



**CABINET  
OFFICE**

# **Directory of Civil Service Guidance**



**Volume 2: Collected Guidance**

**2000**

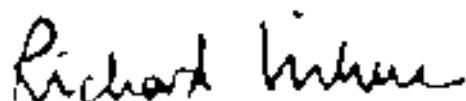
## Foreword By Sir Richard Wilson Head of the Home Civil Service and Cabinet Secretary

I am delighted to introduce this first edition of the *Directory of Civil Service Guidance*. It replaces *Guidance on Guidance*, which was last published in February 1996, and incorporates much material which was previously contained in the *Head of Department's Personal Handbook*.

I hope that by making this guidance more widely available it will give colleagues much better access to the principles and practice which guide the way in which the Civil Service does its work.

I would stress that the main focus of the *Directory* is **guidance**. It reflects important and useful accumulated wisdom which has been built up over the years, but it should not be regarded as a rigid set of rules. While the *Directory* may indicate the key principles, it cannot and does not seek to provide a blueprint for every situation. Every new issue that confronts us has its own particular circumstances and must be judged on its own merits.

We shall continue regularly to up-date the *Directory* in the light of experience. We have included contact details with each entry in case you wish to give feedback on your experience with the guidance or need to check the latest position.

A handwritten signature in black ink, reading "Richard Wilson". The signature is written in a cursive, slightly slanted style.

## Introduction

1. The Directory of Guidance is designed to help civil servants to find central guidance on a variety of topics. It is in two volumes:

**Volume I: Guidance Summaries** short summaries of guidance on a wide range of issues. On most topics, where the standard guidance will be widely available, the entry simply refers to it. In some cases, fuller guidance is not widely available here the entry refers to a more substantial account which is set out in Volume II;

**Volume II: Collected Guidance** a collection of selected central guidance (reproduced in full) which is not already available in other self-standing documents.

2. Further advice on guidance sources may be obtained from the Central Secretariat in the Cabinet Office (telephone 020 7270 1864). The *Directory* is also available on the internet at [www.cabinet-office.gov.uk/guidance](http://www.cabinet-office.gov.uk/guidance). Updates and new guidance entries will be posted on that site. We do not expect to publish a further hard copy.

3. We would be grateful for any comments on the scope, organisation, completeness and accuracy of the text, which should be sent to Cabinet Office, Central Secretariat, 4 Central Buildings, Matthew Parker Street, London, SW1H 9NL. (Email: [jburnett@cabinet-office.x.gsi.gov.net](mailto:jburnett@cabinet-office.x.gsi.gov.net)).

Central Secretariat

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## Access by Former Ministers to Official Papers

1. By convention, former Ministers are allowed reasonable access to the papers of the period when they were in office, although such access is at the Government's discretion. Since 1993 such access has been conditional on potential authors undertaking to comply with the Radcliffe principles governing Ministerial memoirs (see *Ministerial memoirs: the Radcliffe Rules and their application*). Subject to this point, they may have access in the Cabinet Office to copies of Cabinet or Cabinet Committee papers which were issued to them when in office, and access in the department concerned to other official papers which they are known to have handled at the time.
2. It is a firm rule that access to official papers must be limited to former Ministers personally. The only exception has been, in the case of former Prime Ministers, to extend access to those formerly on the Prime Minister's staff when in office, who had access to the material at the time. To allow access, for example, to other research assistants would breach the conventions about confidentiality of exchanges between Ministers and of civil servants' advice to Ministers. It would also give them an obvious advantage over other researchers, who have to wait until the papers are released in accordance with the Public Records Acts.
3. Departments may provide the former Minister, if s/he wishes, with help in checking references and verifying facts, but their assistance should not extend to writing up anything intended for publication. They should, if in any doubt about propriety, consult the office of the Secretary of the Cabinet.

## Access by Ministers and Special Advisers to documents of a previous administration

1. Documents of a former Administration are the property of the Crown. Access to them by any person not entitled in an official capacity to see them requires the agreement of the Government of the day until they are released as public records.
2. Ministers of a former Administration, whether currently in office or not, may see but may not retain official documents which they saw as members of that administration. Such access may be made conditional. (See *Access by former Ministers to official papers*.)
3. It is an established convention that Ministers of a current Administration may not generally see documents of a former Administration of a different political party.
4. This convention was last set out in detail by the then Prime Minister in reply to a Written Parliamentary Question on 24 January 1980 (Official Report cols. 305 7):

The guidance to officials on the availability to Ministers of one Administration of the papers of a previous Administration is as follows:

It is an established rule that after a General Election a new Administration does not have access to the papers of a previous Administration of a different political complexion. This rule applies especially to Cabinet papers.

The general principle is clear. An incoming Minister should not have access to any minutes or documents written by a predecessor of a different Party other than those which were published or put in the public domain by that predecessor; nor should he be told whether directly or by access to departmental papers which would tell him exactly what his predecessor had said. Moreover, it may be equally important to withhold papers which show the advice given by officials to the previous Minister even though there may be no indication on them of his views.

On the other hand, the national interest requires that there should be some continuity of policy. The arguments for continuity are stronger in certain fields than in others. Foreign policy is generally recognised as providing the classic example of a field in which continuity is important; but there are other fields in which some at least of the work of departments ought to continue on broadly the same lines as before. Under modern conditions it is not practicable for departments to make a completely fresh start with all their work.

There is no neat formula which can be used to reconcile the general principle with the practical considerations which sometimes point in the opposite direction. Departments use their discretion in making the best reconciliation possible in each individual case. It is one thing to give an incoming Minister a general account of the basis of departmental policy in a particular field under the preceding Administration and another to allow him to examine the particular personal views of his predecessor on certain points. On personal matters such as these, especially when the political content is high, a department is expected to be very discreet about what outgoing Ministers have said or thought. On the other hand there may be no objection to showing an incoming Minister, e.g. a report which his predecessor saw but on which action remains to be taken, or documents which were made widely available outside Government.

It may be possible to draw a distinction between documents recording the way in which decisions were reached and documents announcing these decisions. The guiding line must be to avoid embarrassment to previous Ministers.

Nor can there be any standard action in those cases where departments feel that incoming Ministers have a need to know. Some papers, e.g. reports, may, if appropriate, be suitable for showing to new Ministers as they stand. In other cases, eg where the outgoing Minister was personally involved or expressed views on paper, the requirement can be met by preparing a summary of what was at issue, and the action taken without showing incoming Ministers the actual documents which came before the previous Administration. In any instance (whether an individual case or not) where it is decided that papers of the previous Administration ought to be disclosed to a new Government difficulty may be avoided if, as a matter of courtesy, the former Minister is consulted before this is done.

It is questionable whether in this context a distinction can be drawn between departmental papers about policy matters and those about individual cases. Individual case work often has a substantial political (if not policy) content and the possibility of embarrassment could be just as real if a Minister were able to learn about the personal views of his predecessor on the handling of an individual case as it would be in matters of another kind. And, in any event, it is not easy in practice to draw a hard and fast line between case work, and policy. Although, therefore, it is a fair generalisation that papers on case work are less likely to cause difficulty than papers on policy, departments should nevertheless bear in mind the main objective – to protect Ministers from the political embarrassment that would arise if their successors saw documents that it was not appropriate for them to see.

5. The Prime Minister said in reply to a further Question that:

The guidance and the conventions which it embodies have been accepted by successive Administrations of both parties for many years (col. 307).

### Cabinet Papers

6. When an Administration of a different political party takes office, directions are issued both to outgoing Ministers and to their departments to arrange for the destruction or return of any Cabinet and Cabinet Committee papers which either may be holding. In no circumstances may a Cabinet or Cabinet Committee paper of a previous Administration be shown to a Minister of the current Administration without the approval of the Secretary of the Cabinet.

### Other Information

7. In the case of other documents (and non-documentary information), departments have to make the best reconciliation that they can between providing present Ministers with all the information which they need in order to do their job and the conventions outlined in the Prime Minister's statement. The Prime Minister's Parliamentary answer recommends that the guiding line should be to avoid embarrassment to previous Ministers. This may be difficult to assess in certain circumstances, and departments may find it helpful to apply a broad rule of thumb test along the lines of whether the disclosure of particular documents or information

to members of the present Administration would be liable to reveal (directly or indirectly) the personal opinions of members of the former Administration.

8. The Cabinet Secretary's office should be consulted:

- a. in any case of substantial doubt (including doubt about answers to be given to PQs which relate, wholly or in part, to the period of a previous Administration, unless the information is already in the public domain);
- b. if any question arises of informing and seeking the views of a member of a previous Administration: for example, if the need to disclose documents in the course of judicial proceedings, or to release information under open government policies appears to require disclosure of documents covered by the convention;
- c. if any doubt should arise about the meaning of a previous Administration (e.g. where the former Administration is of the same political party but an Administration of another party has intervened).

9. It is possible (not only in the period immediately following a General Election) that a Minister might ask an official to produce a document of a previous Administration. Departments should ensure that their staff are aware of the general rules. Any cases of doubt should be referred to Heads of Departments personally.

10. The conventions on access to papers of a previous Administration by current Ministers also apply to their Special Advisers.

#### Advice from the Law Officers

11. Written Opinions of the Law Officers, unlike other Ministerial papers, may generally be made available to succeeding Administrations (paragraph 22 of the *Ministerial Code*).

## Accountability for events under a previous administration

1. Present Ministers are not accountable to Parliament for events which took place under a previous Administration. However, questions about such events are sometimes addressed to them. If action is required, whether an inquiry into past events, or follow-up action, only the present Government can take such action.
2. Present Ministers are in a particular difficulty in dealing with such questions when they relate to events under a previous Administration of a different Party because they do not, by convention, have access to the relevant papers where these might reveal the opinions of former Ministers. (See *Access by Ministers and Special Advisers to papers of a previous administration*.) So they should first consider declining requests to give an account, or initiate action, in respect of events for which they are not accountable. If, however, they conclude in the circumstances of a particular case that it is impossible or inappropriate for them to stand aside, they have to rely on the advice of officials who have access to the papers and they should make clear that they are doing so. If Ministers decide that the seriousness of the case requires that an independent inquirer should be given access to the papers of a previous Administration (of whatever Party), the Government should consult the leader of the political Party concerned, and where possible the Prime Minister of the previous Administration and the previous Ministers who were in charge of the relevant Department.
3. Civil servants act on behalf of present Ministers and similarly cannot be required to justify actions taken or approved by Ministers of a previous Administration. They may however be required to account for and justify actions taken by civil servants and they have access to the relevant papers in doing so. When appropriate, civil servants should say that actions were taken on Ministerial instructions or with their approval; they should not (subject to the special procedure described in paragraph 8 below) reveal or discuss the role of previous Ministers.

### Accountability for past events

4. Questions about actions taken under a previous administration fall into two broad categories:
  - i. those where the actions are now of purely historical significance; it is clear that Ministers of a current Administration cannot be accountable for the actions of their predecessors. Where past events have no continuing relevance or operational significance to the Government of the day, nobody is accountable to Parliament for them.
  - ii. actions which continue to be of concern because, for example:
    - a. they caused some unremedied injustice;
    - b. they reveal irregularity or impropriety about which action needs to be taken;
    - c. they reveal some continuing defect in the arrangements for accountability to Parliament concerning the activities of Crown servants.
5. In the case at ii.a, Ministers very often deal with individual cases which have run on from a previous Administration and there is no objection to their doing so,

provided that this can be done without revealing the attitudes of previous Ministers. Where the concern relates to the possibility of injustice arising from maladministration, the case may fall within the remit of the Parliamentary Ombudsman (see entry on *Parliamentary Ombudsman* in Vol I). His powers to call for papers are not subject to the conventions restricting access to the papers of a past Administration and the practice has been to allow access to papers relevant to his investigations (falling short of Cabinet and Cabinet Committee papers) which would normally be regarded as covered by the conventions. Where maladministration is not within the scope of the Ombudsman's powers, because for example the injustice relates to Civil Service personnel matters, it may be possible, at the discretion of the Government of the day, to have the case investigated by a suitable person appointed for the purpose. In accordance with the conventions on access to papers, former Ministers would be consulted.

6. The Security Service Act 1989 and the Intelligence Services Act 1994 established mechanisms to investigate complaints that the security and intelligence agencies have caused damage to individuals or their property. The provisions do not apply to anything done before the respective Acts came into force. They place members of the security and intelligence agencies under a duty to disclose relevant documents to the Tribunals set up to investigate complaints. Such documents may in turn be disclosed to the appropriate Secretary of State in reports under Schedule 1, paragraph 5(1)(b) of the Security Service Act 1989 or Schedule 1, paragraph 6(1)(b) of the Intelligence Services Act.

7. Another situation where documents may need to be disclosed to current Ministers arises in legal proceedings when the disclosure of relevant papers may be required. Applications by other parties for discovery of papers of a previous Administration may raise questions of public interest immunity for papers which would not normally be seen by Ministers of the new Administration. In order to form a Government view as to whether the public interest in their disclosure outweighs any harm which would be caused, either the papers could be shown to the new Minister (in which case it would normally be right to consult the relevant former Minister beforehand), or the Permanent Head of the Department concerned may take the decision and, if necessary, sign the certificate instead of the Minister. It would be open to the Permanent Head, in the latter circumstances, to leave the matter to the Court, if s/he felt unable to assess the competing public interests between making a claim on the one hand or disclosing the documents on the other. Each case should be considered on its merits and, where in doubt, the Permanent Head should consult the Secretary of the Cabinet.

8. Where the cause for concern is a breakdown, or perceived breakdown, in the arrangements for accountability to Parliament, the position is more complex. Where the breakdown concerns the improper or irregular use of public funds, the special role of Accounting Officers is clearly relevant, and their responsibility to answer for any shortcomings is not confined to events under the present Administration. Similarly a civil servant would not decline to answer questions, for example from a Select Committee, about purely administrative acts under previous Administrations in which Ministers had taken no part. If Ministers had been involved it would not be open to a civil servant to discuss their role beyond saying that Ministers had authorised what had been done. (However, a special procedure applies where an Accounting Officer's advice on a matter of propriety or regularity of expenditure has been overruled by a Minister. In such a case the papers would be sent to the

Comptroller and Auditor General; and if the Public Accounts Committee inquired into the matter, the Accounting Officer's advice and its overruling by the Minister would be disclosed to them.) But if the cause for concern is that Ministers of the former Administration were misled or not informed by officials, or that officials took improper action without Ministerial clearance, Ministers of the current Administration may be thought to have a responsibility for satisfying themselves and reporting to Parliament that the facts have been established, appropriate disciplinary or other action has been taken, and that the working arrangements have been reviewed to prevent a recurrence.

9. In such cases the interaction of the doctrine of accountability and the conventions on access to papers of a former Administration is particularly complicated. The constitutional position of civil servants in relation to Ministers is such that:

- > Ministers alone are accountable for the information given to Parliament;
- > civil servants have no final authority to decide what information shall be made available to Parliament;
- > civil servants should not deliberately withhold relevant information from their Minister;
- > the duty to make information available to the Minister is subject to the conventions limiting Ministers' access to papers of previous Administrations.

10. Clearly if Ministers do not know what went on, and the convention prevents their finding out, it could be argued that they cannot investigate events of which they have no knowledge, or be accountable for their implications. An effective resolution in such circumstances depends on the following principles:

- i. Officials have a duty to provide present Ministers with all relevant information about departmental policy or past events, subject to not disclosing the personal views or comments of previous Ministers or the advice submitted directly to them. They are therefore under a duty to give Ministers information about events which may have been concealed from a past Administration, as there is no question of revealing the opinions of, or advice given to former Ministers. In answering questions about such matters, Ministers must rely on the information given to them and should make clear that they are doing so.
- ii. If Ministers believe that there is sufficient evidence of an unsatisfactory state of affairs, it is open to them, after consultation with Ministers of the previous Administration, to appoint a suitable person to inquire into the events concerned, giving them necessary access to papers. The BSE Inquiry is a recent, large-scale example of such an inquiry.

11. It is possible that Ministers of former and current Administrations may disagree about the course of action to be taken, or the extent of access to papers. In such circumstances, current Ministers would need to judge, taking into account the views of former Ministers, whether the public interest in the continuity of the Government's business across Administrations was greater than that of preserving the convention preventing access to papers of the previous Administration. Ultimate responsibility for the handling of the papers rests with the current Government, as advisers to the Crown as owner, and as custodian of papers not yet in the care of the Public Record

Office. So, if Ministers are satisfied that the balance of public interest is in favour, they retain the right to authorise an investigation without former Ministers consent.

## Briefing for and attendance at events run by organisations with party political links

1. It is an established principle set out in the *Civil Service Code* that civil servants should not engage in activities likely to call into question their political impartiality, or to give rise to criticism that people paid from public funds are being used for party political purposes. This is reinforced in the *Ministerial Code* (paragraph 56). Some further guidelines are set out below.

### Conferences

2. Civil servants in their official capacity are prohibited from attending conferences convened by, or under the aegis of, party political organisations (see paragraph 4.4.12 of the *Civil Service Management Code*), except when their presence may be required for carrying through essential official business unconnected with the conference. Nor should they attend, either on their own or in the company of Ministers, meetings of policy or subject groups of any of the Parliamentary parties; although if the Minister wishes to have a brief for such a meeting to explain departmental policies or actions, this can be provided.

### All party subject groups or committees

3. There is less risk here of prejudicing the impartiality of civil servants between the political parties. Ministers attending meetings of such groups may, if they judge it appropriate after consulting the official Head of Department in each case, be accompanied by one or two officials to brief them and respond to questions of a factual or statistical nature at their request. (Questions of policy should be answered by Ministers.)

4. In deciding whether a civil servant should attend such meetings alone, departments should satisfy themselves that the group in question is constituted on an all-party basis and is pursuing the subject in a non-party political way. Ministers should be asked to give standing or ad hoc approval to a civil servant's appearance before each group. Departments may need on occasion to decline invitations if the subject matter becomes politically contentious, consulting Ministers as necessary.

5. Members of parliamentary all-party groups are not bound by the same standing orders, rules of procedure or conventions which govern Select Committees, and civil servants who agree to brief them would not be protected by the accepted conventions for appearing before Select Committees (as set out in *Departmental Evidence and Response to Select Committees*). Nevertheless, civil servants should follow the same principles and confine their contribution to questions of fact and explanations of government policy and actions, and avoid being drawn into expressing views on politically contentious issues.

### Organisations at the margins of party politics

6. The approach to be adopted towards events organised by these groups will vary according to the nature of the organisation and the subject matter of the conference/event. Some guidelines are set out below, but these do not remove the need for departmental judgement in the light of specific circumstances: guidance can be sought from the Central Secretariat in the Cabinet Office on 020 7270 1987.

Different rules and conventions apply in Northern Ireland.

**a. Groups of which membership of a particular political party is a condition of membership**

Treat these as a single party group. Civil servants in their official capacity should not attend meetings of the group alone or in the company of Ministers. The Minister could be provided with a factual brief explaining departmental policies or actions, but not a prepared speech.

**b. Groups without formal links to political parties, even though they may have leanings towards one end of the political spectrum or the other**

There are no objections to the full briefing of Ministers on matters of departmental interest or to speech writing. Officials could accompany Ministers to events to brief them and, at their request, respond to factual questions. Authority might be given to a civil servant to speak if he or she was explaining declared government policy or the processes of government.

In deciding whether civil servants should attend alone, departments should consider:

- > whether they are satisfied about the nature of the event, and that the degree of involvement is justified by the advantage to the department; and
- > whether it is desirable to be represented by an observer, even if the subjects to be discussed have a politically controversial aspect.

Civil servants should not express views on politically controversial matters.

**c. Study groups/think tanks with strong links to political parties**

Participation in events arranged by politically orientated research organisations may be sensitive if their aims are closely associated with a party objective. Ministers participating in events organised by these bodies will normally be doing so in a party political role: so for the purposes of briefing or accompanying Ministers, these bodies should normally be treated as political like those in (a), although speech-writing for Ministers explaining or enlarging on Government policies may be reasonable, provided that the event itself is not seen as having a party political dimension. As regards civil servants attending functions alone, there is no absolute ban. Similar consideration should be used as for bodies in (b), but applied with even more care to avoid giving the appearance of compromising political impartiality.

7. For advice on the role of civil servants in a referendum campaign, including with regard to campaigning organisations, the Cabinet Office guidance (if any) on the referendum in question should be consulted.

### Exceptions

8. These general rules should not be regarded as inhibiting factual briefings of small all-party groups of MPs by military officers or officials unaccompanied by Ministers when MPs are on overseas or regional visits. Nor need they cut across long traditions of providing briefings for MPs who are about to go on overseas visits, even

if the MPs are all of the same party. It is also open to Ministers to agree factual briefings by senior officials for MPs of one or more parties, whether singly or in small groups (including briefing on the organisation and management of departments, technical matters, or operational aspects of agencies and regional offices) provided facilities are available even-handedly to MPs of all parties. It is for Ministers to decide whether to attend such meetings, although a Minister should always be present when MPs are invited to discuss sensitive matters of public policy with officials. (See also *Contacts between senior civil servants and the Opposition*, which deals with the special case of confidential meetings in advance of an election).

### Written briefing material

9. Material provided by civil servants for Ministers may be distributed to backbench MPs **provided that** it is of a kind that would be released to any *bona fide* enquirer, and that MPs of all parties can have access to it. It would be wholly improper for civil servants to provide a briefing service confined to the backbench MPs of one party. A service limited to the backbenchers of one party would only be in order if civil servants involvement were confined to providing factual information for the Minister, and the arrangements for circulating the factual information were made by the party concerned and the costs met by them. The basic principle is that the Civil Service should not be open to criticism for favouring one political party. The possibility of criticism can never be ruled out, and in particular the question of the use of official resources should always be carefully considered.

### Members of the Scottish Parliament, National Assembly of Wales Members, Northern Ireland Assembly Members and UK Members of the European Parliament (MEPs)

10. The same principle of the political impartiality of civil servants should be upheld in relation to the involvement of officials in briefing MSPs, Assembly Members, Northern Ireland Assembly Members and MEPs. The Cabinet Office (European Secretariat) can provide detailed advice on briefing MEPs.

## Contacts between Senior Civil Servants and the Opposition

1. As a general principle, there is no objection to contacts between senior civil servants and leading members of the Opposition parties if the latter wish to inform themselves about the factual questions of departmental organisation or to keep abreast of organisational changes. Such contacts should always be cleared with departmental Ministers. See *Briefing for and attendance at events run by organisations with party political links* for more details.
2. Towards the end of a Parliament, or when a General Election has been called, however, the Prime Minister authorises special arrangements under which Opposition spokesmen may have contacts with senior civil servants without Ministers having a right to be privy to the content of their discussions. (A note on the history of this convention was submitted by the Cabinet Office to the Treasury and Civil Service Select Committee, and is printed in Vol. II of their Fifth Report, 1993 94, pp. 29 30.) In the course of these contacts, the Opposition parties, in preparing for major changes in the machinery of government, may also wish to let senior departmental officials have some idea of their plans, so as to enable the changes to be made as smoothly as possible if the Election results in a change of Government. In the nature of things the number of people concerned, either in the Opposition parties or in the Civil Service, will be very limited.
3. The initiative for arranging such contacts lies with the Party Leaders to approach the Prime Minister in the first instance. Subject to the Prime Minister's approval, and that of the Party Leader, the department concerned should be approached through the official Head of Department, who will keep in touch with the Head of the Home Civil Service.
4. A clear distinction must be drawn between contacts for these purposes and requests for information about Government policies. The latter should be dealt with at Ministerial level, and in so far as officials take part in the discussions they should do so only in support of their Ministers or with their Ministers' express authority.
5. Departments should treat any requests for contacts with officials during a pre-Election period as follows:
  - a. Any request from a member of an Opposition party for confidential talks with civil servants should be referred to the Head of Department, whether the request is made directly to a civil servant or through Ministers.
  - b. The Head of Department should consider whether the request appears to be for the purposes described in paragraph 2 above. If s/he thinks it is, s/he should refer it to the Head of the Home Civil Service, who will advise on how to handle it. (It will normally be necessary to make sure that the approach has in fact been authorised by the Opposition Leader.)
  - c. If s/he thinks it is not particularly if it appears to touch on issues of Government policy s/he should consult his/her Minister, who will decide how it is to be handled.

When an Election has been called further guidance may be issued. (See *Elections and*

*Referendums below.)*

## Defamation of Ministers and Civil Servants

1. Paragraph 25 of the Ministerial Code states:

Ministers occasionally become engaged in legal proceedings primarily in their personal capacities but in circumstances which may have implications for them in their official positions. Defamation is an example of an area where proceedings will invariably raise issues for the Minister's official as well as his private position. In all such cases they should consult the Law Officers before consulting their own solicitors, in order to allow the Law Officers to express a view on the handling of the case so far as the public interest is concerned or, if necessary, to take charge of the proceedings from the outset.

2. The Law Officers are precluded by the terms of their appointment from advising Ministers in their purely personal capacity. Libel proceedings by a Minister may however raise public interest issues on which it is right for the Law Officers to be consulted. Where a libel relates to the conduct of the Minister in his/her official capacity, the public interest is clearly engaged and the Law Officers must be consulted.

3. Successive Law Officers have generally discouraged Ministers from bringing defamation proceedings for various reasons. Where the libel related to the conduct of a Minister in the performance of his/her official duties and it is in the public interest that proceedings should be brought, the Minister may properly be indemnified out of public funds for the reasonable costs of bringing those proceedings. This matter is not considered in the *Ministerial Code* but the same rules must apply as apply to civil servants. These are considered below.

4. Where civil servants are libelled in their private capacity, what they do about it is for them to decide. If allegations are made about Ministers or officials in connection with actions they took in their official capacity, departments, agencies and the devolved administrations in Scotland and Wales have discretion to fund defamation proceedings when in their view it is in the public interest so to do. Where the action is publicly funded, the department must ensure, by agreement with the claimant, that it has first call on any damages so as to defray its costs. It is, of course, open to any claimants in defamation proceedings to decide to pass any damages awarded to charity, and departments must discuss this possibility with potential claimants. But each case should be considered on its merits, where appropriate taking into account any lasting damage that the potential claimant may have suffered, which should be recognised by the retention of all or part of the damages awarded. If there is an agreement to pay damages to charity, that should not on any account be publicised, before or during the action, for fear of prejudicing the case.

5. Particular guidance on the responsibilities of Accounting Officers for public expenditure on matters arising from private activities is given in the Annex to the Treasury Minute on the 25th Report from the Committee of Public Accounts 1992-93 (Cm 2175).

## Disclosure of protectively-marked information

### Select Committees

1. Guidance on disclosure of protectively marked information to Select Committees is set out at paragraphs 80 to 87 of *Departmental Evidence and Response to Select Committees* (available at [www.cabinet-office.gov.uk/central/1999/selcom](http://www.cabinet-office.gov.uk/central/1999/selcom) or from the Cabinet Office Central Secretariat on 020 7270 5895).

### Individual Members of Parliament

2. MPs on Parliamentary business may be given access to assets protectively-marked **RESTRICTED**. If access to **CONFIDENTIAL** is required, this should be authorised by the Minister responsible. Access to **SECRET** or above is only allowed in exceptional circumstances, and the Minister responsible should obtain the Prime Minister's approval before authorising access.

3. Where a visit is planned to a sensitive establishment with which more than one Service or department is concerned, the department sponsoring the visit should ensure that all departments concerned give their approval before access is authorised.

4. If a Member of Parliament seeks access to protectively-marked assets in his private capacity, e.g. as a director of a firm undertaking Government contracts, the official Head of the Department responsible for the assets should be consulted.

### UK Members of the European Parliament (MEPs)

5. The rules at paragraphs 2-4 above also apply to UK MEPs requiring access to UK protectively-marked assets in the course of their European Parliamentary duties. In addition, the Minister authorising the disclosure should be satisfied that the assets do not thereby become available to MEPs of other nationalities.

## Elections and Referendums

### GENERAL ELECTIONS

1. When the dissolution of Parliament is announced guidance is issued to Ministers, official Heads of Department and Information Officers by No 10 or the Cabinet Office as appropriate. This section gives a general outline of the likely coverage and content; but anything in it may be overridden by the guidance that is issued at the relevant time.

#### Departmental business

2. Guidance is issued on the following lines. During a General Election period the Government retains its responsibility to govern and Ministers remain in charge of their departments. Essential business must be carried on. However, it is customary for Ministers to keep to a minimum decisions which would initiate new action of a continuing or long-term character, or would make new public appointments. In discharging Government engagements Ministers should seek to avoid creating any impression that they are using such occasions for party political purposes. Before undertaking to fulfil international commitments they should carefully consider whether the subject matter is such that they can speak as a representative of Her Majesty's Government. But clearly attendance at some international meetings may be necessary.

#### Constituency correspondence

3. Guidance is provided on the handling of correspondence on matters raised by constituents. In general:
- a. citizens' individual interests should not be prejudiced by the calling of an Election, and it follows that letters relating to them should normally be replied to, whether by Ministers or on their behalf;
  - b. all candidates, whether or not they were sitting Members before the dissolution, are strictly speaking on an equal footing. Care should be taken not to discriminate between candidates of different parties;
  - c. the replies should as far as possible be straightforward, and should avoid controversy.

#### Public statements and handling of enquiries

4. The Cabinet Office issues written guidance on the handling of enquiries, briefing and requests for information. In addition, some Prime Ministers in the past have decided to appoint an Election Business Unit (EBU) in the Cabinet Office, under the supervision of a member of the Cabinet. Establishment of a Unit is not a requirement but, if one is set up, its functions would be: to provide advice to Departments on any aspect of the handling of enquiries during the election period; to provide any necessary co-ordination where enquiries raise issues which affect a number of departments; and to act as a channel of communication with the governing party where they wish to check with Departments statements to be made on the governing Party's behalf for factual accuracy and consistency with Government policy. The EBU

would also expect to be informed of important statements made by Ministers during the Election campaign.

#### Press articles, interviews and broadcasts by Ministers

5. Guidance is issued by the Prime Minister to Ministers.

#### Information activities

6. Guidance is issued by the Government Information and Communication Service to Ministers and departmental Information Divisions, and by the Central Office of Information to Information Officers in the regions and overseas. It covers:

- a. relations with the press,
- b. distribution of printed material,
- c. publicity and advertising,
- d. exhibitions, films etc.,
- e. facilities for overseas visitors,
- f. overseas information services.

It also covers requests for factual information from candidates and the general public.

#### Use of official transport by Ministers

7. Guidance is issued by the Prime Minister to Ministers.

#### Contacts between senior civil servants and the Opposition

8. For the general rules see the entry on *Contacts between senior civil servants and the Opposition* above. When a General Election is called further guidance may be issued. If the arrangements described in paragraph 2 of the above separate entry have not come into effect, because the Election is called well before Parliament is approaching its full term, the Prime Minister would normally authorise confidential contacts between the Civil Service and senior Opposition figures once an Election has been called. However, Opposition spokespeople are unlikely to have time for such contacts during a General Election campaign.

#### Documents of the current Administration

9. See paragraph 15 below. When a General Election is called Heads of Department should consider where, in the event of a change of Administration to one of a different political party, problems are likely to arise; and should ensure that appropriate instructions are given in good time, both to Ministers Private Offices and to others who will be briefing the new Ministers.

#### Initial briefing for new Ministers

10. Heads of Department will wish to arrange for the customary briefing to be prepared for use by Ministers following the Election. General guidance is not normally issued on this.

### Action on a change of Administration

11. **Ministers:** Ministers remain in office until they resign or are dismissed. Where an administration falls, following defeat at a General Election or in Parliament, the resignation of the Prime Minister generally conveys the resignations of his entire administration. The Lord Chancellor and the Law Officers continue to act until their successors have been appointed.
12. **Ministers salaries:** Cabinet Office officials will inform departments of the date when the salaries of outgoing Ministers will cease to be payable. (For Ministers other than the Lord Chancellor and the Law Officers this is decided by the incoming Administration, and is normally the day after the poll.) Cabinet Office officials will similarly inform departments of the salaries of incoming Ministers and their starting date.
13. **Other action:** a new edition of the *Ministerial Code* will be issued. Security matters affecting Ministers, the appointment of Special Advisers etc will also need to be addressed by departments.
14. **Cabinet papers:** where the new Administration is of a different political party the outgoing Prime Minister asks Ministers to arrange for the destruction or return of all Cabinet and Cabinet Committee papers and minutes held by them, and also reminds Ministers not to take away copies of other official documents seen or used by them during their time in office. The Secretary of the Cabinet informs Heads of Department that this has been done. S/he gives instructions on the disposal of Cabinet or Cabinet Committee papers which are held personally by Heads of Department or other senior officials, or which, consistent with current Cabinet Office rules, have been placed on departmental files. Any papers that departments are authorised to retain must not be shown to incoming Ministers.
15. **Other papers of the former Administration:** for the rules on access by the new Ministers, see the entry on *Access by Ministers and Special Advisers to documents of a previous administration* above. Any such papers should be carefully examined before they are submitted to incoming Ministers, both by a senior member of the Division concerned and again by the Private Office, and any cases of doubt should be referred to the Head of Department personally. Although vigilance is particularly necessary in the months immediately following an Election, the general rules will of course continue to apply thereafter.

### OTHER ELECTIONS

16. Guidance is issued on Civil Service conduct during elections to the European Parliament, the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly, the Greater London Authority and local government. These election campaigns differ from general elections in that there is no prospect of a change of the UK Government consequent upon the elections, and the business of government continues as usual. However, all political parties approach these elections from a national point of view, with nationally produced material. Officials in all departments should therefore take particular care during the period of these election campaigns not to undertake any activity which could call into question their political impartiality, or could give rise to the criticism that public resources are being used for party political purposes. Particular care should be exercised in relation to the announcement of sensitive decisions with a possible impact on the elections, and in

relation to paid publicity campaigns.

17. The following general principles should be observed by all civil servants, including special advisers:

- a. there should be even-handedness in meeting information requests from candidates from different political parties. Such requests and responses should be handled in accordance with the principles laid down in the Code of Practice on Access to Government Information;
- b. particular care should be taken over official support and the use of public resources, including publicity, for Ministerial announcements which have a bearing on matters relating to the relevant election;
- c. similar care should be taken over announcements of decisions made at official level. In some cases it may be better to defer an announcement until after the election but this would need to be balanced carefully against any implication that deferral could itself influence the political outcome; each case should be considered on its merits; and
- d. special care should be taken in respect of paid publicity campaigns which should not be open to the criticism that they are being undertaken for party political purposes. There should be a general presumption against undertaking new campaigns in any area that might be considered controversial in relation to the election.

Specific guidance may also be issued to special advisers on their position during the campaign.

18. The period of sensitivity preceding these elections is not fixed in relation to any particular date but, for the purposes of this guidance, the general convention is that particular care should be taken in the three weeks prior to polling day.

19. Decisions on the application of this guidance in particular cases are for Departments in the first instance but further advice can be sought from the Secretary of the Cabinet or from Central Secretariat, Cabinet Office or, on publicity matters, from the Head of the Government Information and Communications Service.

## REFERENDUMS

20. For advice on the role of civil servants in a referendum campaign, including with regard to campaigning organisations, the Cabinet Office guidance (if any) on the referendum in question should be consulted.

## Honours

### The Structure of the Honours System

1. Honours are bestowed on individuals in recognition of achievement and meritorious service, or as a demonstration of The Sovereign's gratitude for personal service rendered to The Sovereign. In addition, gallantry awards are made by The Sovereign in recognition of outstanding acts of bravery.
2. All United Kingdom honours derive from The Sovereign, and each Order is regulated by Statutes (their own rules and regulations). Honours in the personal gift of The Sovereign include those in: The Order of the Garter; The Order of the Thistle; The Order of Merit; and The Royal Victorian Order.
3. Those honours which concern departments are: the Order of the Bath (for senior members of the Home Civil Service and senior military officers only); the Order of Saint Michael and Saint George (awarded to people who have given service to Britain overseas); the Order of the British Empire (since 1917 the main Order for awards and the one in which most (up to 90%) appointments are made); Knights Bachelor; and the Companions of Honour (an award which although ranking alongside that of a Knight does not carry a title). The Order is limited to around 60 Companions who are recognised generally for outstanding personal distinction in a particular sphere of national or international activity.

### The Half-Yearly Lists

4. The honours bestowed by The Sovereign on the advice of Ministers are customarily awarded twice a year, at the **New Year** (usually published on 30 or 31 December) and on the occasion of The Sovereign's Official Birthday in June.
5. There are three Lists each time. These are the **Defence Services List**, of those recommended to The Sovereign by the Secretary of State for Defence; the **Diplomatic Service and Overseas List**, of those recommended to The Sovereign by the Secretary of State for Foreign and Commonwealth Affairs; and the **Prime Minister's List**.

### Oversight and Review of the System

6. The structure of the honours system, the consideration of all major policy issues, and the co-ordination of issues covering all three parts of the half-yearly Lists are the responsibility of the **Committee on the Grant of Honours, Decorations and Medals** (the HD Committee), the Chairman of which is the Head of the Home Civil Service.

### Ceremonial Branch

7. The Ceremonial Branch of the Cabinet Office is the focal point for the consideration of all honours policy issues. Once the Prime Minister's Honours Secretary has initiated each honours round, Ceremonial Branch is responsible for advising the Head of the Home Civil Service on any special considerations which Permanent Secretaries need to keep in mind during that round, for co-ordinating the central selection process and for preparing the final list of recommendations to be placed before the Prime Minister. The Prime Minister is not bound by the list submitted: he or she remains personally responsible for the recommendations

submitted to The Sovereign, and having taken note of the advice of expert committees he or she may delete names from, or add them to, the list prepared through the official machinery (subject to clearing additions with the Political Honours Scrutiny Committee).

8. As indicated above, before each round the Head of the Home Civil Service may alert Permanent Secretaries to any points that may have been highlighted during the previous honours round, e.g. the balance of awards, any apparent under-representation, or any particular strengths or weaknesses and the emphasis which the Prime Minister of the day wishes to see reflected in the Honours List.

9. During each round the Ceremonial Branch will maintain contact with Departmental Honours Sections, and at least once per year will meet Department Honours Secretaries to exchange views on the efficiency and smooth running of the process.

### Wide Representation and Balance

10. The Honours List should be as representative as possible of outstanding service and achievement across the whole of the country's life, whether in the public, private or voluntary fields. In making their recommendations departments should seek to ensure this objective over a period. They should avoid any undue bunching of honours in a particular field of activity, geographical area or age group which is contrary to this main principle.

11. In considering nominations for honours, Permanent Secretaries should ensure that they and their departments scrupulously observe equal opportunities policies. Women and members of ethnic minority communities should be given equal consideration, on merit, alongside other candidates. Departments should monitor the numbers of people in these groups in the pool of candidates from which selection will be made.

### Departmental Scrutiny and Assessment

12. Honours and gallantry awards are bestowed in recognition of outstanding service or bravery. There should be no automatic awards. Each award should be made on merit to those who have gone beyond the bounds of duty in their contribution to the United Kingdom. In more general terms, the awards are intended to recognise high or exemplary achievement, making a difference through outstanding and innovative service to others, whether paid or unpaid, especially self-sacrificial service to a voluntary body or to the community (e.g. against the odds in key policy areas) or which brings quality and distinction to British life. Account should be taken of voluntary service in the consideration of recommendations, whether such service is the sole criterion for an award or in support of other substantial contributions.

13. It is the responsibility of Permanent Secretaries personally to ensure that the final lists submitted from their departments are based on a thorough scrutiny of each case, taking account of comments from within their departments, and subject to the need for confidentiality by Departmental contacts in the field who may well have their own machinery for collecting and scrutinising nominations. Full and equal

regard should be paid to all nominations, however, from whomever submitted. The citations should provide a concise and accurate picture of each individual's contribution ( added value ), rather than simply a list of posts or positions held.

14. Permanent Secretaries should seek to ensure that their departments maintain the integrity of the honours system, by:

- > using the resources of their departments and their contacts in the field to bring forward for consideration deserving individuals within their field of responsibility, assessing the merits of such cases equally with those who have been recommended by members of the public;
- > ensuring that Government policy is applied regarding standards in public life;
- > refraining from any act or disclosure that might open the system and those who participate in it to pressure or inducements to recommend an award; and
- > ensuring that due care is exercised in vetting nominations and preparing recommendations.

## Lobbyists: Contact with

1. All civil servants, including special advisers, are employed by the Crown and paid by the taxpayer to serve the Government of the day in a manner which upholds the highest standards of propriety in public life.

### Basic principles

2. The basic principles are set out in the *Civil Service Code*. They are demanding. But it is worth remembering that they are reflected in every department's Management Code and that any breach may give rise to disciplinary proceedings.

3. Civil servants should conduct themselves with integrity and honesty. They should not deceive or knowingly mislead Parliament or the public. They should not misuse their official position or information acquired in the course of their official duties to further their private interests or the private interests of others. They should not receive benefits of any kind which others might reasonably see as compromising their personal judgement or integrity. They should not without authority disclose official information which has been communicated in confidence in Government or received in confidence from others.

4. The principles of public life set down by the Nolan Committee in its first report in 1995 are also relevant: in particular

- > 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 family, 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.
- > 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.

### Lobbyists in the UK political system

5. The Nolan Committee said in their first Report, it is the right of everyone to lobby Parliament and Ministers, and it is for public institutions to develop ways of controlling the reaction to approaches from professional lobbyists in such a way as to give due weight to their case while always taking care to consider the public interest (First Report of the Committee on Standards in Public Life, page 35).

6. The Government's approach, reflecting the approach of the Nolan Committee, is not to ban contacts between civil servants and lobbyists **but to insist that wherever and whenever they take place they should be conducted in accordance with the Civil Service Code, and the principles of public life set out by the Nolan Committee**. This means that civil servants can meet lobbyists, formally and informally, where this is justified by the needs of Government.

### Practical application to contacts with lobbyists

7. These basic principles apply to **all** contacts between civil servants and people outside Government, be they businessmen, trades unionists, journalists or

campaigners of any kind. What the principles mean in practice will depend on the circumstances of each case. It is not possible exhaustively to cover every situation which may arise, but the main points to have in mind in dealings with professional lobbyists, given the nature of their work, is as follows.

8. Some things are completely unacceptable. For instance:

- > **DO NOT** leak confidential or sensitive material, especially market sensitive material, to a lobbyist.
- > **DO NOT** deliberately help a lobbyist to attract business by arranging for clients to have privileged access to Ministers or undue influence over policy.

These would be serious disciplinary offences and trigger procedures under which you would be liable to dismissal.

9. Much more common are situations where dealings with a lobbyist are acceptable provided that they are handled with care. These are grey areas where common sense has to be used. Here again, breaking the basic rules may lead to disciplinary action.

- > **DO NOT** say or do anything that could be represented as granting a lobbyist preferential or premature access to information, Parliamentary or Governmental, which you have received because of your official position.
- > **DO CONSIDER** whether meeting one group making representations on a particular issue should be balanced by offering other groups a similar opportunity to make representations.
- > **DO NOT** accept gifts or other benefits from a lobbyist which are offered to you because of your official position and could place you, or reasonably be considered to place you, under an obligation to the donor.
- > **DO NOT** give the impression to a lobbyist that any particular advice, idea or information from their clients could or will be decisive in the decision-making process. Decisions are for Ministers who will want to weigh up all the evidence and all the advice they receive before they judge the public interest.
- > **DO NOT** do anything which might breach Parliamentary privilege or offend against the conventions of Parliament. Remember that the papers and reports of Select Committees are the property of the Committees and subject to Parliamentary privilege. If in doubt whether particular papers are in the public domain, seek guidance from the Clerk of the Select Committee.
- > **DO NOT** use your knowledge about what is going on inside Government to impress your contacts in the lobbyist world. What may seem simple gossip to you may make money for someone else, or amount to improper help.
- > **DO NOT** use your position to help a lobbyist get a benefit to which he or she is not entitled.
- > **DO NOT** offer, or give the impression of offering, a lobbyist preferential access to Ministers or their officials. Where you think someone can contribute some interesting ideas, you should tell those concerned and let them decide for

themselves.

- > DO always declare to your Department any personal or family business interests which may at some time create an actual or potential conflict of interest with the work of your department, and comply with any instructions from the Department designed to eliminate the conflict.
- > BE CAREFUL about accepting hospitality from a lobbyist: see next section.

These guidelines must of course be interpreted with common sense. If for instance you have a friend who is a lobbyist you do not have to sever your friendship and stop meeting them socially. If you are married to one, you do not have to get divorced! But do make sure that the ground rules are understood, that you make proper arrangements to deal with any conflict of interest and that you do not get tempted into doing something which would lay you open to criticism or be misunderstood.

### Hospitality

10. Departments usually have their own rules about accepting hospitality which reflect the circumstances of their work. You should read them. If there is a complete ban on accepting certain kinds of invitation, you must comply with it.

11. Where the decision whether to accept hospitality is left to your judgement, you need to ask yourself some common sense questions: for instance, whether there is benefit to the Government in your accepting the invitation; whether the entertainment is lavish, on a scale which you could not personally afford; whether you are accepting too much hospitality from the same source; and, if your post is prominent, whether just your attendance at an event may be open to interpretation as a signal of support.

12. Provided that you are satisfied about the propriety of accepting, it may be legitimate occasionally to take modest hospitality from a lobbyist, if for instance it gives you the opportunity to gain a better understanding of an industry or a group or a particular point of view. But if you find this happening to you a lot, you should pull back quickly.

### If in doubt

13. If you are in doubt about what is proper, there are three particular things you should do.

- > DO err on the side of caution. If you would feel uncomfortable if it became public, do not do it.
- > DO consult your line manager, if you are still unsure.
- > DO consider putting a brief note on the file recording that you have addressed the issue of propriety and setting out your reasons for believing that your actions comply with the *Civil Service Code*, if you decide to go ahead.

### Lobbyists in other roles

14. The focus of this note has been on professional lobbyists – whether individuals,

partnerships or companies who earn their living by providing their clients with contacts, information and advice about how to persuade the Government and other public sector bodies to do or give them what they want. Remember that you may meet a lobbyist in other roles: for instance as a journalist or consultant. Bear all his or her interests in mind in your discussions. You cannot expect lobbyists to keep their different roles in watertight compartments.

### Conclusion

15. Lobbyists are a feature of our democratic system. There is no ban on civil servants having dealings with them where this serves a proper purpose and is conducted in a proper manner. But the need for propriety is crucial. Lobbyists themselves are bound to want to talk up their own influence and contacts. It is the job of all civil servants to make sure that they conduct their dealings with lobbyists in a manner which is proper and not open to misinterpretation.

## Machinery of Government changes

### General

1. The Prime Minister's approval is required and should be sought for any proposal to transfer existing functions:
  - a. **Between Ministers in charge of departments or other Cabinet Ministers.** An exception may be made where the proposed change is minor, does not justify public announcement, and can be made administratively (paragraph 16 gives guidance on the circumstances where functions can be transferred by administrative action, and those where a legal procedure is required).
  - b. **Between a Minister and a non-departmental public body**, if it is likely to be politically sensitive or to raise wider issues of policy or organisation.
  - c. **Between junior Ministers within a Department**, if it involves a major reallocation of work or a change in Ministerial titles, including courtesy titles.
2. The Prime Minister's approval is also required for **the allocation of new functions which do not fall wholly within the responsibility of one Minister**. Requirements to obtain the Prime Minister's approval apply whether the functions in question derive from statute or from the exercise of the Royal Prerogative, or are general administrative responsibilities.
3. On these matters the Prime Minister looks for advice to the Head of the Home Civil Service, who is supported for this purpose by the Central Secretariat in the Cabinet Office.

### Handling a proposed Machinery of Government Change

4. At an early stage of any proposal which may involve a machinery of government change, including cases of doubt, or where it appears that the Prime Minister's approval is not required, departments should consult:
  - a. the **Central Secretariat**, who will advise on the application of the general principles to a particular case; and
  - b. **departmental legal advisers**, who will advise on the need for legal procedures as described in paragraphs 14ff.
5. Where a change proposed has implications for other departments, their agreement should be sought. The interests of the Scotland, Wales, and Northern Ireland Offices and the Treasury should be kept particularly in mind. Correspondence at Ministerial or official Head of Department level should be copied to the Head of the Home Civil Service, and other interdepartmental correspondence to Central Secretariat. If all the departments concerned are agreed on a particular proposal, the Minister in charge of the ceding department (since s/he will be most familiar with the subject matter) should then seek the Prime Minister's approval. Where the proposal concerns the allocation of new functions, the submission will normally come from the principal receiving Minister.

### Submissions to the Prime Minister

6. The content of submissions to the Prime Minister will obviously vary according to the nature of the particular proposal, but should normally include:

- a. **an outline of the reasons** for the proposed change, drawing attention to any wider policy implications or matters of particular sensitivity;
  - b. **confirmation that other interested Ministers have been consulted** and are content;
  - c. **any implications for expenditure and staffing**, with confirmation if appropriate that the Treasury are content; and
  - d. **the method by which the proposal would be implemented** (see paragraphs 14ff), timing of implementation, and proposals for publicity.
7. Submissions to the Prime Minister should be copied to the other Ministers concerned and to the Head of the Home Civil Service.

### Disputed proposals

8. Where differences of view remain after interdepartmental consultation it may be helpful for the Central Secretariat to mount a detailed study of the proposal. If this appears to be a possible way forward, departments should first consult the Central Secretariat informally. Any study would be undertaken on behalf of the Head of the Home Civil Service, and s/he should be formally approached by the Head of Department to request a study.
9. The Prime Minister determines disputed proposals for machinery of government changes, but unresolved differences of view should be referred to the Head of the Home Civil Service before a submission is made to the Prime Minister. It may be appropriate for him/her to make the submission on behalf of the Ministers concerned (for example, where there has been a detailed study of the proposal by the Central Secretariat). In other cases, each Minister with a view on the proposal may minute the Prime Minister direct, with a copy to the Head of the Home Civil Service.

### Publicity

10. Transfers of functions are normally announced, in order particularly that Parliament is made aware which Minister is answerable for particular responsibilities. Transfers implemented by primary legislation or a Transfer of Functions Order (see paragraphs 18 21) necessarily become public; other transfers are customarily announced by way of an arranged written Parliamentary Question. This will usually be answered by the Prime Minister; in minor cases it may be answered by another Minister with the Prime Minister's approval. In either case the draft Answer is prepared by the ceding department for the Prime Minister's approval; the Central Secretariat can advise.

### Staffing

11. The general rule when functions are transferred from one department to another, as set in the *Statement of Practice on Staff Transfers in the Public Sector*, is that staff are transferred with the work. This is usually essential to ensure that the work can carry on without interruption or loss of efficiency. In particular, departments should ensure that the principles of TUPE (the Transfer of Undertakings (Protection of Employment) Regulations) are followed where a change of employer is involved. It is also the only practicable solution when large numbers of staff or

particular kinds of expertise are involved. Departments should, however, make every effort to provide an opportunity for those who wish to stay with or return to their original departments to do so, having regard to the need for consistent treatment of staff affected by the transfer and the needs of the work. Someone whose preference cannot be met should be told why it cannot be met. In a few cases it may be possible, before the actual transfer of work, to fill some of the non-essential posts from within the receiving department or by recruitment. Departments should consider this option wherever possible. It will seldom be possible, however, to avoid transfers, especially for key personnel.

### Accommodation

12. If the transfer of functions and staff is not accompanied by a change of accommodation, the full responsibility for the properties involved will normally transfer to the receiving department with the relevant financial resources. Where the transfer results in a move from existing accommodation within the financial year that the transfer is made, the property vacated will usually remain the responsibility of the original department who will retain the financial cover.

13. For Civil Estate property, departments should consult the appropriate regional office(s) of the Property Advisers to the Civil Estate (PACE) as soon as any change in accommodation seems likely to be needed, as required under the Civil Estate Co-ordination Agreement. They should also, where necessary, inform any other departments with an interest in the properties concerned. The Civil Estate Co-ordination Agreement was issued by Treasury as an Annex to a DAO letter (1/96 on 10 January 1996) and gives details of the framework of accountability for departments and PACE. It includes requirements for departments and PACE to provide information to each other and describes the role of PACE in providing arrangements for co-ordination, intelligent client support and advice.

### Implementing changes

#### Legislation

14. The procedure necessary to achieve a transfer of functions depends both on the nature of the function concerned, and on the identities of the current holder and intended recipient of the function. In many cases a legal procedure is necessary, and although the following paragraphs give general guidance, departmental legal advisers and Central Secretariat should always be consulted at an early stage. They may in turn consult Parliamentary Counsel. The first step is to identify any statutory powers and duties, formal prerogative instruments, and property rights associated with the function.

15. The Minister in charge of the ceding department is normally responsible for preparing any primary legislation, Transfer of Functions Order or prerogative instrument, and for handling any debate in Parliament on it.

#### Administrative Action

16. There are two instances where functions may be transferred by administrative

action alone:

- a. prerogative functions not conferred by a formal prerogative instrument; and
- b. functions vested by statute or formal prerogative instrument in the Secretary of State at large, where the transfer is between one holder of the office of Secretary of State and another.

Where, however, a function is vested in a named Secretary of State, for example the Secretary of State for Wales, transfer by administrative action will not be possible.

### Formal Prerogative Instrument

17. Where a function has been conferred by a formal prerogative instrument, for example a Royal Charter, transfer will require a formal procedure. The original instrument may be amended, or it may be withdrawn and a fresh one substituted. In the case of a transfer between one Minister and another it is possible to use the statutory Transfer of Functions Order procedure described below. This may be convenient where the Order can sweep up both statutory and prerogative functions. However, the use of a Transfer of Functions Order will prevent any subsequent attempts to transfer the prerogative function by prerogative instrument: any subsequent transfer must then be made by statutory process.

### Transfer of Functions Order (TFO)

18. Any function can be transferred from one Minister to another by an Order in Council, known as a Transfer of Functions Order, under the *Ministers of the Crown Act 1975*. TFOs are drafted by Parliamentary Counsel, on instructions from departmental solicitors. A TFO can also provide for a function to be (or cease to be) exercisable, concurrently or jointly, by two or more Ministers, or for a change in a Minister's statutory title. In all these cases a TFO is subject to negative resolution procedure.

19. A TFO may also provide for the dissolution of a Government department, and the distribution of functions previously exercised by its Minister among other Ministers. In this instance the TFO must be laid before Parliament in draft and requires an affirmative resolution of each House before being made. However, there will sometimes be an exception where a department headed by a Secretary of State is dissolved and the bulk of his functions transferred to another Secretary of State by administrative decision. In this case any tidying-up TFO required to sweep up functions and property rights vested in the Secretary of State of a dissolved department by name will not necessarily be treated as effecting the dissolution, and may therefore be subject to negative resolution procedure.

20. The TFO procedure applies only to transfer between Ministers (defined in the 1975 Act as including the Treasury); a TFO cannot have as its purpose the transfer of functions between a Minister and a non-Ministerial body, or between one non-Ministerial body and another.

### Primary Legislation

21. Where it is desired to transfer a statutory function between a Minister and a non-Ministerial body, or between one non-Ministerial body and another, the transfer will

require an instrument of the type which conferred the function. This is usually primary legislation.

#### Further advice

22. Further detailed guidance can be obtained from the Central Secretariat, Cabinet Office, Horse Guards Road, London SW1P 3AL (020 7270 5881 or 020 7270 1863).

## Memoirs and Books: Publication by Civil Servants

1. Section 4.2 of the Civil Service Management Code sets out the rules relating to civil servants' duties of confidentiality and their use of official information.
2. Serving civil servants who wish to publish books or other works which draw on official information or experience must apply for permission to do so by submitting their text for scrutiny by the appropriate department. No civil servant may publish his or her memoirs while still in the Service, because public responsibility for the actions of their departments rests with Ministers.
3. Former members of the Home Civil Service must continue to observe their duties of confidentiality after they have left Crown employment. In particular, they must supply to the Head of their former Department, in good time before publication, a copy of the text or other recorded form of any material which they intend to make public and which draws, or appears to draw, on official information or experience. They are also urged to seek the advice of the Head of their former Department before entering any commitment to publish or broadcast personal accounts of their experience in Crown employment. In clearing material for publication, the Head of the Department and the Head of the Home Civil Service will have regard to the factors set out in section 4.2 of the *Civil Service Management Code*. Parallel rules apply to former members of the Diplomatic Service, for whom the final authority is the Head of the Diplomatic Service.
4. Former civil servants must abide by the decision of the Head of their Service in respect not only of State secrets, or information whose disclosure would be prejudicial to the UK's international relations, but also in respect of matters of trust and confidentiality (official advice, the views of Ministers or of colleagues, or judgements on the qualities or abilities of Ministers or of colleagues) which fall within the period of 15 years recommended by the Radcliffe Committee (see *Ministerial Memoirs: the Radcliffe Rules and their application*). As also recommended by the Radcliffe Committee, this period can be extended for disclosures relating to public servants who are still serving. A similar extension applies to disclosures by former public servants relating to Ministers or former Ministers still actively engaged in politics.
5. Heads of Department should ensure that guidance on the lines of the preceding paragraphs is given to civil servants whose work brings them into close contact with Ministers eg senior civil servants, private secretaries, press officers. It should also go to temporary civil servants in the same position, including special advisers. It should be repeated from time to time to ensure that it is not forgotten.

## Ministerial Accountability: Parliamentary Resolutions on

1. The standards that Parliament expects for Ministerial accountability to the House were set out in two resolutions passed by in March 1997. The text of these resolutions is set out below.

### **Resolution on Ministerial Accountability (adopted by the House of Commons 19 March 1997)**

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

- (1) Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions, and actions of their Departments and Next Steps Agencies;
- (2) It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;
- (3) Ministers should be as open as possible with Parliament, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the Government's *Code of Practice on Access to Government Information (second Edition, January 1997)*;
- (4) Similarly, Ministers should require civil servants who give evidence before Parliamentary Committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the *Civil Service Code (January 1996)*.

### **Resolution on Ministerial Accountability (adopted by the House of Lords 20 March 1997)**

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

- (1) Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions, and actions of their Departments and Next Steps Agencies;
- (2) Ministers should give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;
- (3) Ministers should be as open as possible with Parliament, refusing to provide information only when disclosure would not be in the public interest;

(4) Ministers should require civil servants who give evidence before Parliamentary Committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information;

(5) The interpretation of public interest in paragraph 3 shall be decided in accordance with statute and the Government's *Code of Practice on Access to Government Information (second Edition, January 1997)*: and compliance with the duty in paragraph 4 shall take into account the duties and responsibilities of civil servants as set out in the *Civil Service Code (January 1996)*.

## Ministerial Memoirs: The Radcliffe Rules and their application

1. The conventions currently governing the publication by former Ministers of memoirs and other works relating to their experience as Ministers were laid down in a statement made in the House of Commons on 1 August 1946 on behalf of the Prime Minister (Mr Clement Attlee) by the Lord President of the Council (Mr Herbert Morrison).
2. The conventions established in 1946 have been maintained under successive Administrations and the Radcliffe Committee's report (Cmnd 6386, January 1976) reinforced the key principles. The Committee drew out of the conventions certain specific working rules, and made recommendations as to the administrative structure which should condition the clearance of an ex-Minister's intended memoirs.
3. The following key principles have been developed under successive administrations and have been endorsed by the current Government. For the rules relating to civil servants, see the separate entry on *Memoirs and books: publication by civil servants*.

### Key Principles

1. The author should be free to use his Ministerial experience for the purpose of giving an account of his own work, subject to restrictions on three separate categories of information:
  - i He must not reveal anything that contravenes the requirements of national security operative at the time of his proposed publication.
  - ii He must not make disclosures injurious to this country's relations with other nations.
  - iii He must refrain from publishing information destructive of the confidential relationships of Ministers with each other, and of Ministers with officials. In particular, references to individuals and their view of particular circumstances may be permitted provided that their disclosure would not damage either Ministers or officials – particularly those still in office – in their work. In general he should not reveal the advice given to him by individuals whose duty it has been to advise him in confidence. If it is necessary to describe the advice he received, he should consider whether it is possible to mention the advice given without attributing individual attitudes to identifiable persons. He is however free to give an account of his own stewardship. Under this heading he should also treat with discretion communications received by him in confidence from outside members of the public.

He should not make criticisms of those who have served under him or those whose competence or suitability for particular posts he has had to measure as part of his official duties.

He may, however, regard the obligations concerned with confidential relationships (but not those concerned with national security and international relations) as lifted after the expiry of 15 years from the relevant events, though even beyond that point he should not reveal the advice tendered by individuals who are still members of the public services nor make public assessments or

criticisms of them.

2. These restrictions leave him a wide latitude for the writing of an account of his stewardship.
3. The established principles of law do not provide a system which can protect and enforce those rules of reticence that the Committee regard as called for when ex-Ministers compose their memoirs of Ministerial life.
4. Nor does legislation offer the right solution.
5. There can be no guarantee that, if the burden of compliance is left to rest on the free acceptance of an obligation of honour, there will never be an occasional rebel or an occasional breach; but so long as there remains a general recognition of the practical necessity of some rules and the importance of observing them, the Committee do not think that such transgressions, even though made the subject of sensational publicity, should be taken as having shattered the fabric of a sensible system.
6. A Minister on taking and leaving office should have his attention drawn explicitly to his obligations in relation to memoirs. He may have access to the Departmental and Cabinet papers he saw while in office for the purpose of writing his memoirs, but any request for access will only be granted on the understanding that the Radcliffe conventions and procedures, as set out in this note, are followed.
7. A former Minister proposing to publish a work relating to his Ministerial experience should submit the manuscript to the Secretary of the Cabinet.
8. The Secretary of the Cabinet, acting at the request and on behalf of the Prime Minister should have duties of two kinds in relation to such a manuscript.
  - i To have it examined in respect of national security and the preservation of international relations and to transmit any objections to the author. The author should have a right of reference to the Prime Minister but should accept the latter's decision as final.
  - ii To offer views on the treatment of confidential relationships in the manuscript, bearing in mind the guidance given in paragraph 4 above. The author should pay careful attention to this advice but must take upon his own shoulders the responsibility for deciding what he is going to say. If he decides to publish material in spite of advice from the Secretary of the Cabinet, he should let the Secretary know what he proposes to do so that before publication there may be time for the Prime Minister's own direct influence to be brought to bear upon the dispute, if the Prime Minister so wishes.
9. A former Minister who has kept a diary of his Ministerial experience should give testamentary instructions to ensure that its publication does not flout the current understandings that his own ex-colleagues are likely to be observing.
10. Former members of the public services should be under the same obligation as former Ministers to submit their manuscripts for scrutiny with regard to national security and international relations, and to defer to the judgement of those carrying the immediate responsibilities in these fields. In the matter of confidential relationships, the principles concerning publications by ex-Ministers, the obligations which rest upon them, and the periods for which those obligations should be

maintained, should all be reflected also in the rules governing the publication of memoirs and other works relating to their official experience by former members of the public service.

## Ministers: Appointment, Titles, Powers and Responsibilities

### Nomination and Titles of Ministers

1. The Prime Minister nominates the members of the Government. By appointing certain members of the Administration to Ministerial offices upon whose holders functions have been conferred, the Crown vests them with power and responsibility to discharge those functions on its behalf. The Ministerial offices in question are generally those whose holders are the senior Ministers of Government departments (e.g. Secretaries of State).
2. In the main, specific functions will have been attached in statute to a Minister by Parliament. Ministers may also discharge functions on behalf of the Crown by virtue of powers and privileges derived from the Royal Prerogative. Besides exercising statutory and prerogative powers, Ministers of the Crown may also do anything which they are not precluded from doing, provided that Parliament has granted the money.
3. Junior Ministers (e.g. Ministers of State and Parliamentary Secretaries) do not normally exercise functions in their own right.
4. The responsibilities of junior Ministers within a department are usually allocated to them by the senior Minister at the head of the department to which they have been assigned, and their duties within the department may normally be altered by the senior Minister without reference to the Prime Minister. Certain junior Ministers, however, may be known by descriptive titles which indicate the range of responsibilities which they have been given. Such courtesy titles have no legal basis or effect. They are conferred with the approval of the Prime Minister, whose consent should be sought to any major intra-departmental re-allocation of responsibilities which affects the validity of a title, to any change in such titles, or to the adoption of new titles.

### Appointment of Ministers

5. Ministers and officials should note that, in some cases, there are various formalities to be completed after a Minister's appointment has been approved by Her Majesty and announced by the Prime Minister's Office.
6. For example, Secretaries of State, the Chancellor of the Exchequer and the Lord Privy Seal are sworn in the presence of The Queen in Council and receive their Seals of Office from the Queen in Council; the Lord Chancellor receives the Great Seal from the Queen in Council; and the Chancellor of the Duchy of Lancaster receives his/her Seal of Office from The Queen.
7. The formalities of the arrangements for Seals and swearing in are arranged by the Clerk of the Privy Council directly with the Palace and the Ministers concerned.
8. Arrangements are made for outgoing Ministers to cease being paid from the date of announcement, and incoming Ministers to be paid without either overlap or interval.

### Performance of Ministerial functions during vacancies or other transitions

9. Care needs to be taken before Junior Ministers or officials take action on behalf

of a Secretary of State or other Ministerial Head of Department when the office is vacant following an election, death in office, or resignation. Similar considerations apply to action taken by a Ministerial Head of Department or by Junior Ministers when any of the formalities mentioned in paragraph 5 above have still to be completed.

10. There is a possibility in such circumstances that the validity of an instrument made or action taken will be successfully challenged in proceedings for judicial review or other legal proceedings, and it is essential that legal advice is taken before any such step. Immediately following a General Election, the Cabinet Secretary should also be consulted in such cases.

11. Because of the diversity between the positions of different Ministers, there are no simple rules. The overriding rule of practice must be to seek legal advice where action has to be taken in the name of the Minister, usually under statutory powers, in such circumstances. It may be that any problem can be overcome in another way. Relevant considerations will include the following:

- > whether the Ministerial office is that of a Secretary of State. In law any Secretary of State is capable of performing the duties of another Secretary of State. Thus if a statutory instrument has to be made urgently by a Secretary of State it may be possible for another Secretary of State to sign it.
- > whether the Minister is a corporation sole. By no means all Ministers (including Secretaries of State) are incorporated as corporations sole. But where they are it will usually be possible, e.g. under section 3 of the Ministers of the Crown Act 1975, to arrange for the use of the corporate seal in particular cases. Also, depending on the purpose or purposes for which the Minister has been incorporated, it may be possible for other acts not involving the use of the corporate seal to be carried out in the name of the Minister.
- > whether statute requires the Minister personally to discharge the relevant function. In such case it may not be possible to discharge the function until, for example, the office is filled.

12. In most cases practical difficulties should not arise because any vacancy or transitional period is likely to be of limited duration.

### New responsibilities

13. The responsibilities with which a Minister is entrusted on taking office will also include potential responsibility for new issues coming within that particular field. When such issues fall wholly within one Minister's remit, it is normally clear who should take the responsibility. Occasionally, however, an issue will arise which bears little relationship to the existing structure of Ministerial functions; or, alternatively, several Ministers may have a functional interest in the same topic. On such occasions it will usually be clear from the existing content of Ministerial portfolios which Minister should take responsibility for the new problem; but in cases of doubt (particularly when there is disagreement) the Prime Minister should in the last resort be asked to rule which Minister is to take responsibility. (Normally this will not involve a transfer of functions, although a transfer may be consequential on the Prime Minister's decision).

14. In cases of difficulty or disagreement about such matters at official level, the department concerned should consult Central Secretariat in the Cabinet Office. If Ministers disagree or difficulties persist, the senior Minister concerned should approach the Prime Minister, who may seek the advice of the Head of the Home Civil Service.

#### Transfers of functions

15. The entry on *Machinery of Government Changes* gives more detailed guidance on the handling of proposals for machinery of government changes, and on the implementation of any transfer of functions which the Prime Minister may approve.

## Senior Civil Service: Appointments and Recruitment to

### Introduction

1. Most of the guidance relevant to appointments and recruitment to the Senior Civil Service is available in the following:
  - > *A Checklist of Procedures for Senior Appointments* sets out the detailed processes for filling vacancies in senior posts, particularly the very senior posts where vacancies require consideration by the Senior Appointments Selection Committee, and Agency Chief Executive posts. It is available from the Senior Appointments, Succession Planning and Mobility Brokerage Team in the Cabinet Office (tel. 020 7270 6297).
  - > The Civil Service Commissioners *Guidance on Senior Recruitment* sets out the required procedures for recruitment to the SCS from outside the Civil Service. It is available from the Commissioners Office (tel. 020 7270 5080) or at [www.open.gov.uk/ocsc/senior.htm](http://www.open.gov.uk/ocsc/senior.htm)
  - > Chapter 2 of the *Personnel Managers Guide to Pensions and Compensation* covers pensions aspects of external recruitment to the SCS. It is available from Civil Service Pensions Division in the Cabinet Office (tel. 01256 846461).
  - > Chapter 3 of the *Interchange Good Practice Guide* sets out requirements and good practice on secondments into the Civil Service from outside. It is available from the Interchange Unit in the Cabinet Office (tel. 020 7270 1842).

However, a number of issues are not covered in these documents. Guidance is set out below.

### Security Clearance for SASC Group posts

2. Where a transfer between departments is proposed involving a SASC Group post (see *A Checklist of Procedures for Senior Appointments* for the list of these posts), the receiving department is responsible for ensuring that any security clearance held is acceptable for the new post. However, the Head of the Department in which the individual is currently working is responsible for bringing to the attention of the Head of the receiving Department, or the Head of the Home Civil Service as appropriate, any information of security significance on the individual's record.

### Succession planning

3. It is crucial that there should be an adequate supply of suitably trained and experienced people in the Civil Service with the ability to fill senior posts. To ensure that those in the SASC Group posts, and those with the potential to fill them continue to have opportunities for development and advancement (which may involve interdepartmental movement or external opportunities), the Head of the Home Civil Service, and the Senior Secretary of SASC in the Cabinet Office on his behalf, exercise a particular interest in these appointments. Heads of Department are asked to prepare succession plans for all SASC Group posts as part of their departmental personnel management strategy covering the supply side of delivering departmental objectives or business plans. The Senior Secretary of SASC holds an annual round of

discussions with Heads of Department on this subject. A letter from the Cabinet Office in the autumn of each year commissions this process, and this should be referred to for details.

4. If required, the Senior Appointments, Succession Planning and Mobility Brokerage Team in the Cabinet Office (tel. 020 7270 6297) may be able to help in identifying internal candidates for SCS posts that demand particular skills or experience.

### Statutory Office Holders

5. For a number of statutory office holders (e.g. the regulators), although they may not be civil servants, there is a statutory requirement to obtain the formal consent of the Minister for the Civil Service to the salary offered. Civil Service Performance Management and Pay Division in the Cabinet Office (tel. 020 7270 4624) should be consulted about such cases at the earliest opportunity.

### Recruitment to the Senior Civil Service from outside the Civil Service

6. Before starting the procedure for recruitment to a senior post through open competition, a number of steps will need to be taken to determine, among other things, the requirements of the job and the method of filling it. Advice on the job evaluation of posts is available from the Civil Service Corporate Management Command Secretariat in the Cabinet Office (tel. 020 7270 5892).

7. Where a vacancy is to be filled by open competition, the post should be advertised on normal Civil Service terms and conditions and within the pay range for the job weight, unless it is clear that a higher salary is required to attract suitable candidates. The advertisement should not exclude applications from existing public servants.

### Conflicts of interest

8. When considering appointments from outside the Civil Service, it is important to consider carefully what arrangements should be made to guard against conflicts of interest and the risk of unfavourable comment, either when the appointment is made or when the individual returns to his or her previous employment. If, as will usually be the case, an appointment has been made by open competition, it should be easier to defend against criticism. Departments should bear in mind the following points relating to the terms and conditions of such appointments, particularly when considering period appointments:

#### a. **Shareholders and interests in outside concerns**

Paragraphs 4.3.8 4.3.9 of the Civil Service Management Code are relevant. Significant shareholdings in companies having a special relationship with the department, or operating in the field with which the individual's official appointment is concerned, should normally be disposed of. In the case of a period appointment, it may sometimes be sufficient for the shareholding to be placed temporarily in the hands of a trustee, and for the individual to avoid official dealings with the affairs of the company in which he or she has a shareholding.

#### b. **Directorships**

Whether executive or non-executive, these should normally be given up if they involve any conflict with the individual's official position or any significant use of official time. Each case should be looked at on its merits, including the question of the retention of director's fees.

**c. Partnerships**

An interest as a partner might be retained if it makes no demands on official time, and any involvement with matters pertaining to the firm or its clients is avoided while the individual is engaged in the public service.

**d. Appointments after leaving the Service**

The Business Appointment Rules apply to all staff including those on period appointments. (See also entry on *Business appointments after leaving Crown Service* in Vol I. The rules are set out in full in Annex A to Section 4.3 of the Civil Service Management Code.) Normally period appointees positively expect to return to their previous occupation or profession. They should be told about the Rules before they accept a Civil Service post, in order to avoid difficulties as their appointments end. An appropriate form of words should be included in their letters of appointment, to the effect that they are subject to the Rules and might be required to seek approval before taking future employment.

Similar points apply when considering secondments into the Civil Service. See Chapter 3 of the Interchange *Good Practice Guide* for further guidance.

### Other special conditions

9. Departments need to consider carefully the nature of the contract offered to those recruited from outside the Civil Service. Contracts on a fixed term basis with a clear expiry date are likely to be appropriate for those who have been appointed on special pay terms in order to take up a single specific post.

10. Other than in their time-limited nature and the consequent differences in termination provisions, the assumption is that external appointees will serve on normal Civil Service conditions unless otherwise specified, and will on recruitment be subject to all the normal procedures such as the appropriate security and health checks. The Cabinet Office should invariably be consulted about any requests from individuals for special arrangements, e.g. for superannuation or other conditions of service.

11. If a salary is enhanced because of special conditions (e.g. because it covers full superannuation costs) this fact should be brought out in any public announcement of the figure.

12. If the appointment is part time (e.g. four days a week) this should be explicitly recognised and agreed at the outset and reflected in the pay package.

### Pay review

13. Before terms of service are finally settled, clear arrangements should be established for reviewing salary.

### Termination

14. The full range of financial terms in the event of early retirement/severance as set out in the Civil Service Compensation Scheme (CSCS) do not generally apply to persons serving on a fixed term basis. However, in the event of redundancy or where it is considered appropriate for management reasons to make a discretionary payment to a fixed term appointee in return for an agreement to resign voluntarily, compensation may be paid on the basis provided for in Section 8 of the CSCS. It may also be necessary to think about an extension clause.

15. In the past, Departments included in all formal letters of appointment for fixed periods of one year or more a clause requiring the appointee to forego any right of appeal against alleged unfair dismissal. However, such waiver clauses are illegal in contracts made on or since 25 October 1999, when section 18(1) of the Employment Relations Act 1999 disapplied section 197(1) of the Employment Rights Act 1996. A decision not to renew a fixed term appointment made since then will be treated in law as a dismissal, and it will need to be justified in the same way as a dismissal from a permanent employment.

## Sponsorship

1. Many Government Departments are working with the private sector to encourage or secure sponsorship for events such as conferences or publicity campaigns. This may be a useful means of saving public expenditure by engaging the generosity or legitimate mutual interests of Government and industry. But it is essential that Ministers and Departments put procedures in place to ensure that any returns sponsors receive are not greater than is proper and proportionate, and that any sponsorship agreement is able to withstand public scrutiny.
2. It is reasonable for sponsors to expect some return for their support. Such returns should be:
  - (i) confined to the event itself, i.e. there must not be any suggestion that sponsors will be sympathetically regarded for other purposes such as access to Ministers outside the sponsored event or Government contracts;
  - (ii) tangible, and specified in a written agreement between the Department and the sponsor which should, for example, cover the display of the name of the sponsor at the event, in invitations to the event, and in any photographs of Ministers (or other VIPs) arranged at the launch of the event.
3. Sponsorship should not be sought or accepted from firms which are involved in significant commercial negotiations with the host Department (whether or not linked to the event), or which may be affected by the exercise of that Department's regulatory or licensing work.
4. Sponsorship should be sought in an open and even-handed manner between firms in a particular field. Grounds should not be given for a sponsor's competitors to complain that they were not given fair opportunity to provide sponsorship. Departments should also consider whether the arrangements would give rise to a contract for supplies, works or services to which the EC Procurement Directive might apply.
5. Sponsorship should be of events, not of individual Ministers or civil servants, lest individuals appear to be placed under an obligation to the sponsor.
6. Offers of free travel as part of a sponsorship package for a one-off event is acceptable provided that suitable alternative carriers have also been offered the opportunity to provide sponsorship. Other offers of free travel, whether for Ministers or officials, should not normally be accepted in line with the guidance in the Ministerial Code.
7. In general, acceptance of sponsorship should be tested against the general principle that it does not, and does not appear to, place a Minister or Department under an obligation to a sponsor going beyond any agreements relating to the event itself. Particular care needs to be exercised when considering unduly large amounts of individual sponsorship (or instances of repeat sponsorship) to minimise the risk of criticism of an undue obligation.

**8.** In cases of doubt, guidance may be sought from the Central Secretariat of the Cabinet Office.

## Travelling Expenses of Spouses and Partners: Use of Official Funds

1. Heads of Departments have discretion to authorise the reimbursement or payment for meals, travel and overnight accommodation for spouses and partners of senior officials who accompany their husbands/wives/partners to official functions. Such occasions are expected to be exceptional but may be appropriate when the official is attending in a strictly representational capacity and at which attendance by the spouse or partner would be expected.
2. Within the United Kingdom expenses should normally be restricted to the spouses or partners of members of the Senior Civil Service. However, cases may arise when expenses may be justified for spouses or partners of slightly more junior officers who have to attend such functions. Outside the United Kingdom reimbursement of expenses will be restricted to the spouses or partners of Permanent Secretaries or their equivalents although very exceptionally this may extend down to the posts immediately beneath them.
3. For both domestic and overseas travel, prior approval of the Head of Department must always be obtained. No hard and fast rules can be laid down as to the precise circumstances that warrant the reimbursement of a spouse or partner's expenses. However, the Accounting Officer must always be satisfied that the expenses are justified for official purposes.
4. Heads of Departments should ensure that a spouse or partner's travelling and subsistence expenses are kept to a minimum for both UK and overseas trips. Journeys should be made as economically as possible. Nonetheless, the spouse or partner is entitled to travel in the class appropriate to the official. Accommodation costs, including breakfast, should be reimbursed on the basis of the actual expenses. For other meals and incidental expenses Heads of Departments may meet up to a maximum of one-third each of the appropriate rate of night subsistence allowance.
5. As set out in DEO(PAY)(96)1 of 19 July 1996, departments and agencies have discretion to compensate for any tax liability for meals and travel which they provide for officials' spouses. Such expenditure is covered by paragraph 8.1.1 of the Civil Service Management Code, which gives departments and agencies authority to reimburse expenses incurred by their staff in connection with their employment.

## Whistleblowing

1. The Public Interest Disclosure Act 1998 came into force in July 1999. It enables workers who blow the whistle about wrongdoing to complain to an employment tribunal if they are dismissed or suffer any other form of detriment for doing so. Only employees can complain of unfair dismissal, but workers who are not employees can complain that they have been subjected to a detriment if their contracts are terminated because they have made a protected disclosure. The legislation covers workers in the public sector (with some exceptions, eg those who work in the security services) as well as the private sector. For the Civil Service, this legislation needs to be considered alongside the appeals mechanism contained in the *Civil Service Code*.

### What Protection does the Act Give?

2. The legislation does **not** introduce a general protection for whistleblowers in all circumstances. A disclosure will qualify for protection if, in the reasonable belief of the worker making it, it tends to show that one or more of the following has occurred, is occurring or is likely to occur:

- > a criminal offence
- > a failure to comply with a legal obligation
- > a miscarriage of justice
- > the endangering of an individual's health and safety
- > damage to the environment
- > deliberate concealment of information tending to show any of the above.

### When are disclosures protected?

3. A qualifying disclosure will be protected under the Act if it is made:

- > in good faith to the worker's employer (either directly or through internal procedures authorised by the employer), or to another person whom the worker reasonably believes is solely or mainly responsible for the failure in question;
- > to a legal adviser in the course of obtaining legal advice;
- > in good faith to a Government Minister by a worker employed in a Government-appointed organisation such as a non-departmental public body;
- > to a person or body prescribed by the Secretary of State in Statutory Instrument 1999 No 1549 (a prescribed person), eg the Health and Safety Executive.

In the last case the worker must make the disclosure in good faith, reasonably believe that the information and any allegation in it are substantially true, and reasonably believe that the matter falls within the description of matters for which the person has been prescribed.

4. Qualifying disclosures will also be protected if they are made other than

described in paragraph 3, provided that the worker makes the disclosure in good faith, reasonably believes that the information and any allegation contained in it are substantially true, and does not act for personal gain. One or more of the following conditions must also apply:

- > the worker reasonably believed that he or she would be victimised if he or she had made the disclosure to the employer or to a prescribed person;
- > there was no prescribed person and the worker reasonably believed that disclosure to the employer would result in the destruction or concealment of evidence;
- > the worker had already disclosed substantially the same information to the employer or a prescribed person.

It must also be reasonable for the worker to make the disclosure. In deciding the reasonableness of the disclosure, an employment tribunal will consider all the circumstances. This will include the identity of the person to whom the disclosure was made, the seriousness of the concern, whether the failure is continuing or likely to occur, whether the disclosure breached a duty of confidentiality which the employer owed a third party, what action has been taken or might reasonably be expected to have been taken if the disclosure was previously made to the employer or a prescribed person, and whether the worker complied with any approved internal procedures if the disclosure was previously made to the employer.

5. A disclosure about an exceptionally serious failure made other than described in paragraph 3 will be protected if the worker makes the disclosure in good faith, reasonably believes that the information disclosed and any allegation contained in it are substantially true and does not act for personal gain provided that it is reasonable for the worker to make the disclosure, having regard, in particular, to the identity of the person to whom the disclosure is made. It will be for the employment tribunals to consider whether any particular failure is exceptionally serious: this is a matter of fact, not of a worker's personal belief.

#### What should I do if I become aware of wrongdoing?

6. The *Civil Service Code* advises that you should report any actions that are inconsistent with its provisions (paragraph 11). First, you should raise the issue with your line manager. If for any reason, you would find that difficult you should report the matter to the nominated appeals officer within your department.

7. If you are unhappy with the response you receive, you may report the matters to the Civil Service Commissioners (paragraph 12 of the *Civil Service Code*). Exceptionally, the Civil Service Commissioners will consider accepting a complaint direct.

8. These procedures should also be used if you wish to make any other disclosure covered by the 1998 Act.

#### Will I be protected if I blow the whistle before going through the internal

### procedures?

9. Only you can make this judgement, and in doing so you will need to consider the preceding paragraphs carefully. It is preferable – and this is at the heart of the Public Interest Disclosure Act – to raise the matter internally if appropriate and practical. It is after all in the interests of the organisation and its workforce that issues and concerns are aired in this way. If you are in any doubt, you should speak to your departmental nominated officer (paragraph 6). Your conversation will be treated in absolute confidence.

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