



# Civil Servants, Ministers and Parliament

## Contents, Background, History & Further Reading

### Contents

This book describes the constitutional and ethical framework which governs the behaviour of UK civil servants. This is often referred to as *the Westminster Model* of government<sup>1</sup>.

The first three chapters list all the main ethical rules, and offer practical advice to currently serving officials.

The fourth chapter considers what civil servants should do (if anything) if Ministers do not take their advice, or if Ministers appear to be 'behaving badly'.

The fifth chapter discusses the many pressures on, and criticisms of, *the Westminster Model*. The sixth chapter describes how civil servants may, as a result, be becoming increasingly accountable to Parliament.

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<sup>1</sup> This phrase is useful for many purposes but it has no precise or widely agreed definition.

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# Chapter 1 - Background, History & Further Reading

## 1.1 Introduction

The culture of the Civil Service is quite unlike that of any other organisation in the UK. Civil servants are expected to be highly professional 'serial monogamists':- intensely loyal to their current Ministers but ready to switch allegiance whenever there is a change of government. And they are simultaneously expected to respect the vital role of Parliament.

This relationship between civil servants, Minister and Parliament was admired - and emulated, to a greater or lesser extent, in many other countries. It still has its admirers but it also nowadays has many critics who argue that it is outdated and not fit for the modern world. The first three chapters of this book accordingly describe the culture and ethics of the Civil Service as summarised in the Civil Service Code and elsewhere. The remainder of the book discusses what seems to be going wrong, and what might be done about it.

To set the scene, this extract from a 1949 *Handbook for the New Civil Servant* very nicely summarises the way in which the working methods of all civil servants - not just those in Whitehall - were designed so as to facilitate impartiality and accountability to Parliament.

The first thing that strikes many people, when they come into a Government office for the first time, is the importance that the Civil Service attaches to papers - files, memoranda, written records of all kinds. A good deal of the work of the Civil Service, of course, is done by telephone or by personal conversation, but you will find that anything important or new has to be recorded on paper somewhere, sooner or later; and in all probability a large part of your work will consist of dealing with papers – reading them and writing them.

You may think this is a slow and cumbrous way of doing things; but there are two reasons for it. The first is the Parliamentary system of government. Parliament has the right to inquire into any action taken by a Government Department, and a Parliamentary Question may be asked at short notice, perhaps a long time after the event, perhaps in absence of the civil servant who actually took that particular action. So that Parliament may get the information, it is essential that there should be a written record of the action and, as far as possible, of the reasons for it.

Secondly, the written record is necessary to preserve the impartiality of the Civil Service to the public. The Civil Service cannot, as a private business sometimes may, give one customer a bargain and make up for it by charging another customer extra; it has to deal with all on the same terms. Therefore, there must be a written record of what has been done in the past, so that it may be done again in the future when the same problem arises. That does not mean that the Civil Service is bound by precedent. Very often there will be no precedent, in other cases it is clearly right to modify earlier policy. But this should be done not by intuition but deliberately after considering what previous practice has been.

Another thing that may strike you is that very few problems seem to be settled by one person alone: the papers may sometimes pass through several hands before a letter is answered or a decision given. This is partly due to the need for looking at the records – a job which is done by the juniors – partly because very often a subject will concern more than one branch of a Department. The process need not cause delay and is essential if there is to be a consistent policy.

From the very first you must learn to be precise and honest in your work. You must fully appreciate the problem to be solved; you must then collect and check all the relevant facts, and set them out clearly and fairly. Don't take anything for granted: there is always more than one point of view, and it may be dangerous to accept somebody else's statement without verifying it for yourself. Don't be lazy and try to pass off a guess as an accurate figure or statement; it may not be questioned, but if it is you must be prepared to justify it. If you see a snag, or a difficulty, or a point which you don't understand, don't ignore it in the hope that nobody else will spot it; it is your job to straighten it out, or if you can't, at least to point it out to your chief and let him deal with it. Whatever shortcomings civil servants may have, they must never be found wanting in this kind of honesty.

Moreover, you must be accurate. You must learn the importance of using words in their exact meanings, so that they convey, to somebody you have never seen, exactly what you intend to convey, and not just something roughly approximating to it. If there is any ambiguity in your phrasing somebody is sure to misunderstand; so say what you mean, simply and clearly. Keep your sentences short and avoid officialese. Read "Plain Words," the book by Sir Ernest Gowers, published by the Stationery Office at 2s<sup>2</sup>.

Seventy years later, there is less emphasis on accountability to Parliament and rather more on civil servants' 'first and foremost' duty to serve their departmental Ministers.

There remains, though, significant emphasis on the need for propriety. Here is one commendably brief instruction:

- Don't bend or break the rules
- Put in place and follow clear procedures
- If approval is needed, get it first
- Don't allow a conflict of interest to appear to affect a decision
- Don't use public money for private benefit
- Be even-handed
- Record the reasons for decisions

How did this culture and these rules develop? The rest of this chapter summarises the history of what is often referred to as the Westminster Model of Government, beginning with a summary of the constitution of the United Kingdom in so far as it affects the Civil Service. Later chapters go into more detail.

## 1.2 The UK Constitution

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<sup>2</sup> '2s' means 2 shillings = 24p. Rebecca Gowers, Sir Ernest's great-granddaughter, has created a new edition of 'Plain Words', updating it to reflect modern English usage.

Although often referred to as 'unwritten', most of the UK's constitution is clearly set out in writing. A 2021 blog by David Allen Green<sup>3</sup> provided links to four places where large parts of the constitution can be found, including *the Cabinet Manual*, *The Judge over your Shoulder*, and *Erskine May*.

In short, our constitution attributes power to Parliament, to the Executive, and to the Courts. The relative power of each body varies with the subject matter<sup>4</sup>.

The United Kingdom is a Parliamentary (rather than Presidential) democracy. *The Crown in Parliament* is sovereign<sup>5</sup>. An Act of Parliament - following royal assent - is the supreme law of the land<sup>7</sup>.

It would be hard to improve on these words of Lady Hale and Lord Reed in the UK Supreme Court:

"Let us remind ourselves of the foundations of our constitution. We live in a representative democracy. The House of Commons exists because the people have elected its members. The Government is not directly elected by the people (unlike the position in some other democracies). The Government exists because it has the confidence of the House of Commons. It has no democratic legitimacy other than that. This means that it is accountable to the House of Commons - and indeed to the House of Lords - for its actions, remembering always that the actual task of governing is for the executive and not for Parliament or the courts."

Put less elegantly:- legitimacy and democracy are maintained because Ministers are answerable to Parliament, and the House of Commons is elected by the people. Subject to complying with the laws made by Parliament, day to day decisions are taken by Ministers (and if necessary by the whole Cabinet) and implemented by a politically neutral Civil Service.

Put shortly, therefore, there is a simple chain of command:

- Civil servants are accountable to Ministers.
- Ministers are accountable to Parliament.
- Members of Parliament are accountable to their constituents.

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<sup>3</sup> [https://www.civilservant.org.uk/library/2021-David-Allen-Green-The\\_UK's\\_Written\\_Constitution.pdf](https://www.civilservant.org.uk/library/2021-David-Allen-Green-The_UK's_Written_Constitution.pdf)

<sup>4</sup> Citizens' fundamental rights and legal duties do not necessarily derive from Parliamentary enactments. The 2019 *Miller* Supreme Court judgment on the prorogation of Parliament showed that there can be rare occasions when Parliament is constitutionally so weak that it requires the protection of the courts.

<sup>5</sup> But nothing else done by parliament is '*sovereign*'. For example: a parliamentary resolution or standing order binds only parliament (if at all). And statutory instruments can be struck down by the courts as *ultra vires* the parent Act of Parliament.

<sup>6</sup> Note, too, that there are two sovereignties - Lord Bridge:- "*In our society the rule of law rests upon twin foundations: the sovereignty of the Queen in Parliament in making the law and the sovereignty of the Queen's courts in interpreting and applying the law.*"

<sup>7</sup> A decision by a UK Government to sign an international treaty does not create rights and duties in national law which are enforceable in UK courts. Only UK legislation can create or revoke such rights and duties. European Union law was accordingly incorporated into UK law by the European Communities Act 1972. That legislation could not and did not fetter the ability of successor Parliaments to revoke or amend the 1972 legislation.

### 1.2.1 Edmund Burke and T H Green

18th Century philosopher Edmund Burke argued that Members of Parliament (MPs) should act as representatives, not delegates. Burke himself said the following to his constituents, having been returned as an MP:

*"Your representative owes you, not his industry only, but his judgment; and he betrays instead of serving you if he sacrifices it to your opinion."*

In other words, MPs should act in what they judge to be the public interest - not as advocates for the interests of their constituents and therefore not necessarily in the way that their constituents might wish them to vote, nor even necessarily in the interests of their own constituency.

(It is worth noting, however, that Burke decided, six years later, that he would not seek re-election rather than lose the forthcoming vote, thus showing that no MP can completely ignore the views of his constituents and hope to be re-elected.)

Building on Burke's model, the 19th Century idealist T H Green described an ethical framework in which civil servants behave with integrity in order to deliver good government. Green argued that, as politicians are inevitably subject to short term and selfish pressures, there needs to be a unified administration in which officials ensure the common good or public interest. To do this, they must be **politically neutral** and must demonstrate pecuniary and moral integrity. They must not be motivated by the desire to make money.

### 1.2.2 Northcote Trevelyan Reforms

The other major 19th Century development was the 1854 Northcote Trevelyan Report<sup>8</sup> on *the Organisation of the Permanent Civil Service*. The authors were responding to pressure for change arising from 'the great and increasing accumulation of public business, and the consequent pressure on the Government.'

The authors recommended that civil servants should be appointed on merit through open competition, rather than patronage, with the following core values:

- Integrity
- Honesty
- Objectivity and
- Impartiality – including (again) **political impartiality**.

The increasing emphasis on political impartiality was then to some extent codified in 1884 when the Gladstone Government determined, in an Order in Council, that 'a civil servant standing for election in a constituency must resign his post when he announces himself as a candidate'.

### 1.2.3 The Haldane Report

The next major development was the 1918 Haldane Report<sup>9</sup>, following the First World War, which recommended the development of deep partnerships between Ministers and officials so as

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<sup>8</sup> [https://www.civilservant.org.uk/library/1854\\_Northcote\\_Trevelyan\\_Report.pdf](https://www.civilservant.org.uk/library/1854_Northcote_Trevelyan_Report.pdf)

<sup>9</sup> [https://www.civilservant.org.uk/library/1918\\_Haldane\\_Report.pdf](https://www.civilservant.org.uk/library/1918_Haldane_Report.pdf)

to meet the more complicated requirements of busier government as substantial executive ministries emerged from the first world war.

The report's impact came through two closely-linked ideas:

- Government required investigation and thought in all departments to do its job well: 'continuous acquisition of knowledge and the prosecution of research' were needed "to furnish a proper basis for policy". Gone were the days when key decisions could draw only on the expertise of Ministers, MPs and outside opinion. Ministers could not provide an investigative and thoughtful government on their own. Neither could civil servants, but a partnership between both could do so.
  - Haldane did not spell out how such investigation and thought were to be developed, except to recommend they should be based on a split of functions between government departments which essentially has continued to this day.
- The partnership should be extended from the cluster of officials round a Minister, typical of 19th century government, to embrace whole departments as the repositories of relevant knowledge and opinion.

The relationship between civil servants and Ministers thus became one of **mutual interdependence**, with Ministers providing authority and officials providing expertise. This 'Haldane Convention' encapsulates the notion that civil servants have an indivisible relationship with their departmental Ministers, quite different to many other models of government around the world, which are often based on separation of powers.

As a result, the UK Civil Service has no 'constitutional personality' or any responsibility separate from the Government of the day. It is there to provide the Government with advice on the formulation of the policies, to assist in carrying out the Government's decisions, and to manage and deliver Government services. Civil servants therefore ... :

- ... cannot express their own opinions, even in court or in front of a Parliamentary committee,
- ... must loyally carry out Ministers' decisions with precisely the same energy and good will, whether they agree with them or not,

## Commentary

Perhaps the most striking thing about Haldane's convention is that there has been no attempt to replace or improve it despite the huge changes that have taken place over the last 100 years. The consequences are quite profound.

The priority attached to political impartiality, for instance, has left little room for non-Civil Service appointments within government. There may now be more political appointees than in previous years but, even today, the number of such Special Advisers is strictly limited. Ministers do, however, receive much policy and political advice from outside their departments, including from constituents, party members the media and think tanks.

We have, as result, avoided the problems that are so apparent within the American constitution where 2,000 senior posts are Presidential appointments with the result that many candidates have few relevant qualifications and little relevant experience, and many posts remain open long after the arrival of a new President. The UK system also reduces (but does not entirely eliminate) the dangers of groupthink.

I have seen it argued that the UK diverged from the USA immediately after the First World War when President Woodrow Wilson wanted to ensure that, when civil servants exercised discretion, their decisions were the legitimate expression of the President. The UK answer is to ensure that civil servants are so close to Ministers that they know their minds so well that they take the same decisions that Ministers would take, given the law and the substance of the relevant government policy. This is the reason why civil servants are almost always present when Ministers meet their colleagues to discuss policy and when Ministers meet others in 'official' meetings. They listen into Ministerial phone calls, take notes of meetings and debrief those who need to know. Ministers cannot reach decisions in private, with each other or with someone else - nor can officials.

Wilson's alternative answer was a rules-based administration tied down to the greatest extent possible by detailed rules. I understand that such rules are now published annually and run into thousands of pages. Wilson's approach required the greatest possible separation of functions between politicians and officials, the latter taking decisions on specific cases so as to ensure that political interests (and corruption) did not influence administrative decisions. This separation has been eroded by the politicisation of the top levels of the US executive (see above). Wilson was an admirer of Northcote-Trevelyan and had hoped to administer government through a wholly merit-based Civil Service, but the US spoils system was too strong.

In practice, each part of the federal bureaucracy came to make the rules for itself because politicians did not have the time to do so. And then, as American politicians were also not very interested in holding officials to account, effective accountability was (and remains) to the courts rather than to the President or Congress. All US courts, and particularly the American Supreme Court, appear to be much more 'political' than their UK counterparts.

It appears that the UK may be going the same way. Ministers are increasingly using secondary legislation to implement major policies, and the courts seem increasingly drawn into holding the executive to account. The Supreme Court prorogation<sup>10</sup> and Rwanda<sup>11</sup> decisions are perhaps good examples of this.

Another consequence of Haldane is that civil servants are not allowed to openly support their Minister's policies. It is of course the case that no employee - public or private sector - can expect to be allowed (publicly) to criticise his or her employer's policies. But civil servants aren't allowed to praise them either. This is because the Government's policies might change overnight - under a new Prime Minister, for instance - whereupon previous support for policy A would overnight become seen as criticism of replacement policy B.

It also follows that civil servants cannot be directly questioned about Ministers' policy decisions, thus greatly constraining the effectiveness of Parliamentary inquiries. .

Finally, Manchester University's Dave Richards and York University's Martin Smith offered this interesting analysis:-

... the British system of government is seen to embody a system not of formally codified rules but instead one of advice - determined by the constitutional principle that [Prime]

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<sup>10</sup> <https://www.supremecourt.uk/cases/docs/uksc-2019-0192-summary.pdf>

<sup>11</sup> <https://www.supremecourt.uk/cases/docs/uksc-2023-0093-press-summary.pdf>

Ministers act as advisers to the sovereign, having in turn been advised by civil servants. It is based on the convention that officials are in a position to advise a Minister on a subject (free from the threat of fear or favour) and as such, there is no requirement for the separation of power between the political and administrative class. This is the antithesis of the US 'Wilsonian model' or many other European models of government that are premised on more pluralistic sentiments and a separation of powers.

Constitutionally then, the Haldane convention does not recognise any division in the personality of Ministers and their officials. This principle of both indivisibility and mutual dependence within the UK system is seen as providing both a practical and constitutional constraint to protect against the arbitrary (ab)use of power. This convention became a bedrock of the Westminster model. It established the *modus operandi* that officials and Ministers should operate in a symbiotic relationship whereby Ministers decide after consultation with their officials whose wisdom, institutional memory and knowledge of the processes of governing helps to guide the Minister. The official is loyal to the Minister who takes the rap when things go wrong. Whatever the problems with this approach, democratic or otherwise, it at least outlined clear lines of responsibility and accountability.

Ministers were the ones held to account even if they often evaded the responsibility. Of course, scratch below the surface and the constitutional niceties of the Minister-civil servant relationship have of course proved at times fractious. The Wilson Government's suspicion and criticism of Whitehall moved it to establish Fulton<sup>12</sup>, although infamously of course the Haldane principle was left strictly off-limits. Heath's reorganisations in the early 1970s was an asserted attempt at Ministerial muscle flexing, but Whitehall was not shy in kicking-back. The Benn side-show during the 1970's Labour Government offered some entertaining spats when first in Industry, then in Energy, he challenged the standard operating procedures within Whitehall, so boo-hooing Haldane. But beyond these skirmishes, it is really only since the 1980s, that the Haldane model has been gradually, and largely implicitly, undermined.

This undermining is discussed in the final two chapters of this book.

#### 1.2.4 Crichel Down

This was a 1950s controversy following Prime Minister Winston Churchill's promise that certain land requisitioned for wartime use would be sold back to its former owners after the war. Crichel Down had instead been transferred to the Ministry of Agriculture who greatly increased the price at which they were willing to sell it. The previous owners were furious and the subsequent public inquiry revealed maladministration by civil servants without the knowledge of their Minister. This nevertheless led to the resignation of the Secretary of State for Agriculture (Sir Thomas Dugdale), the first Ministerial resignation since 1917.

The decision of the Minister to resign emphasised the notion that civil servants were ultimately accountable to their Ministers, and the Minister in turn to Parliament, rather than having distinct responsibilities themselves.

The Home Secretary then used the affair to identify Ministerial accountability in this way:

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<sup>12</sup> [https://www.civilservant.org.uk/csr-fulton\\_report-findings.html](https://www.civilservant.org.uk/csr-fulton_report-findings.html)

- A Minister must protect a civil servant who has carried out an explicit order by the Minister.
- A Minister must protect and defend a civil servant who acts properly in accordance with the policy laid down by the Minister.
- Where an official makes a mistake or causes some delay, but not on an important issue of policy and not where a claim to individual rights is seriously involved, the Minister acknowledges the mistake and accepts the responsibility, although he is not personally involved, and states that he will take appropriate corrective action in the department. The Minister would not expose the official to public criticism.
- Where action has been taken by a civil servant of which the Minister disapproves and has no prior knowledge, and the conduct of the official is reprehensible, there is no obligation on the part of the Minister to endorse what he believes is wrong or to defend what are clearly shown to be errors of his officials. But the Minister remains constitutionally responsible to Parliament for the fact that something has gone wrong, and the Minister alone can tell Parliament what has occurred.

### 1.3 The Armstrong Memorandum

The (lengthy) Armstrong Memorandum<sup>13</sup>, first published in 1985, summarises the duties and responsibilities of civil servants. The most important parts read as follows:

- Civil servants are servants of the Crown. For all practical purposes the Crown in this context means and is represented by the Government of the day. ... The Civil Service as such has no constitutional personality or responsibility separate from the duly constituted Government of the day. It is there to provide the Government of the day with advice on the formulation of the policies of the Government, to assist in carrying out the decisions of the Government, and to manage and deliver the services for which the Government is responsible....
- The Civil Service serves the Government of the day as a whole, that is to say Her Majesty's Ministers collectively, and the Prime Minister is the Minister for the Civil Service. The duty of the individual civil servant is first and foremost to the Minister of the Crown who is in charge of the Department in which he or she is serving.\*
- The basic principles of accountability of Ministers and civil servants are [as follows]:
- Each Minister is responsible to Parliament for the conduct of his Department, and for the actions carried out by his Department in pursuit of Government policies or in the discharge of responsibilities laid upon him as a Minister.
  - A Minister is accountable to Parliament, in the sense that he has a duty to explain in Parliament the exercise of his powers and duties and to give an account to Parliament of what is done by him in his capacity as a Minister or by his Department.
  - Civil servants are responsible to their Ministers for their actions and conduct.
  - The British Civil Service is a non-political and professional career service subject to a code of rules and disciplines. Civil servants are required to serve the duly constituted Government of the day, of whatever political complexion. It is of the first importance that civil servants should conduct themselves in such a way as to deserve and retain the confidence of Ministers, and to be able to establish the same relationship with those whom they may be required to serve in some future Administration. That confidence is the indispensable foundation of a good

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<sup>13</sup> [https://www.civilservant.org.uk/library/1996\\_Armstrong\\_Memorandum.pdf](https://www.civilservant.org.uk/library/1996_Armstrong_Memorandum.pdf)

relationship between Ministers and civil servants. The conduct of civil servants should at all times be such that Ministers and potential future Ministers can be sure that confidence can be freely given, and that the Civil Service will at all times conscientiously fulfil its duties and obligations to, and impartially assist, advise and carry out the policies of, the duly constituted Government of the day.

- The determination of policy is the responsibility of the Minister (within the convention of collective responsibility of the whole Government for the decisions and actions of every member of it). In the determination of policy the civil servant has no constitutional responsibility or role distinct from that of the Minister. ... It is the duty of the civil servant to make available to the Minister all the information and experience at his or her disposal which may have a bearing on the policy decisions to which the Minister is committed or which he is preparing to make, and to give to the Minister honest and impartial advice, without fear or favour, and whether the advice accords with the Minister's view or not. Civil servants are in breach of their duty, and damage their integrity as servants of the Crown, if they deliberately withhold relevant information from their Minister, or if they give their Minister other advice than the best they believe they can give, or if they seek to obstruct or delay a decision simply because they do not agree with it. When, having been given all the relevant information and advice, the Minister has taken a decision, it is the duty of civil servants loyally to carry out that decision with precisely the same energy and good will, whether they agree with it or not.
- Civil servants are under an obligation to keep the confidences to which they become privy in the course of their work; not only the maintenance of the trust between Ministers and civil servants but also the efficiency of government depend on their doing so.
- When a civil servant gives evidence to a Select Committee on the policies or actions of his or her Department, he or she does so as the representative of the Minister in charge of the Department and subject to the Minister's instructions ... and is accountable to the Minister for the evidence which he or she gives. The ultimate responsibility lies with Ministers, and not with civil servants, to decide what information should be made available, and how and when it should be released, whether it is to Parliament, to Select Committees, to the media or to individuals. It is not acceptable for a serving or former civil servant to seek to frustrate policies or decisions of Ministers by the disclosure outside the Government of information to which he or she has had access as a civil servant.

\*It is worth noting that many felt that the second bullet point went too far in down-playing the importance of the Cabinet. Geoffrey Chipperfield, for instance, thought that ...

*'[It was] misleading in its emphasis that, for all practical purposes, the official's boss was his/her Secretary of State. While that was true generally, it downplayed the importance of consensual cabinet agreement and responsibility, and the need, in order to support this, for officials to work with their opposite numbers in other departments and share information. In particular it was important for officials to realize that instructions from their Minister not to consult or share information with other Departments was offending against cabinet government.'*

## 1.4 The Osmotherly Rules

The final element of my above summary of the Armstrong Memorandum concerns officials giving evidence to Parliament. This instruction must be read in conjunction with the Osmotherly Rules<sup>14</sup>, first published a few years earlier in 1980.

Put shortly, officials are allowed to describe and explain the reasons which caused Ministers to adopt existing policies but they should not give information which undermines collective responsibility nor get into a discussion about alternative policies. In particular, they are not allowed to divulge:

- advice given to Ministers by officials;
- information about interdepartmental exchanges on policy issues, the level at which decisions were taken, or the manner in which Ministers consulted their colleagues;
- the private affairs of individuals, including constituents;
- sensitive commercial or economic information, and
- information about negotiations with other governments or bodies such as the European Commission.

When a civil servant gives evidence to a Select Committee on the policies or actions of his or her Department, he or she does so as the representative of the Minister in charge of the Department and subject to the Minister's instructions ... and is accountable to the Minister for the evidence which he or she gives. The ultimate responsibility lies with Ministers, and not with civil servants, to decide what information should be made available, and how and when it should be released, whether it is to Parliament, to Select Committees, to the media or to individuals.

Note, however, that senior officials have recently become entitled to refuse to sign off plans which they regard as unrealistic, and they are held directly accountable for the successful delivery of those plans which they have signed off as realistic. Further information is in chapter 6.

## 1.5 The Carltona Principle

This is the legal principle under which civil servants exercise power on behalf of Ministers. Secretaries of State (etc.) are responsible for the way in which their decisions are exercised by their officials, but they are not required to have attended personally to every one of them.

The case most often cited as authority for the proposition that a person may authorise another to exercise a power for and on his or her behalf is *Carltona Ltd v Commissioners of Works* 1943. This was a wartime case dealing with the requisition by the Government of a factory which manufactured food products. In *Carltona*, the English Court of Appeal considered whether a Minister had to exercise personally a power to take possession of land, or whether the power could be exercised by one of the Minister's departmental officials for and on behalf of the Minister. The court concluded that the power in question could be exercised by a departmental official for and on behalf of the Minister. The court's reasoning indicates that there are two grounds which justify a Minister being able to authorise an officer to exercise a power vested in the Minister:

- the Minister is ultimately responsible to Parliament for the decision of an authorised officer; and

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<sup>14</sup> [https://www.civilservant.org.uk/library/2014\\_Osmotherly\\_Rules.pdf](https://www.civilservant.org.uk/library/2014_Osmotherly_Rules.pdf)

- in modern government, Ministers have so many functions and powers that administrative necessity dictates that they act through duly authorised officers.

Note, however, that this principle was eroded somewhat by the 2020 decision that the imprisonment of former leader of Sinn Fein, Gerry Adams, had been unlawful because it had been approved by a junior Minister instead of by the Secretary of State in person. The longer term consequences of this decision remain to be seen.

Note also that a person exercising a power for and on behalf of another does so as the ‘agent’ or ‘alter ego’ of the person in whom the power is vested. The act of the authorised person is therefore, at law, the act of the person in whom the power is vested. This is fundamentally different to the act of a delegate which, at law, is the delegate’s and not the delegator’s act.

## 1.6 The Seven Principles of Public Life ('The Nolan Principles')

The Seven Principles of Public Life were promulgated in 1995 by Lord Nolan in the first report of *the Committee on Standards in Public Life*. They encapsulate the values and behaviour appropriate to the whole of the public sector, and apply as much to the Civil Service as to other holders of public office.

- Selflessness:- Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their families or their friends.
- Integrity:- Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- Objectivity:- In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards or benefits, holders of public office should make choices on merit.
- Accountability:- Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Openness:- Holders of public office should be as open as possible about the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- Honesty:- Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- Leadership:- Holders of public office should promote and support these principles by leadership and example.

## The Civil Service Code

Much of the above is brought together in the Civil Service Code<sup>1516</sup> which was first published in 1996. This important document is discussed in great detail in chapters 2 and 3.

<sup>15</sup> [https://www.civilservant.org.uk/library/2015\\_civil\\_service\\_code.pdf](https://www.civilservant.org.uk/library/2015_civil_service_code.pdf)

<sup>16</sup> There are slightly different versions for the Home Civil Service, the Diplomatic Service, and the Devolved Administrations - Scotland, Wales and Northern Ireland.

The code was later given legal force by *the Constitutional Reform and Governance Act 2010* (The CRaG Act).

## 1.7 Ministers' Duties

Ministers owe these three important duties to their civil servants:

First, Ministers may not ask civil servants to do things which are illegal or improper (such as spending public money without proper approval).

Second, they must consider officials' advice, even if they do not take it. They cannot therefore take a policy decision without first giving officials an opportunity to advise them on the suitability of their proposed course of action. The Ministerial Code<sup>17</sup> says that 'Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants'.

Third, Ministers may not ask officials to hide information from other interested officials, nor from Cabinet Ministers, in their own or other departments, nor may they ask officials to help circumvent collective discussion, for instance by announcing a 'decision' whilst a Cabinet colleague remains opposed to it.

This third duty is important because it underpins collective Cabinet government. Ministers often compete with one another as they seek promotion or when promoting their pet policies. But the quality of policy- and decision-making quickly deteriorates if Cabinet colleagues - and in particular the Chancellor and No.10 - are kept in the dark.

It is of course sometimes sensible to work up a proposal before showing it to colleagues. But officials may not collude in a 'bounce' and if they feel that colleagues in another department would expect to be told about a proposal, then they must tell them. Civil servants may therefore not support freelancing – actions of individual Ministers or small groups that do not have the sanction of the government as a whole. But officials may support the Prime Minister if (s)he wishes to establish a small secret group to focus on a sensitive issue.

It is also worth noting that the Ministerial Code says that Ministers have an overarching duty 'to comply with the law'. A reference to 'international law' was removed during one update of the code but the Cabinet Office, when challenged, said that the previous reference to international law had been unnecessary as it was subsumed within the definition of law.

## 1.8 Official Guidance & Further Reading

The indivisibility and mutual dependence of Ministers and civil servants mean that officials must also work within the laws, conventions and rules summarised in:

- The Cabinet Manual<sup>18</sup>,
- The Ministerial Code<sup>19</sup>, and

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<sup>17</sup> <https://www.civilservant.org.uk/library/2019-MINISTERIAL-CODE-FINAL.pdf>

<sup>18</sup> [https://www.civilservant.org.uk/library/2011\\_cabinet-manual.pdf](https://www.civilservant.org.uk/library/2011_cabinet-manual.pdf)

<sup>19</sup> [https://www.civilservant.org.uk/library/2010\\_Ministerial\\_Code.pdf](https://www.civilservant.org.uk/library/2010_Ministerial_Code.pdf)

- The Civil Service Code<sup>20</sup>.

Civil servants are employed by the Crown under *the Royal Prerogative*<sup>21</sup> and powers delegated under the Prerogative and under various Acts, regulations, instructions etc. The most important of these are:

- the Civil Service Order in Council 1991,
- the Civil Service (Management Functions) Act 1992,
- the Civil Service Order in Council 1995, and
- the Civil Service Management Code (which includes the Civil Service Code).

Further information about the Orders in Council etc. may be obtained from the Government's official Civil Service website.

There is good general guidance in "Propriety and Audit in the Public Sector<sup>22</sup>" published by the NAO-chaired Public Audit Forum in August 2001.

Lady Hale's 2017 speech *The UK Constitution on the Move*<sup>23</sup> includes a very nice summary of the UK constitution, although she doesn't touch on the role of the Civil Service.

Detailed guidance is available in the following documents, all of which are on the Cabinet Office or Treasury web sites.

#### Cabinet Office

- Civil Service Management Code:- addressed to central government departments and agencies and setting out the terms and conditions on which civil servants are to be employed
- Standards of Propriety:- also addressed to central government departments and agencies, this document covers subjects such as the requirement of staff to seek permission before accepting outside hospitality, and the sale of surplus property to civil servants.
- Guidance for Civil Servants: an interesting and readable two volume Directory of Civil Service Guidance

#### HM Treasury

- Regularity and Propriety<sup>24</sup> is a handbook written mainly for Accounting Officers but offering a readable summary of what is and is not "proper" behaviour in the stewardship of public funds
- The Accounting Officer's Survival Guide<sup>25</sup> is intended to help new Accounting Officers understand their personal responsibilities and to help established Accounting Officers resolve problems arising.
- Government Accounting
- DAO letters: (Dear Accounting Officer letters)

<sup>20</sup> [https://www.civilservant.org.uk/library/2015\\_civil\\_service\\_code.pdf](https://www.civilservant.org.uk/library/2015_civil_service_code.pdf)

<sup>21</sup> [https://www.civilservant.org.uk/skills-parliamentary\\_business.html](https://www.civilservant.org.uk/skills-parliamentary_business.html)

<sup>22</sup> [https://www.civilservant.org.uk/library/2001\\_propriety\\_audit.pdf](https://www.civilservant.org.uk/library/2001_propriety_audit.pdf)

<sup>23</sup> [https://www.civilservant.org.uk/library/2017-Lady\\_Hale-The\\_UK\\_Constitution\\_on\\_the\\_Move.pdf](https://www.civilservant.org.uk/library/2017-Lady_Hale-The_UK_Constitution_on_the_Move.pdf)

<sup>24</sup> [https://www.civilservant.org.uk/library/2004\\_Regularity\\_Propriety\\_VFM.pdf](https://www.civilservant.org.uk/library/2004_Regularity_Propriety_VFM.pdf)

<sup>25</sup> [https://www.civilservant.org.uk/library/2015-HMT-accounting\\_officer's\\_survival\\_guide.pdf](https://www.civilservant.org.uk/library/2015-HMT-accounting_officer's_survival_guide.pdf)

- Procurement Guidance
- The Sharman Report: "The Review of Audit and Accountability for Central Government, February 2001.

### Further Reading

Douglas Wass' 1983 Reith Lecture "The Privileged Adviser"<sup>26</sup> is a highly readable review of the relationship between Minister and senior official as it was then, and as it is still supposed to be.

An excellent summary of the constitutional development of the UK Civil Service through to 1997 may be found in Michael Duggett's paper *The Evolution of the UK Civil Service*<sup>27</sup>.

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<sup>26</sup> [https://www.civilservant.org.uk/library/1983\\_reith3.pdf](https://www.civilservant.org.uk/library/1983_reith3.pdf)

<sup>27</sup> [https://www.civilservant.org.uk/library/1997\\_evolution\\_1848-1997.pdf](https://www.civilservant.org.uk/library/1997_evolution_1848-1997.pdf)