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Select Committee on the Constitution

1st Report of Session 2010–11

Government Response to the Report on the Cabinet Office and the Centre of Government

Report

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Select Committee on the Constitution

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To examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.

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Contact Details

All correspondence should be addressed to the Clerk of the Select Committee on the Constitution, Committee Office, House of Lords, London, SW1A 0PW.

The telephone number for general enquiries is 020 7219 1228/5960

The Committee's email address is: constitution@parliament.uk

Government Response to the Cabinet Office and the Centre of Government

1. On 29 January 2010 we published a report¹ on the Cabinet Office and the Centre of Government.
2. The Government responded with a letter from the Rt Hon Tessa Jowell, dated 31 March 2010. The response is reproduced here, for the information of the House, in the Appendix.

¹ HL Paper 30, Session 2009–10

APPENDIX 1: GOVERNMENT RESPONSE

Letter from the Rt Hon Tessa Jowell MP

The Government is grateful to the House of Lords Select Committee on the Constitution for its detailed and considered inquiry into, and recommendations on, the Cabinet Office and the Centre of Government.

The key characteristics for the centre of government are for it to be able to react coherently and effectively to the changing pattern of current and future opportunities and challenges. The report in large part supports the structures and arrangements that are already in place and the Government is grateful for that endorsement.

The Committee's central recommendation relates to the need to ensure good levels of transparency and accountability. The Committee rightly draws attention to the specific point that accountability structures should reflect power structures.

The Government agrees about the essential nature and value of transparency and accountability; it will continue to work—with others in and outside Parliament with a role to play—to improve both. Some aspects are already being addressed through measures in the Constitutional Reform and Governance Bill that is currently before Parliament.

The need for the centre of government to react quickly and flexibly to new challenges means that accountability structures may not always mirror new responsibilities at the centre. The Government will act as quickly as it can to ensure that power and accountability mechanisms are aligned as swiftly and accurately as they can be.

Introduction

Recommendation at paragraph 251

In our view, structures of accountability should mirror structures of power, and where structures of power have changed, the structures of accountability should be adjusted accordingly. Two considerations flow from this view:

- **Upholding and improving parliamentary accountability;**
- **Ensuring that all elements of the centre and all aspects of the centre's work are transparent. (Para 8)**

Government Response

The Government agrees that transparency and accountability are key aspects in the working of the centre of government, and that accountability structures need to adapt to reflect changing roles and responsibilities.

Supporting the Prime Minister

Recommendation at paragraph 252

Sir Gus O'Donnell asserted that "there is one Cabinet Office of which Number 10 is a subset". This description of the relationship between the Cabinet Office and Prime Minister's Office was not reflected in other

evidence that we received. It conflicts, for instance, with the statement of Lords Armstrong, Butler and Wilson, that the two offices are “functionally distinct”. It is open to doubt whether Sir Gus O’Donnell’s description of the Prime Minister’s Office as a “subset” and a “business unit” goes beyond what Sir Richard Mottram told us, that “Number 10 is part of the Cabinet Office for public expenditure planning purposes”, and whether it accurately describes how the centre operates in practice. We believe that the nature of this relationship should be clarified by the Cabinet Office, and should be reflected in government publications, which appear to suggest that the two offices are independent institutions. (Para 25)

Government response

The Prime Minister’s Office is a unit within the Cabinet Office rather than a department in its own right. It shares the Cabinet Office’s overarching purpose of making government work better. The specific role of the Prime Minister’s Office is to support the Prime Minister, one of the three core functions of the Cabinet Office, which also include supporting the Cabinet and strengthening the Civil Service. The Government will consider the way the relationship is reflected in Government publications.

The Permanent Secretary and other senior staff of the Prime Minister’s Office play a significant role within Cabinet Office governance structures, for example by participating in the Cabinet Office Board and its sub-committees.

Staff from the Prime Minister’s Office and other Cabinet Office units work closely together in many contexts, including the provision of policy advice to the Prime Minister and Cabinet. The Prime Minister’s Office also assists other Cabinet Office units in ensuring that other departments’ policies receive proper collective consideration. On three core communications functions—strategic communications, press office and digital communications—there will shortly be full integration of management. This means one manager overseeing each of these functions across the Prime Minister’s Office and broader Cabinet Office with the brief of bringing the two sets of teams together as far as possible.

Recommendation at paragraph 253

The role of the Prime Minister’s Office is central to the role and structure of the centre of government. The establishment by the current Prime Minister of the post of Permanent Secretary to the Prime Minister’s Office is an important step in the evolution of the structure of the centre. We recognise the arguments set out by Sir Gus O’Donnell and Jeremy Heywood in favour of the current arrangements, and Sir Gus O’Donnell’s explanation of the role of the six permanent secretaries located in the Cabinet Office. We recommend that the Prime Minister’s Office, and the Permanent Secretaries that operate within it, are subject to appropriate parliamentary accountability mechanisms. (Para 26)

Government response

The structure and responsibilities of the centre of government, including the Prime Minister’s Office, will continue to evolve in order to respond flexibly and effectively to current and future challenges. It is worth noting that the Prime Minister is now subject to more scrutiny and accountability than before. He attends the Liaison Committee where he answers questions from the heads of all Select Committees on topics of their choice twice a year. He also conducts monthly press conferences.

This is in addition to Prime Minister's Questions and twice daily lobby briefing by his official spokesman. This makes No10 one of the most actively accountable prime minister's offices in the world. The Prime Minister's Office and officials who operate within it are subject to the usual accountability mechanisms in the same way as other officials and as set out in the *Civil Service Code* and the Cabinet Office Guidance on *Departmental Evidence and Response to Select Committees*.

The Cabinet Secretary is the Accounting Officer for the Prime Minister's Office. The Intelligence and Security Committee also scrutinises the relevant sections of the Cabinet Office, and the Chairman of the Joint Intelligence Committee gives evidence to it.

Recommendation at paragraph 254

We conclude that a greater involvement and influence by the Prime Minister on policy delivery is inevitable in the modern age, that the Prime Minister's role has evolved over a long period under different governments, and that Prime Ministers will wish to use all possible resources in pursuit of the role. We recommend that the Prime Minister's role and the centre's role in policy delivery are transparent and accountable to Parliament. (Para 43)

Recommendation at paragraph 255

We believe that the Delivery Unit and the Strategy Unit play a useful role in delivering the Government's policy agenda, for instance in co-ordinating work across government departments, and that there should be transparency and accountability for the work of these units. (Para 52)

Government response

The Government agrees about the importance of transparency and accountability in the work of the Prime Minister and of units, including the Delivery Unit and the Strategy Unit, supporting policy delivery. Information about the work of the Delivery Unit and the Strategy Unit is published in the HM Treasury and Cabinet Office Departmental Reports and on their websites. Supplementary detail about their activities is regularly provided, for example, through answers to Parliamentary Questions.

Ministers are subject to Parliamentary accountability; officials are subject to the usual accountability mechanisms and as set out in the *Civil Service Code* and the Cabinet Office Guidance on *Departmental Evidence and Response to Select Committees*

The Government is grateful to the Committee for its support for the work of the Delivery Unit and the Strategy Unit.

Recommendation at paragraph 256

We agree with the Minister for the Cabinet Office that the flexibility of the structure of the centre of government is an asset. We also recognise the value of an "incubator role", where the Cabinet Office develops units and functions that are consequently transferred to the relevant government departments, but we fear that the Cabinet Office has tended to function less as an incubator and more as a dustbin. The fact that policy units for which no other home can be found have been placed in the Cabinet Office

underlines the constitutional importance of ensuring that the Cabinet Office and the units within it are properly held to account. (Para 66)

Government response

The Cabinet Office has a solid history of undertaking projects of vital national importance and then bedding them out into home departments when they are up and running. Examples include Better Regulation and counter-terrorism. All units are properly held to account and we will ensure this continues.

Recommendation at paragraph 257

We recommend that a review of the units that have accrued to the centre be undertaken by the Government, including an examination of the rationale for each unit's continued existence, and for its location at the centre of government rather than in a department. In order to ensure that the Government are properly held to account, we recommend that a copy of this review be sent to this Committee and also, should they wish to receive it, to the House of Commons Public Administration Select Committee. We also recommend that the same review process be repeated regularly. Appropriate mechanisms should be put in place to ensure that those units that remain are held to account in an effective manner. (Para 67)

Government response

The Government welcomes the Committee's recognition of the value of the 'incubator role' that allows the Cabinet Office to develop units and functions prior to their being transferred to the relevant government department. It keeps the structure and units of the Cabinet Office under review. However, the Government does not believe that a formal review would be appropriate or necessary at the current time. The evidence of both the Cabinet Secretary and the Minister for the Cabinet Office explained the dynamic nature of the Cabinet Office, which naturally tends towards the priorities of the Government of the day. This has at times led to a necessary widening of strategic objectives and to functions being incubated in the centre. It is right to continue this approach and to move functions on at the appropriate time.

Recommendation at paragraph 258

We believe that special advisers have an important role to play in the work of government, but that it is necessary to ensure that advisers fulfil an appropriate function that complements, rather than diminishes, the role and responsibilities of ministers and civil servants. Transparency should apply to the work of special advisers. We welcome the provision for a Code of Conduct for special advisers included in the Constitutional Reform and Governance Bill. This Code should include a procedure to limit the numbers of special advisers. We recommend that the Government should define the role of special advisers, and prevent a recurrence of the 1997 Order in Council giving advisers the power to instruct civil servants. We will pay particular attention to these issues when we conduct our scrutiny of the Bill. (Para 84)

Government response

The Government welcomes the Committee's conclusion that special advisers play an important role in government. The Government is open and transparent about

the function and numbers of special advisers. The existing *Code of Conduct for Special Advisers* clearly sets out what special advisers can and cannot do, and the basis of their relationship with Ministers and permanent civil servants. The *Ministerial Code* makes clear the restrictions on the number of special advisers who can be appointed. The Government publishes an annual statement to Parliament on the number and cost of special advisers.

The Constitutional Reform and Governance Bill currently before Parliament would put this on to a statutory footing by making provision for a code of conduct for special advisers and for a report on special adviser numbers and costs, both of which would be laid before Parliament. The Bill also specifies that special advisers are appointed to assist Ministers, and makes clear the restrictions on their activities.

Recommendation at paragraph 259

We reaffirm that structures of accountability should mirror structures of power. We reaffirm that the structure of accountability should mirror the structure of power. Greater prominence in the role of the Prime Minister should be mirrored by increased transparency and more effective accountability. Whilst we welcome the biannual appearance by the Prime Minister before the House of Commons Liaison Committee, we do not believe that this goes far enough in securing the parliamentary accountability of the Prime Minister's Office. (Para 97)

Government response

The Government believes that No10 Downing Street is one of the most open and accountable prime minister's offices in the world. The Prime Minister is accountable to Parliament through his weekly appearance at Prime Minister's Questions. In addition to being open to Parliamentary questions, in the same period since they took up office, the current Prime Minister has already given more statements to Parliament than his predecessors (33 by end February 2010), allowing all MPs to debate and question him directly on the subject as they see fit. In addition to debates of the Queen's Speech, the Prime Minister has introduced a statement to parliament on the draft legislative programme and reduced the power of the Executive through constitutional reforms set out in the Governance of Britain document and the current Constitutional Renewal and Governance Bill. In common with all members, he is an elected Member of Parliament, accountable to his constituents. Since 2002, the Prime Minister has appeared twice a year before the Liaison Committee. This allows members of the Committee, on behalf of Parliament, to hold the Prime Minister to account on topics of their choosing. The Prime Minister's most recent appearance was on 2 February 2010, when members questioned him on the themes of the fiscal deficit, invigorating democracy, counter-terrorism policy, foreign affairs and being Prime Minister.

Recommendation at paragraph 260

We do not support the calls for the creation of a separate Office of the Prime Minister, or an Office of the Prime Minister and the Cabinet, because we do not believe that this would significantly enhance the effective functioning or accountability of government. Instead we recommend that "Supporting the Prime Minister" should remain a core function of the Cabinet Office, so long as there is full transparency in the way in which the Cabinet Office fulfils this role, and so long as accountability mechanisms effectively reflect the importance of this function. (Para 110)

Government Response

The Government welcomes the Committee's support for the Prime Minister's Office remaining an integral part of the Cabinet Office and for *supporting the Prime Minister* remaining one of the Cabinet Office's core functions.

Supporting the Cabinet*Recommendation at paragraph 261*

We reaffirm our belief in the importance of Cabinet government, which plays an essential role in upholding the principle of collective ministerial responsibility. (Para 128)

Recommendation at paragraph 262

We believe that the Cabinet committee system remains an essential part of the UK's government structure, as part of the system of collective ministerial responsibility. In order for Cabinet committees to function effectively, we believe that they should be mirrored by committees of officials. We ask the Government to clarify the extent to which Cabinet committees continue to be supported in this way. (Para 137)

Recommendation at paragraph 263

We reaffirm the constitutional importance of the principle of collective ministerial responsibility. Executive responsibility should not lie solely with the Prime Minister, not least because accountability mechanisms are not designed to reflect such responsibility. In the light of the trends and changes described above, it is important that the principle of collective responsibility is maintained. (Para 153)

Government response

The Government agrees that the Cabinet, collective Ministerial responsibility and the Cabinet Committee system remain essential parts of UK government.

Cabinet Committees are supported by official-level meetings both informal and formal. Formal committees of officials are established for most Cabinet Committees and are organised and chaired by the Committee Secretariat when required. They are attended, in the main, by senior civil servants, and enable the Secretariat and Departments to monitor progress on actions from previous Committee meetings and prepare the Committee forward agenda, including resolving potential differences and testing the effectiveness of Committee papers. Further detail is available at

http://www.cabinetoffice.gov.uk/media/98307/guide_to_cabinet.pdf

The Prime Minister recently constituted three new Committees to focus on the Government's priorities: National Economic Council (NEC), Democratic Renewal Council (DRC) and Domestic Policy Council (DPC). Each is mirrored by a committee of senior officials chaired by the Cabinet Secretary.

Recommendation at paragraph 264

The increasing recognition of issues involving more than one department has placed pressure on the traditional departmental delivery model. In order to ensure that structures of accountability mirror structures of

power, Parliament should ensure that its accountability mechanisms adapt to the changing nature of policy formation and delivery. Government should ensure that the mechanism of the policy formation and delivery process remains transparent. (Para 154)

Government response

The Government agrees that transparency and accountability are key to the work of government, and that accountability structures need to adapt to reflect changing roles and responsibilities, including shared roles and responsibilities.

Recommendation at paragraph 265

We believe that the post of Minister for the Cabinet Office should be maintained in order to ensure that the work of the Cabinet Office is transparent, and to ensure that Parliament is able to hold the Department to account in an effective way, but are concerned that the responsibilities of the Minister in relation to the Cabinet Office are at present ill-defined. We recommend that the Government reassess the current function of the Minister for the Cabinet Office to ensure that the postholder's responsibilities accurately reflect and account for the strategic role that the Cabinet Office plays. (Para 163)

Government response

The Minister for the Cabinet Office is responsible for and gives strategic direction to the Cabinet Office, including oversight of the department's three core objectives:

- Supporting the Prime Minister
- Supporting the Cabinet
- Strengthening the Civil Service.

The evidence of both the Cabinet Secretary and the Minister for the Cabinet Office explained the dynamic nature of the Cabinet Office, where the focus is on the priorities of the Government of the day; this has at times led to a necessary widening of strategic objectives. For example, the Minister for the Cabinet Office is also responsible for co-ordinating Government action in relation to social exclusion and the Third Sector.

The Prime Minister of the day regularly reviews all Ministerial functions and responsibilities.

Recommendation at paragraph 266

In the case of the proposal to abolish the Office of Lord Chancellor in June 2003, the Cabinet Office was unable to ensure compliance with proper constitutional norms in the adoption of a change of such constitutional significance. It is particularly disturbing that these failures occurred without there being any external crisis which might explain, far less justify, such failures. Consideration should be given by the Cabinet Office to means of ensuring that such failures do not recur. (Para 214)

Government response

The Government does not accept that putting forward its proposal was not in accord with constitutional norms. It set out its proposals in June 2003. There was

extensive consultation and debate on various aspects of the Lord Chancellor's role before the Government submitted its proposals to Parliament for scrutiny and approval through the Constitutional Reform Bill in February 2004. As the Cabinet Secretary set out in his letter of 1 December 2009 to the Committee, the Cabinet Office consulted senior officials in the Lord Chancellor's department and the (then) Prime Minister discussed his plans with Lord Irvine in early June 2003. The Cabinet Office did not consult senior members of the judiciary prior to announcement and it would not, as the evidence explains, have been right for the department to undertake consultation with the judiciary without the involvement in it of the Lord Chancellor, which—for the reasons Lord Irvine and Lord Turnbull have explained to the Committee—was not possible at the time.

The Cabinet Office will continue to consider carefully any future changes that, if implemented, would have constitutional implications. Where possible, the Cabinet Office will consult on the merits of any change with their legal advisors in the Treasury Solicitor's Department and the Parliamentary Counsel Office, and with Departmental officials, who will be aware of the views of key stakeholders. However, due to the sensitivity of some proposed changes, this will not always be possible until a late stage. To do otherwise could be destabilising for the ongoing business of Government and undermine the Prime Minister's ability to appoint his Cabinet.

Recommendation at paragraph 267

Whilst we accept the general proposition that the ability to undertake machinery of government changes should remain as a prerogative power of the Prime Minister on behalf of the Crown, this should be subject to a number of provisos. In the case of the proposal to abolish the Office of Lord Chancellor, the fact that it marked a constitutional change of great significance, with implications for both Parliament and the judiciary and that the post could only be removed by statute, meant that it required totally different handling. (Para 215)

Government response

The Government accepts that this required different handling, in the sense that important aspects of the changes, including some of constitutional significance, could only be made with the agreement of Parliament through its consideration of the Constitutional Reform Bill.

Recommendation at paragraph 268

We recommend that the Cabinet Office should play a formal role in investigating the likely consequences of any machinery of government changes, particularly those with constitutional implications. (Para 216)

Government response

All machinery of government changes are a decision for the Prime Minister or the Cabinet Secretary, acting on his behalf. The Cabinet Secretary, supported by civil servants in the Cabinet Office, is responsible for providing advice to the Prime Minister on machinery of government changes, and when doing so carefully considers the full range of implications, including constitutional implications, and structures his advice to the Prime Minister accordingly.

Recommendation at paragraph 269

We further recommend that parliamentary scrutiny of machinery of government changes should be enhanced, and that, as a minimum

requirement, the Government, advised by the Cabinet Office, should be required to set before Parliament a written analysis of the relevant issues and consequences relating to a proposed machinery of government change with constitutional implications, and that an oral ministerial statement be made in Parliament. We affirm the value of the scrutiny work of parliamentary committees in this context, and recommend that relevant committees of both Houses be given the opportunity to scrutinise proposed changes, both before and after they take place. (Para 217)

Government response

The Government believes that the Prime Minister of the day should continue to be able to act quickly to change the structure of the government and to appoint Ministers to the roles he thinks most appropriate. However, changes are not made lightly or in a vacuum. The Government has taken significant steps in recent years to improve the transparency of the machinery of government process and believes that the current accountability mechanisms in place are sufficient for effective parliamentary oversight and scrutiny.

All significant changes are now announced to Parliament by a Written Ministerial Statement which is accompanied by detailed background material placed in the Libraries of both Houses. This provides a starting point for Select Committees and the Government has committed that Ministers will make themselves available to any Select Committee that wishes to examine the implementation of any changes. The Cabinet Office also published in January a best practice handbook on machinery of government changes, which provides advice for civil servants on both the process for taking decisions and on the implementation of any changes. The handbook is available on the Cabinet Office website.

Strengthening the Civil Service

Recommendation at paragraph 270

We find persuasive the arguments which we have heard that the current arrangement where the Cabinet Secretary acts as Head of the Civil Service has worked well. We therefore recommend that the Cabinet Secretary should continue to fulfil the function of Head of the Civil Service, and that the Cabinet Office should retain responsibility for managing the Civil Service. (Para 231)

Recommendation at paragraph 271

We note the Cabinet Secretary Sir Gus O'Donnell's assertion that he has "all the personal authority I need", and agree with his assessment that much "depends on the engagement between the individual Cabinet Secretary and the Prime Minister of the day as to how they use their Cabinet Secretary." Nonetheless we note with concern the evidence we have received suggesting that the authority of the Cabinet Secretary has diminished. The Cabinet Secretary has a vital role to play in ensuring the effective operation of government, and should retain the authority needed to fulfil this function with the full support and backing of the Prime Minister. (Para 242)

Recommendation at paragraph 272

We note the work undertaken by the Cabinet Office in delivering Capability Reviews of departmental activity. We believe that the Cabinet Office is the most appropriate department to undertake this work. (Para 249)

Government response

The Government welcomes the Committee's endorsement of the arrangements under which the Cabinet Secretary acts as Head of the Civil Service and the Cabinet Office is responsible for managing the Civil Service and carrying out Capability Reviews of departmental activity. There are no plans to change these arrangements.

The Government shares the Committee's view that the Cabinet Secretary has a vital role to play in the effective operation of government, and that Prime Ministerial support and backing for the Cabinet Secretary role is essential. The Government does not agree with the suggestion that the authority of the position of Cabinet Secretary has diminished.

Conclusion

Recommendation at paragraph 273

In undertaking this inquiry we have considered a complicated and at times confusing web of offices, structures, jobs and personalities. This complicated picture should not obscure the fact that the operation of the centre of government is of unique and vital importance to the effectiveness of the UK's system of government. We repeat our view that structures of accountability should mirror structures of power. Our recommendations have sought to ensure that where structures of power have shifted, structures of accountability are adjusted accordingly. As the General Election approaches, we call on all political parties to bear this principle in mind. (Para 250)

Government response

The Government agrees that the Cabinet Office and the centre of government have a key role in ensuring an effective and coherent response to a constantly changing pattern of opportunities and challenges. It agrees that transparency and accountability mechanisms should be kept under review to reflect current organisational structures and functions.