in strategy, policy and delivery.

PSG also emphasises the importance of front-line experience, including experience as part of fast-stream development programmes. In some departments such experience is a requirement for those seeking promotion to the Senior Civil Service. There are practical difficulties in making it mandatory across the service, but these need to be addressed and not used as an excuse for weakening the policy.

More effort is needed to bring together the training and development of civil servants and of those elsewhere they work with. There has been a striking development in leadership and management training for public service professionals but too much of it is in individual compartments, with too few connections between departments, services, and different professional disciplines and backgrounds. Also, too few civil servants, especially at senior level, are familiar with the way Parliament works; even more so those who come into departments from established careers outside the public sector.

Many of the PSG's proposals have been made before. If they are to be made effective, and if individuals are to be given opportunities to develop their skills and their careers, the civil service must be willing to accept the less experienced over the more experienced in the broader, longer-term interest. That is not easily achieved in a system for filling vacancies that is largely driven by line managers using individual competitions. Staff also need to be encouraged and supported in secondments to outside organisations that broaden their experience in ways which will later be of value to the service, and then to be given attractive routes by which they can return. But career development and succession planning systems are expensive, including in senior management time. The civil service shows little sense of consistently facing up to this situation, and has seemed uncertain of the principles on which vacancies should be filled.

- **R39: It is important that the PSG programme is followed through, unlike some of its predecessors. Much more attention is needed to succession planning and to the balance between internal promotion and external recruitment at senior levels so that departments have the necessary skills, experience and corporate memory.**

ANNEX A

Draft Ministerial Guidance on the Conduct of Cabinet Business

THE CONDUCT OF CABINET BUSINESS

Guidance for Ministers

Foreword by

The Prime Minister

The Ministerial Code concentrates on ethical and procedural guidance. However the confidence of the public in the quality of government depends not only on the personal probity of Ministers but also on an understanding that major policies will be developed within a framework which ensures that they are thoroughly prepared and properly considered before they are introduced.

This document complements the ethical and procedural guidance in the Ministerial Code. It describes the steps that need to be taken by Ministers, from initial concept to post-implementation review, to ensure that policies are soundly conceived and competently executed by subjecting them to objective analysis and the experienced judgment of Ministerial colleagues. The quality of Government policy and lawmaking will gain from well conducted collective consideration.

No process as complex as the conduct of Cabinet business can be reduced to a set of detailed rules. I commend the content of this document to Ministers as guiding principles to be conscientiously applied.

General principle

1. Ministers of the Crown have a duty to ensure that proposals for major policy decisions are prepared on the basis of thorough objective analysis, fully reflect findings from consultation with those who will be affected by them or involved in initial and long-term implementation, and are subjected to examination and approval by Ministerial colleagues in Cabinet or Cabinet Committees.

Standards of preparation of policy proposals

2. The presentation of policy proposals to ministerial colleagues should clearly define the problem to be solved or improvements to be achieved and explain why action is desirable and, if legislation is proposed, why it is operationally necessary.
3. Proposals should include consideration of different options for achieving the desired outcomes, a full analysis of their costs, benefits and risks (quantified where possible), and a definition of the intended effects, all set out in terms suitable for use as criteria in post-implementation scrutiny.
4. Particular attention must be given to the practicalities of implementation, including where appropriate expert advice from those who will be involved in the implementation process.

Collective consideration

5. All decisions that engage the collective responsibility of the Government must be submitted for consideration by Cabinet, Cabinet Committees or properly constituted ad hoc Committees whose conclusions are fully recorded as a basis for future accountability.
6. As noted in the Ministerial Code, no definitive criteria can be given for issues that engage collective responsibility. However Ministers should ensure that matters that will reflect on the Government as a whole because of their importance, that cut across departmental boundaries in a substantial way, or that require fresh legislation, are considered by Cabinet itself or by Cabinet Committees.
7. All Ministers with a departmental interest in a policy proposal must be fully engaged in its preparation before it is submitted for collective consideration. The Cabinet Secretariats must confirm that this has been done before papers are circulated.
8. Issues must be brought forward in good time and in a properly prepared form. Decisions should always (except in rare cases of extreme emergency) be based on Cabinet or Cabinet Committee papers circulated in advance of the meeting. The Cabinet Secretariats have a responsibility to ensure that proposals are fully, fairly, accurately and clearly represented in the papers and will require amendments to, or reject, papers that do not meet these standards.

Wider consultation

9. The agreement in principle of Cabinet or Cabinet Committees to pursue policies with a significant impact on members of the public should normally be followed by publication of a consultation paper and a subsequent policy statement (traditionally in the form of green and white papers).
10. Papers to be published should be submitted for collective consideration by the appropriate Cabinet Committee. Their length will vary with the complexity of the issue. In many circumstances they can be short.

11. Consultation papers should contain a clear and complete statement and analysis of the issues to be dealt with, set out the main options for action and the principles and tests of practicality that will be applied in reaching a decision, and describe any prior processes of consultation with the public and with relevant experts including those who will be responsible for implementation.

12. Statements of policy should explain the development of thinking within Government since the publication of the initial consultation paper, including the outcome of any further consultations, and set out in some detail and with attention to practicality the option that has been chosen.

13. Some papers deal with matters that involve detailed technical, scientific, economic, statistical or other expert analysis that is not accessible to non-specialists. They must nevertheless be expressed in terms that enable the complete argument to be followed by non-expert Parliamentarians and members of the public.

Preparation of legislation

14. Legislation should not as a rule be used for declaratory or presentational purposes.

15. Submissions to Legislation Committee seeking approval for the introduction of a Bill must certify that the intended outcomes could not be achieved through existing legislation and that the practicality and resource costs of successful enforcement have been fully assessed.

Post-implementation review

16. All policy proposals approved by Cabinet or Cabinet Committees that require fresh legislation or substantial resources should be subject to post-implementation reviews within the three years following introduction to assess the outcomes and costs actually achieved against those set out in the initial proposal.

ANNEX B

Management of the Government's Legislative Programme

Responsibilities for the programme within Government

Responsibility for leading the planning and management of the legislative programme normally rests with the Leader of the Commons, though he/she needs to work closely with the Chief Whip in the Commons and the Lords business managers.

Collective agreement to the programme and oversight of its management rests with Legislation Committee (Legislative Programme Committee under the previous Government). This may be chaired by the Leader of the Commons or, preferably, by another senior and independent member of the Cabinet such as the Deputy Prime Minister, if there is one. The membership of the Committee should be tightly drawn, since it is not a policy-making committee: other ministers can be invited to attend when their Bills are considered. Parliamentary Counsel should always attend. Support both for the Leader as programme manager and for the Committee is provided by the Cabinet Office.

Planning the Programme

The key is to start early (other than in the first session following election of a new Government when preparation time is severely limited). Bids should be invited from departments a full year ahead of the beginning of the session in question. The aim should be to construct a programme which:

- is targeted at the Government's political priorities;
- is well-balanced, making room for other legislation which is technically necessary or desirable (eg Law Commission Bills);
- is manageable within the length of the session in question and having regard to how controversial the programme is;
- looks several years ahead;
- leaves space for priorities that may emerge later (eg emergency legislation to deal with unexpected court decisions).

The programme should not be too long. Although the number of Government Bills has not increased in the last 20-30 years (it has averaged about 30 a year since 1997), the average length of Bills has increased somewhat. It has become common for Bills not to be fully discussed in the Commons for lack of time. The Lords has had to compensate for the often imperfect scrutiny in the Commons. While the present Government's practice of timetabling all Bills in the Commons is part of the explanation (and availability of time in the Lords has become the greater constraint on the Government), the underlying cause is that the average programme is simply too big for adequate discussion. The Government needs to exercise greater restraint and to avoid, for instance, declaratory legislation which does not change the law. Whitehall's culture of legislation as a departmental status symbol needs to change. The aim should be less but better legislation.

Pre-legislative scrutiny is valuable because it exposes a Bill to early scrutiny both by Parliament and by outside experts before the proposals are set in concrete, thus improving quality and giving those affected more of a say. But in the last decade less than 20% of Government Bills have been subject to this procedure. Most Government legislation should be subject to pre-legislative scrutiny and to this end L Committee should construct a programme which looks 2 or 3 years ahead. In order not to increase the gestation period of Bills excessively, scrutiny should be undertaken on the basis of a detailed written description of the proposals, rather than a draft Bill, allowing drafting to proceed in parallel.

There has been little public interest in the draft legislative programmes on which the Government has consulted and the Government has made few changes as a result. Nevertheless, consultation increases transparency and is therefore welcome.

The proposed programme should be agreed by the full Cabinet. Agreement to an outline programme should be sought early in the year, allowing the maximum time for drafting of Bills for introduction or publication in draft. The final programme should be approved before the Summer Recess. Drafting authority should be explicit about the content and length of the Bill in order to avoid subsequent unplanned growth.

Managing the programme

Legislation Committee needs to manage the programme with three aims in view: to ensure that Bills are properly drafted, that they are ready on time (the earlier in the session the better) and that they do not grow vastly in length as a result of Government amendments while in Parliament. It needs to have the clear backing of the Prime Minister and the Cabinet in carrying out this role.

The introduction by Governments of both parties of Bills that have been inadequately prepared - a common occurrence - is usually attributable to failure to think the policy through early enough or to poor management. Early decisions on the programme and the wider use of pre-legislative scrutiny should reduce this problem. But close monitoring of the preparation of Bills by the Cabinet Office with regular reporting to L Committee is essential. The Committee should refuse to permit introduction of Bills that are not ready and encourage Parliamentary Counsel to give it frank advice about this.

The problem of Bills increasing in length as a result of Government amendments should be ameliorated if they are better prepared. But this will not stop departments trying to take advantage of their few legislative opportunities to add new material or to stimulate others to ask for it. L Committee needs to take a tough line with such requests. The bar for additions should be set very high, not least because late additions are often not properly thought through or debated.

ANNEX C

Illustrative Parliamentary Resolution on Thorough Preparation of Government Proposals

The Precedent of the 1997 Resolutions

This draft builds on the 1997 resolutions following the Scott Report. The resolutions passed by the Commons and the Lords were largely identical. The Lords motion

“moved, that, in the opinion of this House, the following principles should govern the conduct of Ministers of the Crown in relation to Parliament:”

This was followed by five paragraphs. The first four said that “Ministers have a duty to Parliament to...” or “should ...” do various things in talking to Parliament or in instructing civil servants giving evidence before Parliamentary Committees. The fifth paragraph prescribed the interpretation of “public interest” by reference to statute and the Code of Practice on Access to Government Information (Second Edition, January 1997), and said that the duty of civil servants giving evidence to Parliamentary Committees should be in accordance with the Civil Service Code (January 1996).

The resolution could *either* specify the elements of thorough preparation; *or* it could refer to another document containing them, perhaps a report by the Commons Liaison Committee setting out a checklist of tests which Select Committees should apply to policy or legislative proposals presented to Parliament. The draft below follows the former approach.

Draft

That in the opinion of this House, the following principles should govern the Conduct of Ministers of the Crown in relation to Parliament:

Ministers have a duty to Parliament to ensure that their policy and legislative proposals have been thoroughly prepared.

The main elements of thorough preparation, which should be set out in a document laid before Parliament when a Bill or other policy is presented, are:

- a. definition of the problem to be addressed and explanation of why action is desirable or, in the case of legislation, why it is operationally necessary;
- b. analysis of the costs, benefits, and risks of different options; and definition of the purpose and intended effect of the proposal in terms suitable for use as criteria in post-implementation scrutiny;
- c. demonstration of the considerations which led Ministers to the proposed option;

- d. demonstration of how the proposal will work in practice;
- e. evidence of consultation on the proposal.

Guidance to Ministers should set out how the provisions in the resolution should be interpreted.

ANNEX D

Some Civil Service Statistics

Total numbers of civil servants have flattened out and fallen slightly in recent years, having risen between 1999 and 2004. There has been a particular reduction in numbers at the DWP, which may, all other things being equal, come under increasing recruitment pressure given the economic circumstances.

There has, however, been an upwards trend in number of Senior Civil Servants (SCS) and Grades 6 and 7 (middle managers). This is shown in the table and chart below:

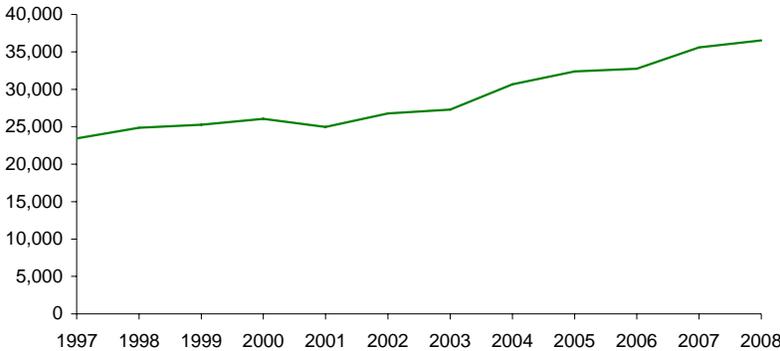
Civil servants by grade level 1997-2008

Non-industrial staff, full time equivalents

	Numbers				% of total		
	SCS	Grade 6/7	SCS & 6/7	Total	SCS	Grade 6/7	SCS & 6/7
1997	3,700	19,740	23,440	439,310	0.8%	4.5%	5.3%
1998	3,720	21,130	24,850	430,460	0.9%	4.9%	5.8%
1999	3,570	21,690	25,260	429,300	0.8%	5.1%	5.9%
2000	3,720	22,320	26,040	445,970	0.8%	5.0%	5.8%
2001	3,850	21,120	24,970	453,770	0.8%	4.7%	5.5%
2002	4,020	22,730	26,750	463,130	0.9%	4.9%	5.8%
2003	4,210	23,080	27,290	491,300	0.9%	4.7%	5.6%
2004	4,450	26,190	30,640	503,550	0.9%	5.2%	6.1%
2005	4,560	27,800	32,360	498,200	0.9%	5.6%	6.5%
2006	4,480	28,250	32,730	489,490	0.9%	5.8%	6.7%
2007	4,570	31,010	35,580	488,930	0.9%	6.3%	7.3%
2008	4,670	31,860	36,530	492,920	0.9%	6.5%	7.4%

Source: Cabinet Office/ONS, *Civil Service Statistics*, various

Civil Service Management Staff 1997-2008
SCS and Grades 6/7, Non industrial, FTE



- On 1 April 2008 there were 4,670 SCS, an increase of one thousand since the late 1990s.
- Overall, there were 56% more civil servants at management grades in 2008 than in 1997.

The table below shows trends in SCS appointments through open competition by source of appointee:

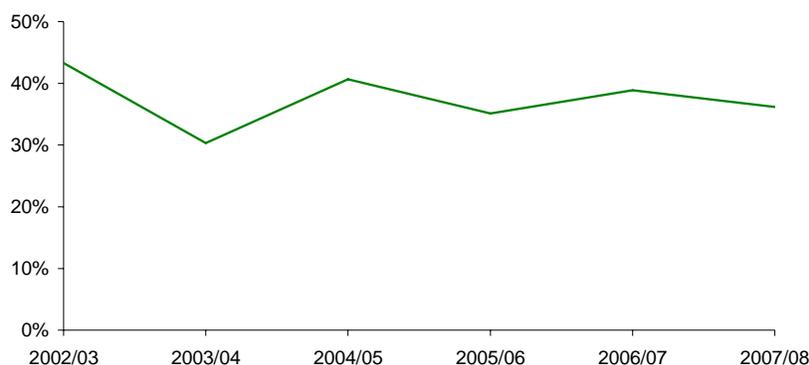
Open competition for appointments to SCS posts (Band 2 and above)

	Civil service	Wider public sector	Private sector	Total	Civil service	Wider public sector	Private sector
1997/98	27	36	20	83	33%	43%	24%
1998/99	32	44	31	107	30%	41%	29%
1999/00	55	59	44	158	35%	37%	28%
2000/01	77	98	27	202	38%	49%	13%
2001/02	77	86	37	200	39%	43%	19%
2002/03	29	26	42	97	30%	27%	43%
2003/04	43	19	27	89	48%	21%	30%
2004/05	37	17	37	91	41%	19%	41%
2005/06	42	30	39	111	38%	27%	35%
2006/07	35	20	35	90	39%	22%	39%
2007/08	43	24	38	105	41%	23%	36%

Note: From 16 July 2002 Civil Service Commissioners ceased to have responsibility for SCS posts at bands 1 and 1A
Source: Civil Service Commissioners

There have been no clear trends in the distribution of SCS appointees by source since 2002/03 (the time span for a consistent series). As demonstrated by the chart below, the proportion recruited from the private sector since then has been flat.

Private sector recruits to SCS posts in open competition
Bands 2 and above only from 2002/03



- Private sector appointees exceeded those from within the civil service in 2002/03 and equalled them in 2004/05 and 2006/07.

The table below shows internal and external appointments to SCS posts (including the lower 1 and 1A grades) by grade in recent years:

Internal and external appointments to the SCS by grade 2005-2008					
Pay band	2005	2006	2007	2008	Total 05-08
Internal promotion					
1	262	375	284	363	1,284
1A	31	29	23	29	112
2	88	107	43	107	345
3	17	18	13	23	71
Total	398	529	363	522	1,812
External joiner					
1	91	86	98	78	353
1A	4	5	5	7	21
2	27	39	32	30	128
3	11	5	9	9	34
Total	133	135	144	124	536
% external					
1	26%	19%	26%	18%	22%
1A	11%	15%	18%	19%	16%
2	23%	27%	43%	22%	27%
3	39%	22%	41%	28%	32%
Total	25%	20%	28%	19%	23%

Source: Government evidence to the Senior Salaries Review Body, 2008

- 23% of SCS recruits in the past four years have been external appointments. In 2008, it was 19%.
- External recruitment is concentrated at the highest levels of the SCS.

List of Recommendations

Chapter 2: Policy Formation

- R1: Departments should ensure, and Ministers should insist on, consistently high standards of policy formation.
- R2: The government's consultation criteria should be expanded to become a more complete guide to good practice. Governments should provide guidance to departments and service deliverers on ways in which consultation techniques can be used to help representative democracy to work reliably and without bias at local and national level.
- R3: Policy should be based on evidence and analysis and draw on relevant experience from the front line. Departmental expertise in commissioning and using relevant research should be strengthened. Departments should use research not only in setting targets and assessing performance but also in identifying and anticipating longer term trends.
- R4: Systematic evaluation should be an established part of policy making, and the tests and methods to be used in assessing the success of the policy should be decided at the same time as the policy itself and published.

Chapter 3: The Centre of Government

- R5: There should be a published statement which sets out the duties of ministers and the Cabinet Secretariat in the preparation and submission of proposals to the Cabinet or to Cabinet Committees. An illustrative draft of Ministerial Guidance is at Annex A. The Cabinet Committee which considers a proposal for a new policy should check that it has complied with the required standards of preparation.
- R6: Departmental post-legislative reports to Parliament should form part of a systematic review of the implementation of policy proposals.
- R7: There is a range of mechanisms available to enable departments to work together to tackle cross-cutting issues, including in particular the use of Cabinet Committees to give leadership and exercise oversight. The structure and membership of Committees should be such that they are able to deal effectively with cross-cutting issues, including those covered by PSAs. Governments should be prepared to use pooled budgets more frequently. Select Committees should not allow their department-facing structure to prevent them from addressing cross-cutting issues and PSAs in particular.
- R8: Confidence between the Centre and departments needs to be strengthened, and the Centre's involvement in departments' day-to-day operations reduced to a demonstrably necessary minimum which avoids over-centralisation of decision making and recognises the responsibility of Secretaries of State to Parliament for the actions of their departments.
- R9: Changes in the machinery of government should not be entered upon lightly or too often. Any proposals for substantial changes in the machinery of government or the structure of public services should be subject to the same principles and procedures as apply to other major changes of policy or legislation. Frequent movement of ministers and senior staff should where possible be avoided.

Chapter 4: Legislation

- R10: The Cabinet Committee which considers a proposal for new legislation should satisfy itself that legislation is genuinely needed and that the proposal meets the required standards of preparation and explanation and satisfies the principles of good legislation. Legislation Committee should make a final check at the point when it approves the Bill for introduction.
- R11: Bills should normally be published in draft to allow time for pre-legislative scrutiny and other discussion before they are formally introduced.
- R12: Government should adopt the aim of limiting new Bills to their essential purposes and to a volume compatible with thorough parliamentary scrutiny without automatic guillotining in the Commons. The objective should be that Parliament should do less through legislation but do it better.
- R13: Parliament should insist that Bills are prepared and presented in accordance with formalised standards and procedures that allow time for thorough scrutiny. Before a Bill is introduced into Parliament the appropriate Cabinet Office minister should issue a certificate that the requirements have been observed.
- R14: Impact assessments containing estimates of cost-benefit and net fiscal impact of all Bills and major policy or machinery of government changes should be available before they are presented to Parliament. Normally the assessments should be part of the relevant white paper or other explanatory document.
- R15: When a Bill contains powers to be exercised through secondary legislation, the pre-publication material on the Bill should set out what cases or circumstances any SI is expected to deal with and the principles it should follow. Where possible, drafts of the proposed delegated legislation should be available to Parliament when it considers the Bill.

Chapter 5: Strengthening Parliament

- R16: As recommended in the Wright Committee report, select committee members and chairs should be elected and Backbench and House Business Committees established, with the changes taking effect at the beginning of the next Parliament.
- R17: The standards for thorough preparation and presentation to Parliament of Bills and other major proposals by the Executive should be formalised by a Parliamentary Resolution or a government commitment endorsed by Parliament. An illustrative draft Resolution is at Annex C.
- R18: Parliament should establish a mechanism for monitoring compliance with the standards, perhaps by means of a review by select committees of legislative and other proposals from the Executive before they reach the floor of the House.
- R19: Government should co-operate with Parliament to enable scrutiny of legislation to be made more rigorous.
- R20: Arrangements should be made for some continuity of membership between the select committee which has considered the issues at the stage when the policy was being formed (or has examined the Bill in draft) and the Public Bill committee which will consider the Bill in the Commons.

- R21: Better opportunities should be developed for select committee reports to be presented in the Commons, including provision for committees to propose substantive motions to the House. Select committees should have more effective powers to call for government papers, for example business cases and risk assessments.
- R22: The extra pay received by MPs who chair select committees should be increased to at least the amount for a junior minister, or perhaps to the pay of a Minister of State.
- R23: The range of skills of staff supporting select committees should be strengthened so as to improve the speed, depth and range of their investigations.
- R24: Post-legislative scrutiny of Acts by the relevant select committee should become the norm.
- R25: Ways of providing Parliament with advice about fiscal sustainability in time to allow MPs to absorb it before the main votes on the budget proposals should be considered. The timetable of the budget proposals, the provision of such new advice and the key votes should be reviewed accordingly.
- R26: On tax, there should be a genuine Green Budget, separating changes in tax rates from new taxes and providing draft clauses on new taxes, all reaching Parliament at least as early as the present Pre-Budget Report.
- R27: As recommended by the Liaison Committee the Government should provide Parliament with more information than it did in 2007 about the framework and themes of the next Comprehensive Spending Review. In the annual process the relevant Select Committees should provide a commentary which the House would have when it considered the Executive's proposed plans for total spending and its allocation.
- R28: Parliament should require from ministers a written explanation and business case for major changes in the machinery of government, with an opportunity for a debate and a vote.

Chapter 6: Delivery and Organisation

- R29: More attention is required to the skills and qualifications needed at the centre of departments for commissioning and performance managing services from the range of bodies charged with delivery.
- R30: Departments should focus on developing policy and monitoring performance rather than day to day operations; they should limit the bureaucratic demands which they impose on service providers, keep to a minimum the number of staff involved in the process, and respect the providers' professional and managerial judgment.
- R31: Departmental governance should be strengthened. The roles and access to ministers of non-executive directors should be clarified.
- R32: Special attention should be paid to the maintenance, preservation and accessibility of departmental records.
- R33: Ministers and staff taking up new responsibilities or entering new areas of work should gain some understanding of the background and history. Governments should make systematic provision for Ministers' induction and training for the positions to which they are appointed, and provide for more continuity in post.

Chapter 7: The Civil Service

- R34: Effective decision making and implementation are most likely to be achieved if the process in support of ministers is managed by a politically impartial civil service
- R35: The Ministerial Code should be amended to contain an explicit duty to give civil servants the opportunity to provide informed and impartial advice before decisions are taken and to require ministers to give such advice fair consideration and due weight. That principle should be given parliamentary force, alongside the reciprocal obligations of the civil service set out in the Civil Service Code.
- R36: The values of the civil service are important and need to be embedded. The Civil Service Commission should have power itself to initiate inquiries into the working of the Civil Service Code and other matters, and should not be limited to reacting to complaints or require the government's agreement before doing so.
- R37: There should be greater transparency over the roles, knowledge and experience of those appointed as special advisers, and constraints over the number of or budget for special advisers.
- R38: Ministerial involvement in the recruitment and selection of civil servants should continue on the present basis rather than be extended; more needs to be done by the civil service to tackle poor performance at all levels.
- R39: It is important that the PSG programme is followed through, unlike some of its predecessors. Much more attention is needed to succession planning and to the balance between internal promotion and external recruitment at senior levels so that departments have the necessary skills, experience and corporate memory.