

HOUSE OF LORDS  
HOUSE OF COMMONS  
MINUTES OF EVIDENCE  
TAKEN BEFORE  
JOINT COMMITTEE ON THE DRAFT CONSTITUTIONAL RENEWAL BILL

**DRAFT CONSTITUTIONAL RENEWAL BILL**

WEDNESDAY 11 JUNE 2008

LORD WILSON OF DINTON, LORD TURNBULL and PROFESSOR PETER HENNESSY

DR MALCOLM JACK, MR MICHAEL POWNALL,  
LIEUTENANT-GENERAL SIR MICHAEL WILLCOCKS and MRS JILL PAY

Evidence heard in Public

Questions 414 - 488

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## Oral Evidence

Taken before the Draft Constitutional Renewal Bill

on Wednesday 11 June 2008

Members present:

Michael Jabez Foster, in the Chair

Armstrong of Ilminster, L.  
Fraser of Carmyllie, L.  
Gibson of Market Rasen, B.  
Hart of Chilton, L.  
Morgan, L.  
Norton of Louth, L.  
Tyler, L.  
Williamson of Horton, L.

Martin Linton  
Mr Andrew Tyrie  
Sir George Young

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Witnesses: **Lord Wilson of Dinton**, a Member of the House of Lords, Cabinet Secretary 1998-2002, **Lord Turnbull**, a Member of the House of Lords, and **Professor Peter Hennessy**, Atlee Professor of Contemporary British History, Queen Mary University of London, gave evidence.

**Chairman:** Good afternoon. Thank you very much indeed for coming to join our Committee and offering evidence on the Civil Service part of our consideration. As you know, the Joint Committee is charged with looking at a whole series of issues, the proposal for a Civil Service Act being only part. Thank you very much for coming to offer your advice on that. Can I first ask Lord Armstrong to start.

**Lord Armstrong of Ilminster:** I do not think I need to declare an interest with these particular witnesses.

**Chairman:** Can I stop you, Lord Armstrong, I do apologise. We probably all ought to declare our interests. I have to tell you that members have declared their interests and they

are on the website if anyone would wish to see them. Are there any other declarations that need to be made today? If not, please carry on.

**Q414 Lord Armstrong of Ilminster:** Thank you. The question I would like to ask is do you think that there should be and we need to have legislation putting the Civil Service on a statutory footing, a Civil Service Act by any other name?

**Lord Wilson of Dinton:** I am on record, when I was Secretary of the Cabinet and Head of the Civil Service, as being in strong support of the case for a Bill, so I warmly welcome this Bill. It is not fashionable to say anything nice about the Prime Minister, but I think he should be given credit for this Bill, as I think should go to the Public Administration Select Committee, who have longpressed for it, and the Committee on Standards in Public Life who also made an important contribution. The reasons why I think a Bill is a good idea I set out in a speech some years ago, which I can make available to the Committee. In essence, the Civil Service has been going, and will continue to go, through rapid change. We live in a period when governments come to power with large majorities and with many members who do not know the underlying conventions of the Civil Service, who have got no experience of government - that is not a criticism, it is a neutral observation - when there are high demands on the Civil Service to perform well and when there is much other constitutional change. These throw up issues about all sorts of things, like the role of special advisers, opening up the Service to outsiders, new ways of working, which very often are about boundaries and it would be a great help to have in statute some of the basic ground rules and principles so that you do not have to argue everything from scratch. It is also worth remembering that Orders in Council are very fragile, they are a fragile basis on which to work. We have a habit in this country of operating on the assumption that everyone knows the rules, but I think it is better not to take that for granted with an important institution and to do what we can to make sure that the basic values, principles and rules governing its operation are part of the law.

**Q415 Chairman:** Is that a view shared by you, Lord Turnbull?

**Lord Turnbull:** I too am happy to see these clauses in this Act. In my view, it does not change the fundamental relationship between the Civil Service, ministers and Parliament. It puts certain values on to a statutory basis and provides certain safeguards, particularly to the Civil Service Commission, and I welcome that. In office, I was less enthusiastic about it, particularly the Bill which was drafted by the Public Administration Select Committee. There was a particular clause which I thought strayed much too far into Parliament trying to manage the Civil Service. That clause is not in this Bill and as it is not in this Bill then I can support the inclusion of these clauses.

**Professor Hennessy:** I am very pleased it is part of the wider Constitutional Renewal Act, but part of me regrets the need for it to be there. I think it is an indication of what is a fact, that the relationships in the last 15 years, but starting earlier than that, probably 20 - 25 years, between what I call the two and a half governing tribes, that being the ministers and the permanent Civil Service, the half being the special advisers, has got to the point where in certain specific instances, but also in general terms, particularly Treasury and No.10 where there has been a large cluster of special advisers in recent years, the relationships have got scratchy, to put it no higher, to the point where you do need to spell out the delineations of function between the two and a half governing tribes. That is a matter of regret for me because part of me remains with Mr Gladstone in 1879 when he said that there is no other constitution in the wide world that depends so much on the good sense and good faith of those who work it, note the verb “work it”, good sense and good faith. Clive Priestley, who we all remember fondly, christened this in modern terms the “good chap” theory of government. I am sufficiently of the *ancien* regime by temperament, training and background, although I have never been a public servant, to regret that, but I do think we have reached a position now where this is crucial. I was very concerned to discover that for the Prime Minister, who does

deserve credit, as Richard said, for bringing all this forward, it was not in the original material he brought in with him as Prime Minister a year ago and Sir Gus O'Donnell got to work on him and persuaded him that the Civil Service Act element was vital, and Alistair Graham, of the Standards in Public Life Committee, went to see him privately and so persuaded him too. Not only are we talking about fragility in terms of Orders in Council and status quo, with which I agree with Richard, we are talking about fragility in this element of the Bill finding its place in the sun in the first place. When Andrew was Cabinet Secretary, and I think Richard too, there was a palpable lack of enthusiasm around the Cabinet table for this. I do not think it had a single ministerial champion. Richard will remember the day when one of the senior ministers had a great outburst against all of this, Northcote-Trevelyan, as an ancient Victorian relic. Of course, I am such a throwback that I think the Indian Civil Service model as transplanted to the UK has served us well and will continue to serve us well and that the specialness of Crown service, as we have always conceived it is absolutely critical to the good government of this country and, although I regret it has got to be in this Act, I am relieved that it is there, paradoxical though that may sound, Chairman.

**Q416 Chairman:** Does it have to be in the Act or is it important enough to have its own title? Does anyone have a view about that?

**Lord Wilson of Dinton:** My own view, Chairman, is that it is more important to get it on the statute book than to worry about the title and whether it is on its own or part of another Bill. The important thing is to get it on the statute book while you have got the opportunity. It has taken 150 years to get here and I would not want to spoil the ship for a ha'p'orth of tar.

**Q417 Lord Armstrong of Ilminster:** Are there any drawbacks? You have all quite reasonably pointed out the advantages and reasons for doing it, but are there any drawbacks other than those that Professor Hennessy described?

**Lord Wilson of Dinton:** I do not think one should claim too much for this, it is a fairly modest measure but one that I think is valuable. Also, it is important not to get into a position where you put so much into the Bill that you make the management of the Service more difficult. You must only put in the Bill those things which are of lasting importance and not going to change. What you must not do is get in the way of flexibility to manage the Service as the world changes around it.

**Professor Hennessy:** Could I add to that, Chairman. I think one of the factors we have all got to remember, and I am sure you do really because you have all been in the business of government one way or another for a long time between you, is that whatever the bits of paper say it is the human relationships that matter. We had questions of procedure for ministers for years, which John Major, to his credit, declassified. We were the only country in the world where the guidelines for proper ministerial behaviour had a 30 year disclosure on them, which was extraordinary really, but once we got them we noticed from some of the old declassified ones that the requirements of Cabinet government are spelt out in paragraphs one and two, that Cabinet should handle all those matters that are of sufficient public interest and those where there is serious disagreement between departments or concerning the country. You will remember, Lord Armstrong, indeed my friends, the two Cabinet Secretaries, will remember that it is the last thing in the world that ever happens in a Cabinet if a Prime Minister is wanting to take shortcuts with the process that somebody speaks up from the end of the table saying, "May I quote you, Prime Minister, paragraphs one and two of questions of procedure for ministers", it does not work like that. So we get back to Gladstone, the good sense and good faith of people, and without that working well all these scraps of paper can be absolutely meaningless, but they do raise the hurdle against deliberate tearing up of the conventions. If it is in primary legislation you could not politicise the Civil Service wholesale without it being

noticed, whereas you could slip through Orders in Council, as indeed has happened once or twice, with hardly anybody, apart from me and Peter Riddell, who is behind me, noticing it.

**Q418 Mr Linton:** I just wanted to ask Peter one thing. You mentioned that Tony Blair had relied so heavily on importing special advisers into Downing Street implying that was a bad thing. If it is a failing, do you think it is a failing of the Civil Service or a failing of the last two Prime Ministers?

**Professor Hennessy:** I do not think it is a failing of individuals actually. I think you can have too many special advisers. The special advisers I have always preferred are those you hire because they know things rather than because they believe things. I do not want to be unkind but ---

**Q419 Chairman:** Can I say we are going to ask you about special advisers later on.

**Professor Hennessy:** Okay, I will come back to it. No, Mr Linton, is the answer to that.

**Q420 Lord Morgan:** I would like to ask all three witnesses, if I may, whether you are concerned that ministers are failing to respect the political neutrality of the Civil Service and, if so, whether there are provisions you would like to see in the draft Bill. Could I particularly ask Professor Hennessy, who is the Attlee Professor who lectured last night splendidly on Attlee's consensus, whether things were different in the past.

**Professor Hennessy:** It is very difficult to be sure because when the archive comes up you occasionally find even Olympian figures like Norman Brook, who I think was a most remarkable man, slipping in what we would now regard as something frankly "huey".

**Q421 Chairman:** What do you mean by that?

**Professor Hennessy:** For example, advising the Cabinet on his views on the abolition of capital punishment, as I remember it, being premature, conscious matters. Just occasionally it

is slipped into it. What is remarkable about it is the scarcity of it, the rarity of it in the old files but, of course, the old files only capture the audit trail, they do not capture the conversation. I think the great virtue of Crown service as we conceive of it, the so-called Victorian relic, means that most public servants right through to today are shot through with the unspoken requirements of this and when lines are really seriously about to be crossed they not only know about it, they say it. It is in the Tom Tiddler's area, the rush of political and governing life, that you might get some people whose alarm bells do not ring. Also, you cannot keep going to the stake, can you, with particular ministers who are tone deaf on this. Indeed, we have some spectacular examples of ministers who have been tone deaf on that in recent years because it has emerged, it has erupted. If you are in the position of my two friends here, you cannot five days of the working week say, "Really, that is not quite consonant with the conventions, Prime Minister or Secretary of State", because they think you are a fusspot and they will not listen to you on anything else. Human nature being what it is, I think people go *sotto* for a while except when you get some almost unarguable case that you are confronted with. I have every sympathy with people in the position of Cabinet Secretaries in recent years having to put up with that kind of working climate. I have always been reeking with sympathy for you, although you may not have realised it!

**Lord Turnbull:** On this question of neutrality, a lot of people come to me and they say, "Isn't the Civil Service being politicised?" and I say, "What do you mean by that?" It can mean one thing, which is people who have political sympathies are being appointed to the Civil Service. I would say there is no evidence whatsoever that is happening. The Civil Service Commissioners are involved in more senior appointments now than they were in the past. The second meaning could be civil servants behave partially, they get sucked in and say and do things, behave in a way which looks as though they are party supporters. It happens from time to time and people get pulled up on it. The more serious problem, I think, has been that



the work of civil servants has been politicised in the sense that more of it goes through the minister's special adviser channel than used to be the case. I think ministers still respect the political neutrality of the Civil Service but they do not use it to the extent that they used to or should do. What can you do about it? There is an important question which maybe later on we need to come back to, which is the Civil Service has a duty to give impartial advice. In the Ministerial Code, but not anywhere in this Act, is a duty on ministers to give proper weight to that. A very significant question is whether that should be made a symmetrical duty.

**Lord Wilson of Dinton:** May I give support to what Lord Turnbull said there and, indeed, Peter Hennessy. Very often, in practice the issues arise in relatively small cases, relatively small instances, and you have a decision about how often do I make a stand and where do I make a stand. It is not a deliberate wish to make a wholesale assault on the impartiality of the Civil Service, it may either be ignorance of the conventions or an impatience with them, a wish to get from here to here more quickly than, say, the selection on merit would permit. This is a very personal thought. I think what it very often boils down to is the duty which I believe there is on ministers not to use the resources which Parliament has voted for government purposes for things which are primarily party political or partisan. I see both Sir George Young and Mr Tyrie sitting over there and some decade ago had the experience of them, quite rightly, raising issues in that area. Very often what one is talking about is where the boundary is, but at least it is important to know what the principle is which one is talking about so that people know what ministers are under a duty not to do. I would like to see that in the law myself.

**Q422 Lord Armstrong of Ilminster:** Should that duty be included in the provisions of a Civil Service Bill or the equivalent, or is it really rather different from the provisions which cover the Civil Service and should be provided for in other kinds of guidance?

**Lord Wilson of Dinton:** When I was thinking about what I would say to you, it seemed to me there ought to be a duty on ministers which is a corollary, as Lord Turnbull was saying, of the civil servant's duty. One of these earlier statutes had a duty on ministers not to impede civil servants in their performance in accordance with the Code. I would like to see that, I think it is rather a good idea. That may cover what it is I am wanting because the Code itself requires civil servants to behave with impartiality, but there is a bit of me that would like to go a step further. I am airing the thought, I am not putting it to you that strongly.

**Professor Hennessy:** Is it not the accounting officer's note country though if money that Parliament has voted for a particular purpose is being siphoned off for something else? That is when the accounting officer system steps in. Maybe I was being naïve, but I always thought that the Cabinet Secretary of the day, if we had ever had anything like it, would have stopped a Watergate here if he had been told that money voted for other purposes was being used by the secret world to bug the opposition campaign offices, he would have just stopped it that way. The accounting officer's mechanism is ancient, 1866, and I still think as an outsider that it is a tactical nuclear weapon, it makes everybody without exception in all political generations sit up and think if there is the slightest whiff of an accounting officer's note, and I think that covers what Richard is worried about.

**Lord Wilson of Dinton:** Except the Cabinet Secretary is not always the accounting officer for the matter under debate.

**Chairman:** That is certainly an area to look at. Let us move on.

**Q423 Lord Williamson of Horton:** I think I did declare earlier that I was, for what seemed like years and years, a civil servant. I come on to the question of ministerial power to manage the Civil Service. There is a rather important clause in the Bill, clause 27, where the minister has a general power to manage the Civil Service covering, "among other things, appointment and dismissal and the imposition of rules on civil servants". That is a bit different from what

was in the draft Bill. In the draft Bill it was a list of certain specific things and now it is a general power in this text. I wonder if you would like to comment on that and let us know whether you think the ministerial power to manage the Civil Service is appropriate as they now put it into the draft Bill?

**Lord Turnbull:** I think it is absolutely appropriate that this power should rest with the minister on the Civil Service. I have some doubts about the particular drafting of this clause. It says that sub-sections (1) and (2) “cover, among other things, appointment and dismissal”. Ministers should not get within a million miles of appointment and dismissal of any particular civil servant. What they should do is deal with the framework under which people are reported and managed generally. This particular drafting gives the impression wrongly and it is not what is intended. I just think it is an infelicity and we can find ways of dealing with it.

**Q424 Chairman:** Does anyone else have a view?

**Lord Wilson of Dinton:** I go along with Lord Turnbull. I do not know the background to this provision and, therefore, I am unclear quite why it is in this form. I sympathise with what Lord Turnbull said.

**Q425 Lord Armstrong of Ilminster:** What is concerning me is if this general power is conferred on ministers then they become accountable to Parliament for the exercise of the power even if the actual exercise of power is delegated to somebody else, to the Head of the Civil Service or whoever. I wonder if we should want to creep into a situation where a minister could be called to account for the appointment or dismissal of individual civil servants.

**Lord Wilson of Dinton:** I think we are already in that position, are we not? For instance, when Michael Howard was the Home Secretary and decided on the dismissal of Derek Lewis, the head of the Prison Service, it was he who took the decision and it was I who issued the

letter as his Permanent Under-Secretary at the Home Office which did the sacking, but it was Mr Howard who accounted to Parliament for it. I know that was formally under the law at that time because I consulted Sir Robin Mountfield. That was formally the correct decision. I am not sure this is doing more than a transposition of the position as it already is. I am obviously unsighted on it.

**Q426 Lord Tyler:** How far do you think that Parliament should be involved in scrutiny of the operation of the Civil Service, either through approval or monitoring of the Civil Service Code or, indeed, the other codes, or in some more intervention in the way in which ministers manage the Civil Service? That is the general question and then I have a specific. You may have noted in the recent Public Administration Select Committee report there was particular attention drawn to the fact that the whole architecture of Whitehall can be changed on a Friday afternoon in the middle of a recess and no-one at this end of the building has any sort of oversight or scrutiny of it and, indeed, within the Civil Service there may be no foreknowledge of what is going to happen. Do you think that is an area where there should be more effective parliamentary scrutiny of the whole machinery of government?

**Lord Turnbull:** First to start on the Code. There is a slightly strange wording which says Government will lay the Code before Parliament, it does not say what happens thereafter. You might as well just say, “Put it in the Library of the House of Lords or Commons”. There is this question of whether there should be some sort of approval. Personally, I do not think that Parliament should try to draft the Code for the Civil Service, although the original Treasury Select Committee was instrumental in drafting the very first version of it. One solution might be that there is a negative procedure which signifies that Parliament warrants that the principles of impartiality have been put into the Code. That is all it needs. That is not trying to say what it should be, it is simply saying, “We don’t think you have encapsulated the things you were required to do under the Act”. Most scrutiny, I think, should come through

the form of select committees and the PAC. I think we would regret it if no change to ministerial boundaries or the architecture of the Civil Service could be made other than through legislation. There have been some changes that have not been successful, but many that have. People come to me from other countries saying, “It is so helpful to be able to respond to some situation and make a change without waiting your place in the queue for legislation”. Again, the correct scrutiny of that is through the normal processes by which ministers are interrogated by Parliament. I would not put the structure of the Civil Service and structure of departments on a statutory basis.

**Lord Wilson of Dinton:** I agree with that. I think that the ability to organise or restructure government is inextricably linked up with the power of the Prime Minister to advise the Queen on the appointment of his Cabinet and his Government and the shape of the Government. If you imagine a minister coming in with a large majority for the first time bursting with new ideas, it is very hard to think that it would be acceptable for him or her to have to go through an elaborate process of parliamentary sanction to get that first big burst of energy through and implemented. I was deeply involved in 2001 with the very large reshuffle, I think one of the largest reshuffles for many decades, which Mr Blair carried out. I knew that he was going to want to do it, he and I talked about it at some length beforehand. I gave him a huge variety of options and I talked very closely on a very confidential basis to my colleagues in the departments concerned. None of it leaked and we put together a very big exercise to make it work, and it worked very smoothly and very effectively. I think it is entirely proper afterwards for Parliament to show an interest in it and select committees to examine it, but I do think it is an integral part of the Prime Minister’s ability to shape the Government that he wants both structurally and in terms of personalities.

**Professor Hennessy:** There is one great exception, Chairman, the Ministry of Defence is a statutory ministry. The Ministry of Defence Act 1946 created it. If that was changed you

would have to have primary legislation. I cannot remember now why it was, but it is the anomaly. There is one example already. I agree, in practical terms it is very difficult to do. Can I come back to the Code. I really do think the Code has to have some kind of affirmative process through Parliament because that is the key to it. Andrew has put his finger on it when he says that values have to convert into the Code. The Act can make it plain that from time to time the Government of the day will want to refresh the Code, but the House of Commons must have an affirmative resolution. The problem that we have in this draft Bill is an interesting problem because it reflects the difficulty we have had as a country over the last 20 years of moving from a back of the envelope constitution to a front of the Code constitution to a face of the Bill constitution, and some of the key bits keep being left behind. It is partly because ministers have this terrible fear of judges. You will have noticed Mr Miliband's evidence to the Public Administration Select Committee that we cannot have a fragment of the Ministerial Code in this Act because the judges might be able to involve it in a judicial review. They are running both angry and fearful of the judiciary, which is a fascinating phenomenon. It is a great misfortune in our country that we have a set of ministers who regard the judges as a kind of enemy.

**Q427 Chairman:** Is that not because they usually find against them?

**Professor Hennessy:** Yes, it is. When members of this Cabinet were young, when they were on the wild left frontier going through their difficult adolescent phase, they used to denounce the judges because they did not understand the working class, with a short 'a'. They all used to recite John Griffith's classic work, *Politics and the Judiciary*, because the men - they all were men in those days - in wigs not only did not understand the working class, they did not like them. They now dislike the judges for an entirely different set of reasons. I think it is something in their genetic make-up, they cannot help themselves.

**Q428 Chairman:** It is not wholly party political though, is it?

**Professor Hennessy:** No, but this particular Government has been the worst that I have ever known in terms of getting at the judges. The judges are now regarded as a bunch of liberal, left softies who are fusspots. The way this Government has run against the Human Rights Act 2000, which it passed, is extraordinary. Mr Blair seemed to run against it every week towards the end of his tenure. It is a remarkable human phenomenon. I think this is distorting the function. It is not distorting your function because you are there to make it better, but it was distorting Mr Miliband's evidence to the Public Administration Select Committee. If you cannot have that crucial bit of the Ministerial Code about respecting the impartiality and political neutrality of the Civil Service, and giving due consideration to their advice even if you reject it in the end, if that cannot be transferable into the key statute which is going to last for generations governing this side of our system, what does that tell you about them. This is a very funny business. They seem to want to give Parliament powers and the moment they have sort of done it they caveat it away again. This whole Bill is shot through with that phenomenon.

**Chairman:** That is a fascinating perceptive. Let us move on to another area with Lord Hart.

**Q429 Lord Hart of Chilton:** This is a question about definitions. The 2004 draft Bill listed those parts of the Civil Service that were covered by the Bill as well as those that were not, but this Bill in a generalised form simply applies to the Civil Service of the State excluding those parts listed as the Security Services and the staff at GCHQ. My question is, are you content with the definition that approaches it along those lines? Do you support the exclusion of the Security Services and GCHQ from that definition?

**Lord Turnbull:** The answer is yes, I think the previous solution was the wrong one. GCHQ has much more in common with the other two agencies than it does with the Civil Service as a whole. That is where it belongs and it needs the same kind of apparatus for dealing with

complaints on a confidential basis. I would group those three. They are grouped in a kind of budgetary sense as well. We have come to a better definition than we had in 2004.

**Lord Wilson of Dinton:** I agree with that. It is sensible to deal with the three agencies together and in separate legislation because they are not exactly the same.

**Professor Hennessy:** They all have their own primary legislation. They were put on a statutory footing before the rest of public service. GCHQ has always been an anomaly because it came out of MI6 and, indeed, the Chief of the Secret Intelligence Service in name was on top of it all until as late as 1956, but they were unionised after the war which caused Robert a great deal of trouble when he was Cabinet Secretary and they were treated separately. I do not think in those days that people seemed to have thought about these anomalies, it was in the era when the tacit understandings about the British constitution were not questioned and very few people bothered about anomalies. In fact, we used to take pride, did we not, in being an anomalous and asymmetrical nature when it came to constitutional matters. The problem we are experiencing now, as I was saying a moment ago, is the difficulties you always find when you want to tidy up, and only then do the anomalies become noticeable. The three secret agencies are best treated separately.

**Q430 Lord Hart of Chilton:** Does it follow from that that we do not have to worry ourselves about the staff not having access to the Civil Service Commissioners and having a requirement to recruit them through fair and open competition on the same basis as applies to other civil servants?

**Lord Turnbull:** I do not think that premise actually follows. They can have those provisions provided by different means.

**Q431 Lord Hart of Chilton:** And do they?



**Lord Turnbull:** If they do not they should do. I think they do appoint on the basis of merit and they do have a complaints procedure. They should not be shared with the Civil Service because there are a number of differences in the way those services operate.

**Professor Hennessy:** The senior ranks go through the Civil Service Selection Board. They did not always, but since the late 1970s MI5 started going to the Civil Service Selection Board, the Secret Intelligence Service had for years, and so have GCHQ for the senior ranks. At the practical level, the valve through which you have to pass into the senior grades, or in the fast track promotion to senior grades, is the same as everybody else. Everybody has slightly different sets of recruitment around it but they all have to go through that valve, which I think is the key question.

**Lord Wilson of Dinton:** My recollection is there are clear channels, ways of dealing with any grievances or worries that people have which I think are appropriate for the character of the agencies, which is a better way of dealing with it.

**Q432 Martin Linton:** I just wanted to explore the meaning of the word “impartiality” because it has already been mentioned. The Bill does put a duty on civil servants of “objectivity and impartiality”, though not on special advisers. First of all, it seems to me the word by itself does not mean anything unless you explain what you are being impartial between. Presumably this is intended to mean political impartiality?

**Lord Wilson of Dinton:** Yes. Can I say, Chairman, there is one improvement in the Bill which I hope the Committee will feel able to recommend. Paragraph 32(2) says: “The Code must require civil servants who serve an administration to carry out their duties for the assistance of the administration as it is duly constituted for the time being whatever its political complexion”. It took me some time to work out what that meant. If it is intended as a guarantee of impartiality I do not think it serves the purpose because the key thing is that the Civil Service should retain the ability and the confidence of other parties to serve future

administrations of whatever political complexion, and I would think that should be on the face of the Bill because that is one of the more fundamental tests of the impartiality of the Service, it does not get caught up in the partisan politics of any particular party it is serving in power and it retains the ability to serve future governments.

**Lord Turnbull:** We really need two clauses here. One is impartiality between Mr A and Mrs B in dealing with members of the public; and impartiality between parties. I agree with Richard's point about retaining confidence. I have not brought my copy of the Civil Service Code, but there may indeed be a provision in there which says you have to behave in precisely this way, that if you are seen as very closely cavorting and backslapping, getting too pally with the administration of the day, you will fail that test of giving reassurance to whoever might come in next that they would get the same degree of commitment.

**Q433 Martin Linton:** That is almost saying if you are a very good civil servant at carrying out the desires of one government you are by definition a bad civil servant because you are not retaining the confidence of the opposition that you would be as good for them.

**Lord Turnbull:** It is absolutely essential that when appearing before a select committee, for example, you do not say, "I think this is a really good policy", you recognise the fact that you are there to represent the minister and you are saying, "The minister thinks this is a good policy because it will do X, Y and Z" and you must avoid over-personalising and buying into it too overtly. If you do that then I think you will realise that whoever comes next is buying into (a) your professionalism and (b) a belief that you will work as hard for them as you have worked for the previous administration.

**Q434 Martin Linton:** The opposition might think that if a civil servant is very effective in putting the case of the government they serve that they would also be effective in putting their case if they were in government.

**Lord Turnbull:** Absolutely. One would hope so.

**Professor Hennessy:** There are three strands to this, are there not, and they are mutually reinforcing. One is that you do not get sucked into the partisan purposes of the government, and we will come to special advisers in a minute but they are the safety valve for that, or they should be. Secondly, you are a professional who is appointed and promoted on the basis of merit because you mobilise evidence with great care. The political class gets where it is and beats the competition because it mobilises prejudice more successfully.

**Q435 Martin Linton:** I do not agree with that.

**Professor Hennessy:** That is absolutely different. You have got to respect people who can be very interested in politics and government but are not partisan. It is very good sometimes for new ministers to accept that. That is the second strand. The third strand is the crucial one, which is evermore crucial because the electorate seems to want quite long periods of one-party government these days, that after ten, 12 or even longer years you can always assume that they have gone over. Even Churchill with his vast experience was taken into No.10 by Norman Brook in October 1951 and he gazed across the private office, which was full of stalwarts like Dennis Rickett and David Hunt, and said, “Drenched with socialism”, which of course was crackers. Even he was a bit prone to that. In 1964, and I remember people telling me about it afterwards, there was a profound conviction on the part of some Labour ministers that he must have gone native and a fair number of this Government had read *The Guardian* and believed what they read that Mrs T had “Thatcherised” the senior Civil Service. Well, I do not want to be unkind to my two friends here, but to get a permanent secretary over the age of 51 to believe in anything except vague notions of decency is almost impossible. If they think they are going to fall for anybody’s manifesto they cannot have met any of them. A lot of people read *The Guardian* and believed they had “Thatcherised” them because they were

politicised under Margaret but they did it themselves. One was called Charles Powell and the other was Bernard Ingham. That is two out of 620,000.

**Q436 Martin Linton:** Surely that is making my point, is it not, that what governments and oppositions want is an effective Rolls-Royce machine that the government can drive and if the opposition wins the election they can drive?

**Professor Hennessy:** Absolutely.

**Q437 Martin Linton:** The word “impartiality” could mean somehow an encouragement to civil servants to hold back on helping the government.

**Lord Turnbull:** I do not think it should be holding back. Ministers should see the Civil Service as a public asset and they have to hand it over in as good a condition to whoever comes next and also they in turn, if they are on the losing end of a general election, want the protections that gives.

**Chairman:** We probably have to move on in a moment.

**Q438 Martin Linton:** I think clause 2 actually describes very well how I imagine the situation to be, whereas I just do not know about the word “impartiality”, whether it means to hold no views or to show no favours, to take the middle course or whatever, it is a meaningless word.

**Lord Wilson of Dinton:** Can I just say in support of Lord Turnbull that the Civil Service Code, which I hope all members of this Committee have seen and have copies of, spells out political impartiality very clearly and amplifies the reference to impartiality in a way which I would find entirely satisfactory.

**Q439 Baroness Gibson of Market Rasen:** Perhaps we can turn from impartiality to independence. Concern has been expressed to us about the degree of independence given to

the Civil Service Commission under the model that is proposed in the draft Bill. I would like to ask your views on that. Will the Civil Service Commission have enough independence? If not, how would you improve its independence?

**Lord Turnbull:** I think the Civil Service Commission has a very strong underpinning which was the agreement that the leader of the opposition should be consulted. Should that be an agreement? I think probably consulted is the right word and in the end the Prime Minister has to make a recommendation. The other is the point put by Robin Mountfield that the budget of the Civil Service Commission appears to be being set by the regulated, and that is the position with every financial institution in the country who pay for the FSA. I can see that there is an issue here but there was a particular solution recommended which was that Parliament sets it budget, which I think is a very bad idea. Parliament should not get involved as a kind of co-manager of the Civil Service even at one removed, it should be the scrutineer and the safeguard. There are ways you can set up pieces of apparatus and safeguards which ring-fence this budget, give assurances to the Civil Service Commissioners that if they are not satisfied they have got avenues to make representations, so I think more can be done to give the Commission an assurance but without turning the Civil Service Commissioners into a kind of NAO which puts Parliament in the wrong position in comparison to the Civil Service.

**Professor Hennessy:** I would give it to the NAO.

**Lord Wilson of Dinton:** Would you?

**Professor Hennessy:** Yes, I would. When you consider the pressure that the Standards in Public Life Committee budget was put under, and all that lot that you put in Great Peter Street or wherever it was when you had to deal with cuts a few years ago, I am not confident that ring-fencing will hold. I do not see what is wrong with Parliament, the sovereign body of the land under the Crown, doing it on the same basis as the Exchequer and Audit Office Act of 1886. It is a well-tried procedure which nobody has ever abused. The Civil Service

Commissioner answers to the Queen, not the Prime Minister, and you cannot put it on the Civil List. I have no confidence in the Cabinet Office in all circumstances doing the decent thing, I really have not any more.

**Lord Turnbull:** The C&AG and NAO are Officers of Parliament, helping Parliament do its work, the Civil Service Commissioner is about keeping the Civil Service doing its work, and I think you mix them up if you put one of them half in Parliament.

**Professor Hennessy:** This Act will make Parliament the guarantor of all the key values that make the British Crown Office. This is making Parliament the guarantor because we cannot rely on the prerogative any more, which is why we are all here. I cannot see why, as part of that new settlement, it should not come to Parliament.

**Lord Wilson of Dinton:** It would import into the role of the Civil Service a relationship which is completely different from the one which we have had for 150 years which has worked well. I believe the first Civil Service Commissioner who felt that his or her budget was being squeezed, if they were worth their salt, would make a special report to Parliament and make a fuss, and I would like to think Parliament would take that as a cue to make life difficult for the Government. The present relationship with the Commission is not something that is being set up for the first time, it builds on a long cultural tradition which I think has worked well in the interests of the country and I would want to build on that rather than suddenly switching them into the NAO which has a much more adversarial role and one that I would not want to import into the relationship.

**Baroness Gibson of Market Rasen:** Thank you, those were very interesting answers. That gives us some food for thought.

**Chairman:** Unfortunately, we have seven minutes to deal with three questions, so what we are going to ask you, if you would be generous enough to do so, is we have got questions about the right to initiative investigations by the Commission and questions about fair and

open competition, and we wonder if we can put those to you in writing and ask you to respond to those so that we can deal with the more interesting one which is about special advisers. I am going to ask Sir George to ask that question.

**Q440 Sir George Young:** Thank you very much. Professor Hennessy, earlier on when you were talking about special advisers you referred to the numbers at No.10 and the Treasury and you said that as a result of the numbers the relationship had become “scratchy”. Was this a function of the numbers or was it to do with the functions of the special advisers?

**Professor Hennessy:** It is a mixture of things, Sir George. I think having so many around the Chancellor and the Prime Minister when we were governed by two rival courts - you need a medieval historian, not me, to explain this to you - it was the only time in history the medieval monarch had a treasurer who controlled his budget in the same kingdom who wanted to topple him every other week, and it led to some very bizarre relationships. The amount of nervous energy that was displaced by these two rival courts badmouthing each other, it is going to be extremely difficult for any historian to make sense of that. The No.10 and No.11 problem under Blair and Brown made it much worse. There was the one regrettable, spectacular outburst in the Department for Transport which will always be remembered for how it should not have been done. Everybody else seems to work it very well. Again, I think it is a combination of human factors and clustering. The other problem which is at the root of it is if I was a secretary of state I would want two types of special adviser probably, and I would want them to be distinguished. One type would be the people I recruited because they knew things and could help me with my legislative programme and my policies, and the other type would be the bag carriers who I recruited because they believed things. Victor Rothschild was extremely offensive about these bag carrier types when he was head of the CPRS, he said they reminded him of those ambitious young men who used to lurk around the court of medieval monarchs and so on. I do not think that your profession needs reinforcing

by special advisers who believing things, that is why you are here. You do not become a politician if you do not believe things. I would distinguish between the two types. Indeed, I think Richard tried to run that when he was Head of the Civil Service and he could not get it there, so that feeds the problem as well.

**Q441 Sir George Young:** Would you go along with Lord Wilson, who has suggested there should be a cap on the number of special advisers?

**Professor Hennessy:** Yes, I would. The Ministers of the Crown Salaries Act since 1937 has put a cap on ministers, I do not see why there should not be a cap on special advisers because they are an extension of the ministers, that is all they are.

**Q442 Sir George Young:** Just coming on to functions, do you think that the functions of special advisers should be set out on the face of the Bill?

**Professor Hennessy:** Yes, in the sense of what they cannot do. Not what they should do, but what they cannot do.

**Lord Wilson of Dinton:** Am I allowed to intervene on that? If one had a choice of one thing which I would change in this Bill it would be to add a provision to the effect that special advisers may not recruit, manage or direct civil servants. Without that, there is huge scope for driving a coach and horses through the Bill as it is currently drafted.

**Lord Turnbull:** I agree with that. I do not agree with the sheep and goats distinction because it implies it is someone who believes but has no knowledge. I am sure that when Mr Tyrie was a special adviser he managed to cover both waterfronts. I would not have a limit. The effect of the Ministerial Salaries Act, in my view, has been to sustain the number of ministers at a time when the number of ministers ought to have fallen, particularly after devolution. If the Prime Minister has power from Parliament to appoint 110 ministers, he is going to appoint 110, indeed may appoint slightly more. Whatever number you chose, if you chose 80 I will



guarantee you that you would have 80 special advisers. I would not go that route. I think the route to go is to make it more apparent what special advisers do and more questioning of whether they really earn their keep and do they have the qualifications and experience to do the jobs that they do. There is also an important provision that I wrote into the Special Adviser Code, and it does not need to be in the legislation, that they should not suppress or supplant Civil Service advice. A good special adviser supplements that advice, can comment on the Civil Service advice, criticise it if they like, but they should not get into a position where they try to dictate what goes to the minister and what does not, and I think that has been the case in recent years.

**Chairman:** I have got several other colleagues who want to ask questions and I am going to have to disappoint them, save for Lord Fraser and Andrew Tyrie who put their hands up a long, long time ago.

**Lord Fraser of Carmyllie:** It seems to me that while the senior civil servants detest special advisers, who they regard as cheeky upstarts without any specialist knowledge of their area, nevertheless from time to time find it quite valuable to have special advisers because sometimes ministers are not as articulate as they might be in their policies and senior civil servants quite welcome that opportunity to get alongside a special adviser and say, “What exactly is the minister talking about?”

**Q443 Chairman:** Do you have a brief response to that?

**Lord Wilson of Dinton:** Yes, I entirely agree. I am on the record repeatedly, and I say it again, as saying the role of special advisers can be very valuable to civil servants in the way that you have described as an avenue to the minister reading his mind, but there ought to be clarity about the boundaries of what they can and cannot do.

**Q444 Lord Fraser of Carmyllie:** All the emphasis of what we are looking at is how in one way or another the role of the special adviser ought to be corralled. Is there not some opportunity for there to be a clearer boundary between what is the role of the impartial civil servant and the special adviser?

**Lord Turnbull:** First of all, I do not accept the first part of the question that we see these as rivalries, that there is a kind of job demarcation, job protection going on. Good special advisers are worth their weight in gold, partly for the reason you gave in the second part of your question. I have always seen them as being three parts of a triangle with traffic going round all three sides, special advisers interacting well with officials, attending the same meetings, sharing a lot of information, not playing games with each other. The problem arises when the balance of the relationship with the minister gets distorted.

**Q445 Mr Tyrie:** Andrew Turnbull and I worked closely together when I was in the Treasury as a special adviser on public expenditure control. I thought I should declare that interest, among other things. I want to ask two questions. The first is what the sanction is if special advisers overstep the mark. When I was in there, if I overstepped the mark I knew very well it would go to the Permanent Secretary, the Permanent Secretary would have a word with the Cabinet Secretary and I would be out on my ear. My impression under this administration is that it is not like that, that the political culture has been to protect special advisers to an enormous degree and, therefore, the whole of the system is very dependent on prime ministerial willingness to act on Cabinet Secretary advice. What sanctions are required to ensure that these arrangements work?

**Lord Wilson of Dinton:** It depends on the situation. Mr Tyrie will remember one occasion when he complained to me that Mr Alastair Campbell had used excessively partisan language in an attack on William Hague. I investigated it at his request and confirmed that I agreed with that view and published a letter. That was excessive activity by a special adviser with an

appropriate response. There are a variety of ways depending on the complaint and some of them are quite difficult for Parliament to hold people to account for because they do not see what goes on. I think you can take steps effectively.

**Mr Tyrie:** I know we are short of time, but I would be interested if the witnesses could put on a piece of paper any suggestions they have because there is not very much in the Bill, even implicitly, on the sanctions aspect of this. May I ask one other question?

**Chairman:** It will have to be very, very quick.

**Mr Tyrie:** I am looking at the list of things that advisers should not do here, but do you think advisers, as they have started to do since 1997, should be permitted to present and advocate government policy in the public? Do you think that they should be permitted to engage themselves in negotiation on behalf of this country abroad?

**Chairman:** Can I say there may be a short answer and a long answer, if you could give us the short one and perhaps put in writing the long one.

**Q446 Mr Tyrie:** Two new functions which were not performed in my time by advisers.

**Lord Turnbull:** No to the second, that is undesirable. Yes to the first, provided that there is still an official spokesman. The system we had in the Treasury for some time was that there was an official spokesman who spoke for the Treasury and someone who spoke politically for the Chancellor. They needed quite a subtle demarcation between them. If the only voice that is coming out is through a politically appointed special adviser then I think we have an unhealthy situation.

**Lord Wilson of Dinton:** Chairman, I sense that you are about to draw us to a close. I agree with what Lord Turnbull said just then. May I volunteer one comment on the Bill before you close us down, which is that I am not clear that I am happy with the exceptions to the requirement that people be recruited on merit. In particular, I am not clear why appointment to the Diplomatic Service as head of mission or governor of an overseas territory should be

excepted from the requirement for merit on the basis of fair and open competition. I am also not clear why some appointments by Her Majesty, such as the Head of Inland Revenue and Customs, should be exempted from the requirement. Those seem to me rum, or odd.

**Professor Hennessy:** Could I just answer Andrew in two words: no and no, unless it is a press spokesman who also is a special adviser because they are temporary civil servants, they come under Civil Service discipline, and you cannot have sheep and goats in that area, you either are or are not a Crown servant.

**Chairman:** Thank you. The trouble with star witnesses is that they have so much that is useful to say and so many questions are raised. We are grateful to you. Can we ask that we write to you with the questions we did not get round to and perhaps invite you to add anything else that you feel perhaps we should have heard but did not have time for. Thank you very much indeed.

## **Memoranda submitted by Clerk of the House of Commons and Clerk of the Parliaments**

### **Examination of Witnesses**

Witnesses: **Dr Malcolm Jack**, Clerk of the House of Commons, **Mr Michael Pownall**, Clerk of the Parliaments, **Lieutenant-General Sir Michael Willcocks**, Black Rod, and **Mrs Jill Pay**, Serjeant at Arms, gave evidence.

**Q447 Chairman:** Can we thank you for sparing the time to come and see us as a Committee. Of course we do not have to explain very much about what we are doing because you know, but I do have to still say that Members have declared interests relevant to this inquiry and these are available today and on the Committee's website. If there are any additional declarations that need to be made, they should be made now. Can I also say that we are conscious of the time and that everyone wants to be out by quarter to six, and so if we could go through the questions as quickly as is proper, and if there is anything left to be asked at the end perhaps we could ask you to respond to writing. The first question is about the Serious Organised Crime and Police Act 2005 and perhaps we could ask if you feel that there have been any problems with sections 132 to 138?

**Dr Jack:** Shall I begin, Chairman, and then I am sure that my colleagues will come in. I think you have had evidence already from the police on the workings of these sections of the Act and I think they have given you various views about their difficulty of enforcing. If I can approach it from the other point of view, I think the two things that we are really concerned with as the House authorities are access to this place, principally, and noise. I think that if the sections of the Act that you have mentioned were repealed and not replaced by anything, we would be in a very difficult situation on those matters particularly, so I think that is the way we would rather approach the subject.

**Q448 Chairman:** So do you think it is proper for you to have a view as to whether there should be a repeal or would you rather leave things as they are?

**Dr Jack:** I think I have gone as far as to say that we think that if the Committee wishes us to give the level of access that we are told is necessary then there should be something in the Act. I would go as far as that. If those sections of the Act are repealed and nothing is put in their place, then I think we return to the situation outlined by the House of Commons Procedure Committee in its report of 2002-2003 in which the Committee said: “We believe that legislation on demonstrations is the only way to ensure that the police have adequate powers to achieve the results intended by the Sessional Order” so a Committee of the House of Commons said that. That view was echoed by ministers not surprisingly when the Bill was introduced. I will not go on too long but I have got a very short extract from 7 February 2005 Commons Hansard where the Minister Caroline Flint at that time said: “We need specific legislation that recognises the unique position of Parliament and its surroundings. The Government recognise that existing legislation has not provided the police with all the powers they need to control protests and demonstrations.” I think our view is that if the powers are removed and nothing is put in their place we would be back to this situation.

**Q449 Chairman:** Is that a view shared by other colleagues on the panel?

**Mr Pownall:** Could I just say that I agree with much of what Dr Jack has said. Perhaps I should just say, as I said in my short memorandum, that the problems of demonstrations in Parliament Square and the noise problems are more matters for the House of Commons than they are for the House of Lords, although we certainly have an interest in the House of Lords. I should also say that the SOCPA powers, and the whole question of demonstrations in Parliament Square, specifically the requirement to give advance notice of such a demonstration, have been the subject of quite a lot of exchanges and debate in the House the Lords, including a quite lengthy debate on a private Member’s bill early in 2007, so inevitably

I have to be somewhat cautious in what I say because very strong views have been expressed in the House the Lords. I agree with Dr Jack, the key thing is access to the immediate vicinity of the House. Black Rod may want to add a little to that.

**Lieutenant-General Sir Michael Willcocks:** If I may, I will come in slightly later when you get on to more operational matters which are more of my concern.

**Dr Jack:** Could I just amplify one thing as well which I think is very important and that is access of course not only for Members of both Houses, which is itself important, but for the large numbers of other people who have to come to and fro to the Palace during the course of any sitting day, and indeed even on non-sitting days, and I mean people who work here, civil servants who come to brief ministers, witnesses before select committees.

**Q450 Chairman:** Did you want to add to that?

**Mrs Pay:** Only to say that I agree very much that the concern for Black Rod and myself is about maintaining access in all of this so that there is no disruption to parliamentary business, which in our view does not only happen on sitting days, there is parliamentary business all the time, and I think what we need here is some clarity so we know exactly which are the areas where we need to have access and that we have that same regulation, if you like, all the time so there is no confusion.

**Q451 Lord Tyler:** Even accepting the point that has just been made about non-sitting days, the emphasis on access clearly is particularly important on sitting days. Is it implicit in what you are saying that we should have a different regime for days when both Houses are sitting, at weekends, the recess, or are you saying we need the same controls throughout?

**Mrs Pay:** I believe we need the same controls throughout because the access is very important for visitors who come to Parliament, a lot of Members and Peers I am sure work through the recesses now, and all of that is parliamentary business as much as formal sittings in the

Chamber and committees. A lot of committees sit through the summer recess as well and I do not think we can differentiate and still maintain clarity.

**Lieutenant-General Sir Michael Willcocks:** We really do need clarity and having an Act which has different provisions for different days of the week, which may change of course when the House sits, we could suddenly call an extra sitting and so on, I think it will need a regime that is absolutely standard and understood by all the public, police and everybody.

**Q452 Lord Norton of Louth:** It is really to follow and pick up a point Dr Jack made and allow him to expand it because the quote he gave mentioned seeing Parliament as a unique institution and that was the justification for action. Why should Parliament be separated out and treated separately from other bodies up and down the country? There are other public bodies and they have got elected members and there may be demonstrations and they need access to the building, so what separates Parliament out that would justify treating it separately in this way given that it sends out possibly the wrong signals about Parliament's acceptance of the willingness to demonstrate?

**Dr Jack:** I suppose because Parliament is the sovereign body of the country and it is in a unique position. I will not start talking about the privileges of both Houses this afternoon, I will keep that for another occasion, but I think that that is the case and I do not think one should apologise too much for that. The point about the negative message is that - and I am careful to say, by the way, that we have no view about demonstrations of course or their merits or whatever - it is the nature of people who demonstrate that they think their demonstrations are the only important thing that is going on. Parliament Square is a very confined area and the Houses are very near the road. This is one difference incidentally with some of the Commonwealth parliaments where they are set back much more than we are. And so it is a balance really of ensuring the democratic rights of people - and we understand why people want to come and demonstrate in front of Parliament - but other people have



legitimate concerns and at the same time; and it is managing all that really, it is getting a balance.

**Lieutenant-General Sir Michael Willcocks:** If I may Lord Norton, there was a presumption there about willingness. We are not talking about demonstrations yet. You are merely asking us whether there should be special provisions to allow access and we have not got on to whether or how we would restrict demonstrations or anything else. There is no presumption that we are striving to limit demonstrations at all. We have not actually approached that point yet.

**Q453 Lord Norton of Louth:** The position is that the 2005 Act covers the area around Parliament and in that sense it is the fact that it is specific to Parliament and I think that is what we are getting at. Dr Jack is right constitutionally but why should the same provisions not apply, say, to other public buildings where you have got confined access, people living locally subject to disruption or whatever? Why is it that this is a public general Act but applies only to the area around Parliament?

**Dr Jack:** We are the authorities responsible for Parliament and I think really that is as far as we can go, we could not really comment.

**Lieutenant-General Sir Michael Willcocks:** We have the figures now from Transport for London that 34 million pedestrians use Parliament Square annually and we now have one million visitors to this Parliament a year. You then have all the Members and members of the public who want to get in. I do think, quite apart from Dr Jack's presumption which I totally agree with it is a sovereign body, it is in a unique position of a very small area with literally millions of people onto which you then put the sort of scale of demonstrations. I do not think any council building in the north of England has had half a million people marching past it for rural rights and things. I do think that we are a very special a) position, b) institution and c) circumstances around us.

**Q454 Lord Norton of Louth:** Just a quick point on your point about numbers, of course the National Assembly for Wales in terms of number of visitors there, they are not actually that much that lower than the Palace of Westminster so should there not be similar considerations?

**Lieutenant-General Sir Michael Willcocks:** Four million tourists as well to Wales?

**Chairman:** Okay I think we will leave that one. Martin Linton?

**Q455 Martin Linton:** Dr Jack mentioned Commonwealth parliaments; do you have any information about other countries, European as well, and how they manage protests? Do they have special regulations on protests, on noise? Do they have Sessional Orders or anything like it?

**Dr Jack:** Yes I have got a bit of information for the Committee which we can obviously follow up and I am sure that the Clerks can do that. I picked out Australia and Canada for perhaps fairly obvious reasons. In Australia there is actually an Act, the Parliamentary Precincts Act, which dates from 1988, and that actually defines the precincts quite specifically. It says that the precincts shall consist of “the land on the inner side of the boundary of a ring road which surrounds Parliament House, and all buildings, structures and works on, above or under that land,” and that is actually quite a wide area. Then another section of the same Act gives the responsibility for maintaining those precincts to the presiding officers to manage as they wish. There I would pick up again the point about negative publicity. Australia and Canada - and I will come on to Canada in a minute - are mature and respected democracies and I do not think anyone thinks that that gives out a negative message in those countries. That is the situation in Australia. Some of the other jurisdictions, the provincial parliaments have similar arrangements. By and large, I think the powers are always invested with the presiding officers, the Speakers of parliaments and then delegated to officers of the House. In Canada although there is a background law, which I have not yet been able to establish, I am told by my source there, if I may put it that way, that

there is a committee called the “Use of the Hill” Committee and the Use of the Hill Committee consists of the Speakers of both Houses, officials, and it is advised by the police, and everyone who wishes to demonstrate, or do anything else in the precincts must apply to the Use of the Hill Committee and get permission. No installations of any sort are allowed within the precincts. Other jurisdictions in Canada have roughly followed that route. Some have legislative definition of precincts, others leave it to a more common law approach. I will just leave it at those two examples of Australia and Canada.

**Q456 Martin Linton:** These are much more recent parliaments. Do you not have any information on the Assemblée Nationale or the Bundestag which are in city centres like us?

**Dr Jack:** I am trying to recollect my attachment to the Assemblée Nationale which was very many years ago. I think actually the Assemblée Nationale is right on the street rather as we are and therefore no doubt has immediate problems, but - and this is rather anecdotal - I get the sense that the police in France act fairly forcefully when they wish.

**Q457 Martin Linton:** It is what their powers are that we need to know.

**Dr Jack:** We could find that out and supply the Committee with that information.

**Chairman:** Thank you for that. Lord Hart?

**Q458 Lord Hart of Chilton:** This question of clarity of what we are talking about for access is obviously a very important issue and the police have asked us to consider clarifying and being quite clear what we are talking about when we are talking about access. If we gave you a plan, I suspect you would all agree, would you not, as to the precise location of the points at which access was to be maintained at all times? Would that be helpful?

**Dr Jack:** It would.

**Mrs Pay:** Yes and we would take that from Carriage Gates, down past St Stephen's Entrance, past Peers' Entrance, right down as far as Black Rod's Garden.

**Q459 Lord Hart of Chilton:** I rather suspected that.

**Mrs Pay:** It is that side of Abingdon Street and also for the Commons in front of Portcullis House on the Victoria Embankment. Those are the access points that we would like to keep clear of protest.

**Q460 Lord Hart of Chilton:** Against that some of those who have spoken on behalf of those wanting to demonstrate without restriction think that Members and officials should really put up with it and use side entrances, but I rather think that you would not approve of that?

**Mrs Pay:** That is correct.

**Lieutenant-General Sir Michael Willcocks:** But perhaps if I could put a rather more serious slant on it, and forgive me, I do not know the background of the Committee and before one says anything as an expert you find someone who is far more expert than you are, but I have great experience in handling demonstrations, riots and everything else, and the point is here you must legislate, I think, for the whole panoply of possibilities. There is no possible way you can control a demonstration which turns ugly on you if they are allowed on this side of the road. Therefore in pure security terms it would justify a very small - it only goes from Black Rod's Garden to the Carriage Gates and Portcullis House, as Jill says - exclusion zone for demonstrations on security grounds, and, by the way, that also ensures you have access to Members, and (I think we ought to keep saying) to the public who want access to their Parliament, which is very important, it is not just for the rights of Members. If you then add in the factor of course of the huge numbers of tourists, you solve the police's problems and make it quite clear, I think.

**Q461 Lord Williamson of Horton:** If we assume, because that is what is being proposed the draft Bill, that sections 132 to 138 of the Serious Organised Crime and Police Act 2005 go, the question is what additional police powers would be needed, in your view, to ensure that access is maintained? Specifically, what do you think about reintroducing the Commons Sessional Orders and the Lords Stoppage Orders? We have to assume that it is a blank sheet, if I can put it like that.

**Lieutenant-General Sir Michael Willcocks:** If I could follow on from my answer before asking Dr Jack to comment. It is no good having an exclusion area if the police cannot enforce it and therefore hand-in-hand with this very small area I would submit that you must give the police the powers to enforce it. Before Dr Jack speaks, the problem with the Sessional Order is that it gives the police no powers whatsoever to enforce it, and therein lies the problem.

**Dr Jack:** I think that puts it in a nutshell. I mentioned the Procedure Committee's report of session 2002-2003 and the phrase that they put in the report is "without such legislation" - that is legislation to introduce these powers - "the Sessional Order is misleading"; misleading in the sense that it appears to secure access but does not.

**Q462 Sir George Young:** Can we go back to noise. Again assuming, as Lord Williamson has said, that SOCPA goes, Dr Jack, you made it clear that you want the power to control noise in the draft Bill. The demonstrators have told us that they have got to make some noise, the stewards have to control the people who are demonstrating, and the object is to get a message over. What is the right legal framework to get the balance that we are all after between on the one hand the right to protest and on the other hand the right of people who work here to carry on working without being harassed?

**Dr Jack:** Perhaps I will bring in my colleagues on this one. I think this is quite a difficult problem actually, the problem of noise, for the very reasons that Sir George has just set out. I

think the problem at the moment appears to be that the police have no powers at all to deal with this problem. If any individual is being excessive in using loudspeakers and so on, the police suggest that the powers are very restricted indeed, unless that person is causing an obstruction on the highway; that is how I understand it. Inhabitants of 1 Parliament Street do find noise levels quite insufferable at times and although I am rather set back in New Palace Yard on the front of the House of Commons, I must say it is quite disturbing even there, so it is a problem.

**Mrs Pay:** I think there are issues about noise because it is very difficult to set a level because at 6 o'clock in the morning something is very loud but by 2 o'clock in the afternoon you cannot hear that noise because of the background traffic. We have a lot of complaints from Members obviously in 1 Parliament Street, in meetings in Westminster Hall, in the Chamber sometimes, and in committee rooms, and it is more about the persistent offender with the loudhailer than it is for a two-hour demonstration in the afternoon where there is a message being got across. The incessant use of a loudhailer just by an individual causes so much disruption and I think talking to the police ---

**Q463 Sir George Young:** What is the answer?

**Mrs Pay:** I think the answer is that if there is repeated complaint by people being disrupted and harassed, that the police have some powers then to either seize the loudhailer after due warning or to move the person away. I do not think it is the noise level that should bring those powers into action; I think it is when there is sufficient complaint for people who in one way or another are being harassed. I have got here some examples where a lady who resides on Parliament Square but is frequently now coming over to Carriage Gates and is using a loudhailer and is harassing Members as they come through Carriage Gates; that is intolerable for them. I think that is the sort of occurrence where the police need powers to move her on

or, if she refuses to do that, to seize the loudhailer. I do not think it is about two-hour organised demonstrations. I think it is more about the incessant use by an individual.

**Dr Jack:** Can I add on that point, it is slightly at a tangent but I thought it might be worth recording, that we do have quite a long list of harassments of various sorts of Members of the House.

**Q464 Chairman:** Perhaps we could have a copy of that; that would be good. Is the problem the same at the House of Lords end or is it not a big issue for your colleagues?

**Mr Pownall:** I would say the problem of noise, Chairman, and there are Members here who can advise as Members of the House, is less of a problem for the House of Lords. We are conscious of it but it does not permeate itself in the same way as in the Commons.

**Q465 Lord Armstrong of Iminster:** Have you ever explored the possibility of civil remedies for noise disturbance, taking out an injunction against individuals who are causing noise disturbance?

**Lieutenant-General Sir Michael Willcocks:** People apply to use loudspeakers in demonstrations and we have objected to the council on the grounds of that, but that is not the same as an injunction of course, and you find that the council rules in our favour and then the people use it anyway and then the police have absolutely no powers to do anything about it, and that is the real problem. I do not think we have ever sought an injunction because I do not think it is practical; they just ignore it, and the problem is the police have no sanction even under those circumstances.

**Q466 Lord Armstrong of Iminster** I had the impression that the police did not feel that the noise was their problem, they are concerned with access and noise is somebody else's

problem and not theirs. Do you think that you and we are dependent upon the police authorities to control the noise?

**Mrs Pay:** I think if the police had some powers then we would be dependent on them but at the moment they do not have any powers to stop the noise, and all that has happened is when serious complaints have been made they then go through a due process and can be perhaps considered four months later when what we need is somebody to be able to take some action on that day. The noise levels are controlled by Westminster City Council and other authorities and I do not think the police would ever want to have any control over noise levels or giving the kind of permissions that Black Rod was talking about. They are looking for some powers to be able to deal with the problem on the day.

**Q467 Lord Armstrong of Iminster:** Who enforces Westminster City Council's powers to deal with noise? Is there any enforcement of that?

**Mrs Pay:** It is the planning authority, I believe, through the planning authority at Westminster City Council.

**Lieutenant-General Sir Michael Willcocks:** But I think then it is unenforceable, frankly, and that is the problem.

**Q468 Lord Armstrong of Iminster:** Do they send out inspectors? If someone rings up and says there is an awful noise going on, do they send somebody out to try and stop it?

**Lieutenant-General Sir Michael Willcocks:** Not to try and stop it. I think they go and check it and monitor it but they, again, do not intervene, and this is the nub of the problem.

**Q469 Baroness Gibson of Market Rasen:** My question is actually to Dr Jack and Mrs Pay and it is about the proposal on the banning of overnight and permanent demonstrations. I



wondered if you would like to talk to us about that and particularly in the context of whether it would be compatible with the ECHR.

**Mrs Pay:** I think there is a security risk with having permanent and overnight demonstrations. They are an obvious target for a terrorist to secrete any kind of weapon or mechanism that could have a time delay on it. I think the condition that was placed upon Brian Haw to reduce the size of his encampment has reduced the risk but, nevertheless, the police would really have to check that every hour all through the night to check that nothing has happened, so I would be more comfortable not to have permanent encampments and permanent overnight demonstrations.

**Dr Jack:** I take the reference to Article 11 of the European Convention and I think we are not really the right people to ask for legal opinions about its application but, once again, I think I am expressing views of many Members of the House who have spoken to me directly, and once again of the Procedure Committee in its report of 2002-03 where the Committee said that “demonstrations should be limited in duration and well-organised to avoid long-term occupations which would limit the number of demonstrations and undermine the aesthetic and environmental value of Parliament Square as an important heritage site,” so I think the Committee gave those two or three reasons for not having long-term demonstrations or overnight demonstrations, and I think that, as the Committee knows very well, with the further plans for development of the Square as a World Square there may be even stronger reasons for that. I think that we take our cue from the Procedure Committee.

**Q470 Lord Tyler:** Can I ask Dr Jack whether he therefore rejects the view of the Joint Committee on Human Rights that there may be an issue here?

**Dr Jack:** No, I certainly would not. I have far too much respect for the Joint Committee on Human Rights. If that is their view I am sure that it is a view that needs to be taken account of.

**Q471 Lord Norton of Louth:** We have covered the issue of access but there is also the issue which both the Serjeant at Arms and Black Rod have touched upon which is obviously that of security. When there is a demonstration, issues arise there and the police would like to have some power to impose conditions on demonstrations on the grounds of security, and it is really to ask whether the House authorities actually have a view on that. Is that something you think is necessary?

**Lieutenant-General Sir Michael Willcocks:** I think first of all, it is interesting, as Dr Jack said, in all the other parliaments I can come across demonstrators have to notify an intent to demonstrate, and although it is a matter for the police, I sympathise with their view on demonstrations, in a much smaller area than the SOCPA provisions, frankly (we are only talking about the front of this building, the riverside, Bridge Street and round here) on the grounds of purely operational practicality to know the size and so on because, as I say, it is one of the busiest focal points certainly of the capital and probably the country with millions of people there and everything else. The first thing is that I would sympathise with their wish to have notification but I would not die in a ditch about that. The problem is to give them powers and access; that is the real thing we are looking for. On the other hand, I think it would be foolhardy not to allow some judgment to be applied by the police in matters of security to give them powers. As ever, the law balances the rights of people to demonstrate with the rights of those people who need access and security and the law has to balance it. I sympathise with their wish to have notification of demonstrations but I absolutely totally support them in having some power to restrict what goes on. Allow the demonstration of course, but it would be foolhardy to have a complete *carte blanche*.

**Q472 Lord Armstrong of Iliminster:** I think that touches the heart of the thing, the need to balance the right to protest with the need to protect parliamentarians and the Houses of Parliament. Do you have any thoughts about the best legal framework with which to do that?

We are told that the SOCPA has failed us in many respects such that the Government is prepared to repeal it. I get the impression from what you are saying that you do not want to leave a vacuum when that goes, but you do not really believe that the revival of Sessional Orders would do the trick because they give no powers to the police.

**Dr Jack:** Yes that is it.

**Q473 Lord Armstrong of Iminster:** What legal framework would you look for, as it were, to try to preserve this balance effectively?

**Mrs Pay:** If I could just give it from my point of view, I support the police's view to have prior notification because that helps them to plan, and I think they know the size of the problem they are going to have the next day or the day after, and therefore they can plan their resources accordingly, and they facilitate demonstrations, they do not try and stop them. I am terribly sorry but I do support their requirement to have notification.

**Q474 Lord Armstrong of Iminster:** So it would be an offence to have a demonstration without giving advance notification; is that right?

**Mrs Pay:** Yes.

**Dr Jack:** That is the case in the Australian Act which I quoted; it is an offence.

**Mrs Pay:** I think also they need the right to put some conditions on. Examples of that that we have are when you have protests from opposing sides, as we had with the Human Fertilisation and Embryology Bill recently. We had demonstrations by opposing sides and they were kept apart and they both got their message across but without any clashes between them. We often have opposing sides for religious debate and for the same reason I think it is important that they are able to put conditions on as well. My third point is if we can get the access identified clearly, as you suggested my Lord, on a plan we can be absolutely clear where we need access and give the police some powers to ensure that that happens.

**Q475 Lord Armstrong of Iminster:** And you think that is really keeping the pavements clear along Abingdon Street and Parliament Square and Bridge Street so that people are kept off those pavements?

**Mrs Pay:** Along Abingdon Street from Carriage Gates to Black Rod's Garden and in front of Portcullis House on the Victoria Embankment. They are the key access points.

**Q476 Lord Armstrong of Iminster:** So that all the tourists that walk down those pavements would have to walk the other side?

**Mrs Pay:** No.

**Lieutenant-General Sir Michael Willcocks:** Demonstrations should be banned. It is to allow the tourists, it is the opposite, to allow the public access to their Parliament and, by the way, allow Members to get in to do their business; that is the point. I am not a lawyer so I am not sure of the precise legal framework but certainly if one accepts that the real balancing act is to balance the right to demonstrate with the right to protect Parliament and its visitors and access, then you require, under whatever legal framework you do, to designate that little area and then give the police powers to enforce it. It so happens at the moment that demonstrators apply to the police and the police say, "Well, go across the road, opposite Old Palace Yard, by the George V statue," and they are all terribly well behaved, but if they were not and they swarmed over, the police cannot do anything about it. They do not have powers at all, they do not have any powers of arrest unless the people were starting to threaten and so on. So they could completely jam up Parliament and stop it working and the police could do nothing about it at the moment. We are very lucky, demonstrators are jolly accommodating, but what we need I think is a framework which allows us to insist upon the fact that that is kept free for tourists, the public coming in and witnesses to committees like this and yourselves to carry out your business.

**Dr Jack:** If I may just pick out of that the powers of arrest within the vicinity of the Palace is one thing that needs to be in the framework.

**Mr Pownall:** Could I just say that I thought the Serjeant at Arms put her finger on it when she said that the purpose of the prior notification should be to facilitate rather than to stop demonstrations. I say that in the knowledge that in the debate in the House of Lords last year prior notification was not particularly welcomed, so I am sure if it is to be done it should be with a light touch and to facilitate demonstrations rather than the opposite.

**Q477 Chairman:** It was put to us by some of those that sought to demonstrate that prior notification was good practice and that it may be that prior notification would grant certain rights that did not exist if there was no prior notification. Would that be an approach that you would support?

**Mrs Pay:** Yes, we would support that.

**Dr Jack:** Yes, and I think it works well in other places, Trafalgar Square for example.

**Q478 Chairman:** It has just been mentioned that the police do not have powers of arrest, but they would have powers of arrest if they were causing an obstruction?

**Dr Jack:** That is so but I think that is the problem that it is very difficult to establish that. That is what the police told you in their evidence.

**Q479 Chairman:** Can I ask one other question of you, Dr Jack, you several times prayed in aid the report of the Procedure Committee which called for legislation, which of course it got, and the legislation it got was SOCPA. Are you effectively saying that you think SOCPA is okay? I know you were reluctant to say that a moment or two ago but is that effectively what you believe?

**Dr Jack:** I will stick my neck out and say yes I do. I would not say there have not been difficulties with it of course, and the whole business is one of balance, as we have been saying this afternoon, so whatever legislation you have, it is going to be difficult to enforce, but I do not think that it has been unduly oppressive, if that is the question you are asking.

**Q480 Chairman:** So it is SOCPA or SOCPA II, something like that?

**Dr Jack:** I think so, yes.

**Q481 Sir George Young:** But SOCPA has left us with Brian Haw and the whole point of the Procedure Committee was to stop that, so surely SOCPA has not worked?

**Mrs Pay:** It is elements of SOCPA that we would prefer to have repealed and other things put in place to strengthen the access and the police powers that we have talked about.

**Lieutenant-General Sir Michael Willcocks:** It is well-intentioned but did not quite achieve what I think it set out to. For a start, speaking entirely personally, casting the net so wide in terms of notification was a mistake. The size of area is not needed. A much, much smaller area, much more focused and, as Jill said, with specific provisions in there to stop the sort of thing, that I think most Members would feel ---

**Chairman:** Lord Norton wants to come in quickly.

**Q482 Lord Norton of Louth:** Is SOCPA adequate though to deal with the issues of security that you have mentioned?

**Lieutenant-General Sir Michael Willcocks:** No.

**Mrs Pay:** No.

**Lieutenant-General Sir Michael Willcocks:** No, that is the point. Having permanent encampments directly opposite the entrance that all MPs, the Prime Minister, heads of state and so on use is a major security risk.

**Mrs Pay:** And there being no powers to remove the protesters that we have evidence of here at Carriage Gates; that is a huge difficulty.

**Q483 Martin Linton:** This is the last question I think and it is just to ask you to be more specific about powers of arrest and powers of seizure. Should they just apply on the pavement on this side of the Embankment and should they be with Sessional Orders or without Sessional Orders? Should they not apply to the pavement on the other side of Parliament Square where the encampment is now?

**Dr Jack:** As far as location is concerned, in the memorandum which I have sent to the Committee in paragraph 16 we define fairly clearly which areas we think should be covered.

**Mrs Pay:** This is a much reduced area for SOCPA and for clarity I think it would be very difficult to say the powers apply to some of these and not others, so I think we would say that in that reduced area we would wish those police powers to apply.

**Q484 Martin Linton:** And seizure powers as well, the loudhailers and such like?

**Mrs Pay:** Yes, absolutely, the two together.

**Q485 Martin Linton:** Those would be localised powers that applied?

**Mrs Pay:** Absolutely.

**Dr Jack:** Within the area in paragraph 16.

**Q486 Martin Linton:** Would there be signage to make it clear to unsuspecting members of the public that this was so?

**Mrs Pay:** I think it probably would be quite sensible for when notification was given that then that information was sent to the organisers, because otherwise we would have signs on every tree.

**Q487 Martin Linton:** One last point, I witnessed a demonstration I think in September 2004 by the Countryside Alliance which was quite violent and where at one stage it looked as though they were going to break through the police barriers and effectively storm Carriage Gates. This was actually on Parliament Square itself. Do you think that this is still a security risk and do you think these powers would address it?

**Lieutenant-General Sir Michael Willcocks:** I think the police would come at it, what they would require is the powers of arrest in this limited area for access that we want and I think the police would say that they would like the Public Order Act sorted out so that it does not just apply to processions, it applies to static gatherings as well, and if you did that they would have all the powers they need. Yes, a demonstration can always turn violent, but if it does the police there have the powers to deal with it once it becomes a threat to life and so on. I think the police would probably argue that they would deal with it, which they did on that occasion.

**Q488 Martin Linton:** But if people did storm Carriage Gates one would be able to arrest them?

**Lieutenant-General Sir Michael Willcocks:** Absolutely.

**Chairman:** Thank you very much. I know that we have rushed through a little because I think we have all got other duties quite shortly, so thank you very much indeed for helping the Committee this afternoon.