



House of Commons
Public Administration Select
Committee

**Machinery of
Government Changes:
Government Response
to the Committee's
Seventh Report of
Session 2006–07**

**Third Special Report of Session
2007–08**

*Ordered by The House of Commons
to be printed 15 November 2007*

The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

Current membership

Dr Tony Wright MP (*Labour, Cannock Chase*) (*Chairman*)
Mr David Burrowes MP (*Conservative, Enfield Southgate*)
Paul Flynn MP (*Labour, Newport West*)
David Heyes MP (*Labour, Ashton under Lyne*)
Kelvin Hopkins MP (*Labour, Luton North*)
Mr Ian Liddell-Grainger MP (*Conservative, Bridgewater*)
Julie Morgan MP (*Labour, Cardiff North*)
Mr Gordon Prentice MP (*Labour, Pendle*)
Paul Rowen MP (*Liberal Democrats, Rochdale*)
Mr Charles Walker MP (*Conservative, Broxbourne*)
Jenny Willott MP (*Liberal Democrats, Cardiff Central*)

Powers

The Committee is one of the select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pasc>.

Committee staff

The current staff of the Committee are Steven Mark (Clerk), James Gerard (Second Clerk), Louise Glen (Committee Assistant), Anne Woolhouse (Secretary) and James Bowman (Senior Office Clerk).

Contacts

All correspondence should be addressed to the Clerk of the Public Administration Select Committee, Committee Office, First Floor, 7 Millbank, House of Commons, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3284; the Committee's email address is pubadmincom@parliament.uk.

Contents

Report	<i>Page</i>
Second Special Report	1
Appendix	1
List of Reports from the Committee during the current Parliament	7

Third Special Report

The Public Administration Select Committee reported to the House on *Machinery of Government changes* in its Seventh Report of Session 2006–07, published 15 June 2007 as HC 672. The Government Response was received on 15 November 2007 and is published below as an Appendix to this Report.

Appendix

The Government welcomes the Committee's report. Since the Committee produced its report, a number of machinery of government changes have taken place, including the creation of: the Department for Children, Schools and Families; the Department for Innovation, Universities and Skills; and, the Department for Business, Enterprise and Regulatory Reform. The Government also published, in July, *The Governance of Britain Green Paper*, setting out a number of proposals designed to foster greater transparency and accountability of executive decisions.

Changes to the structure or functions of government can be desirable for many reasons—for example, to adjust to changes in a government's responsibilities or priorities, or to ensure that a government's functions are being discharged effectively and efficiently. The current system for giving effect to the distribution of functions between Ministers is designed to combine flexibility and speed with proper accountability.

Significant machinery of government changes are, at their core, normally about the distribution of functions between Ministers; the organisational changes affecting Government Departments are a consequence of those changes. The Government believes that it is important to preserve the ability of the Prime Minister of the day to organise the structure of the Government as necessary to meet the challenges ahead, and to do so without undue delay. Ministers remain, of course, accountable to Parliament, and the primary mechanisms for Parliamentary accountability come in three forms:

The accountability of the Prime Minister of the day to Parliament for machinery of government changes, normally set out in Written Ministerial Statements explaining the changes the Prime Minister has decided upon;

The accountability of Ministers and Accounting Officers to Parliament for the proper use of public funds, which is well established;

Orders transferring functions between Ministers (known as "Transfer of Functions Orders").

Parliament, through the Ministers of the Crown Act 1975, has recognised the role of the Prime Minister in determining the structure of the Government. When conferring statutory functions on Ministers through primary legislation, Parliament will either confer functions on "the Secretary of State", or on a particular Ministerial Office (for example, the Minister for the Cabinet Office, or a particular, specified, Secretary of State).

In law, functions conferred on “the Secretary of State” can be exercised by any Secretary of State, and the Prime Minister can redistribute the responsibility for exercising them from one Secretary of State to another administratively. In order to make related, consequential changes, the Ministers of the Crown Act 1975 also gives the Queen in Council statutory authority to make changes in relation to Secretaries of State by Orders in Council. These changes include making a Secretary of State a corporation sole; transferring property, rights or liabilities between Secretaries of State; and substituting references to one Secretary of State (or their department) for references to another.

Where changes require statutory functions to be transferred to or from a Minister specified in the relevant legislation (including where functions of the Secretary of State at large are to be transferred to a Minister who is not a Secretary of State), Parliamentary scrutiny is provided through the procedure for making a Transfer of Functions Order – an Order in Council under the Ministers of the Crown Act 1975 which is subject to parliamentary control.

These Orders in Council are subject to parliamentary scrutiny. Those providing for the dissolution of a government department can only be made when a draft of the Order has been laid before Parliament and each House has presented an address praying that it be made. All other Orders under the Act are subject to annulment by either House.

Parliament has therefore determined and approved an overall structure for transferring functions between Ministers; and when it wishes to ensure that a function cannot be transferred to another Minister without a Transfer of Functions Order it has the ability to specify a particular Ministerial office when passing primary legislation.

The Government's response to the Committee's conclusions and recommendations is set out below.

Recommendation 1 (paragraph 11): We do not have a view on whether some reasons for changing the machinery of government are by their very nature more legitimate than others. We do believe, however, that when significant changes are made, Parliament and the electorate have a right to know the Prime Minister's reasoning, and judge for themselves the validity of those reasons. This is particularly important when there is a risk, as after a general election, that major changes will be rushed through without full consideration.

The Government agrees that Parliament and the electorate have a right to know the Prime Minister's reasoning for making a significant machinery of government change.

The Committee has welcomed the advance publication of a paper setting out the rationale for creating a Ministry of Justice. A detailed paper was published to explain the background to the machinery of government changes announced to Parliament on 28 June 2007. The Government believes that it is good practice to produce such a paper for all significant machinery of government changes, and will aim for such either to accompany a Written Ministerial Statement, or to follow it without unnecessary delay. Whether a change is significant enough to require explanation which goes beyond the information in the Written Ministerial Statement will need to be determined on a case by case basis.

Recommendation 2 (paragraph 17): We are approaching the centenary of the Haldane Report. It is time for a fresh look at the structure of government. It may be that the current departmental structure remains appropriate, but the frequent changes over the last decade suggest that the time is ripe for a new review.

The Government believes that its current structure provides a sound basis for delivering its objectives. A thorough reconsideration along the lines of that undertaken for the Haldane Report would require significant resources and bring about a high level of uncertainty, not least for those working within the system. While it recognises that machinery of government changes are likely to continue to be needed as the challenges facing the Government develop over time, the Government is not persuaded that such an exercise is justified at this time.

Recommendation 3 (paragraph 19): Not all machinery of government changes are just "minor things". Significant changes take time to bed in, and services may suffer in the meantime. The costs are not just financial (although these can be significant); governments stand to lose expertise, institutional memory and strategic focus. The benefits may well justify these costs; but we recommend that any proposals include full and honest consideration of likely costs before such changes are made.

The Government agrees that significant machinery of government changes take time to 'bed in', and can result in costs which are not merely financial.

The likely costs, benefits and risks are assessed when significant machinery changes are under consideration.

Recommendation 4 (paragraph 23): The procedures set out in the current Ministerial Code are designed to ensure that proposals for changing the machinery of government receive a measure of scrutiny within government itself. They do not cover managerial matters, nor are they concerned with external scrutiny. We believe there should be some form of external consultation for major reorganisations.

The Government agrees that, in certain cases, there could be external consultation for major reorganisations. Indeed, there is precedent for stakeholders being consulted by Ministers or by senior officials when a change is being considered.

The Government believes that consultation is helpful; and that whether an external consultation should take place, and the form it should take, should depend on the type of change being proposed and the circumstances surrounding it, including the time available.

Recommendation 5 (paragraph 28): Statutory requirements for consultation are not always appropriate; they may delay urgently needed changes, or be an unnecessary layer of bureaucracy on a small change. On the other hand, if the change is of significance, a requirement to consult may be insufficient; after all, it does not in practice require the Government to convince anyone that their proposals are correct. A stronger check is needed—such as can only be provided by Parliament.

The Government agrees that a statutory requirement for consultation on such changes would be inappropriate, although as described above it does believe consultation can be helpful.

The Government agrees the need for Parliament to have a role. Significant machinery of government changes are announced to Parliament by a Written Ministerial Statement by the Prime Minister. That process provides accountability for the principle and nature of the change, and provides information to Parliament when statutory functions exercisable by the Secretary of State at large (i.e. where the relevant legislation does not specify a particular Secretary of State) are redistributed from one Secretary of State to another. In respect of changes which require statutory functions to be transferred to or from a Minister specified in the relevant legislation (including where functions of the Secretary of State at large are to be transferred to a Minister who is not a Secretary of State), Parliamentary scrutiny is provided through the procedure for making a Transfer of Functions Order—an Order in Council under the Ministers of the Crown Act 1975 which is subject to parliamentary control. Transfer of Functions Orders may also be used for incidental and supplemental matters.

Recommendation 6 (paragraph 35): Transfer of Functions Orders are normally laid some time after the changes they effect. We recommend that the Government should lay Orders in time for Parliament to have a say before changes are made.

Recommendation 7 (paragraph 36): We do not expect the Government to know all the details of how transfers of functions will operate before they are put into practice. But functions can be, and often are, transferred in stages over separate orders. We recommend that Government should lodge preliminary transfer of functions orders at the time it announces prospective changes.

The Government agrees that Transfer of Functions Orders should be brought forward as soon as possible after a machinery of government change is announced. However, the Government cannot agree to lay Transfer of Functions Orders prior to, or at the same time as, a prospective change being announced—either in their preliminary or final states.

Transfer of Functions Orders are complex and take some time to produce; it can take several months after the structure of the change has been settled for the order to be produced because of the time it takes to ascertain all the detailed consequences of a change. Any preliminary Orders would be subject to considerable further refinement and amendment before being brought forward formally, and this brings into question the use of this mechanism as an additional stage in the machinery of government process.

Transfer of Functions Orders vary considerably depending on the nature of the change they relate to. Changes that involve packages of related proposals sometimes require more than one Transfer of Functions Order. Changes that involve a redistribution between Secretaries of State of functions conferred on “the Secretary of State” require a Transfer of Functions Order only in order to deal with incidental and supplementary matters, and are not in themselves a key requirement for effecting changes. And a reallocation of responsibilities that does not involve statutory functions may not involve a Transfer of Functions Order at all.

In terms of Parliamentary oversight more generally, the Government considers that Parliament has, through the Ministers of the Crown Act 1975, approved the right of the Prime Minister of the day to organise the structure of the Government, subject to the accountability mechanisms described above. As they are instruments designed to

address the legal issues which Parliament has required to be brought before it in this manner, Transfer of Functions Orders often do not provide a complete picture of the change being made.

Recommendation 8 (paragraph 38): Transfer of Functions Orders can only be a check on Government if they are debated. The Government should undertake that if a Transfer of Functions Order is prayed against, it will be debated on the floor of the House.

Recommendation 9 (paragraph 45): Parliament should be given the chance to vote on Machinery of Government Changes. We do not believe requiring primary legislation is proportionate; Government should not be prevented from acting quickly if it is in the national interest. But nor do we believe that this is incompatible with parliamentary approval of such changes. If Government has a sensible and defensible rationale for changes then it should have no reason to be wary of debate. If it does not, then the prospect of debate and division may discourage the change being made.

The Government supports the Committee's recommendation that, if an Order is prayed against, and there is sufficient desire for a debate on the floor of the House or in committee, then a debate should be provided. Whether to provide for a debate will need to be determined on a case by case basis as, in practice, the Government feels that the level of pressure for a debate would be of paramount importance in determining whether to provide for a debate.

The Government believes that the Prime Minister of the day should continue to be able to act quickly to change the structure of the government, and that the accountability mechanisms in place are sufficient.

Recommendation 10 (paragraph 46): We recommend that the Ministers of the Crown Act should be amended so that significant changes to the Machinery of Government require the assent of both Houses of Parliament. Government should also be prevented from assuming that it will have Parliament's support; public money should not be invested in structural changes until they have been approved by Parliament. For that, Parliament will require business cases with cost information for proposed changes.

The Government believes that the current formal mechanisms which provide accountability to Parliament for machinery of government changes should not be extended to include a requirement to obtain Parliament's prior approval of changes. This would impair the Prime Minister of the day's ability to organise the government to respond to the challenges ahead. The Government is not therefore able to agree that the Ministers of the Crown 1975 Act should be amended to provide for all Transfer of Functions Orders to be subject to affirmative resolution procedure.

The costs of structural changes are, as a matter of principle, met from Departmental budgets, and there are well established mechanisms for Parliamentary accountability in the use of this money.

Recommendation 11 (paragraph 47): We hope that, if the Ministers of the Crown Act cannot be amended immediately, the new Prime Minister will act in this spirit, and invite Parliament to approve any proposed changes. Adjournment debates could be timetabled; but it would be better to allow substantive debates on a motion to affirm the House's support for proposed changes.

The Government's response to this recommendation is now a retrospective one. However, it believes that the Prime Minister's Written Ministerial Statement on 28 June 2007, outlining Machinery of Government Changes affecting a number of Departments, with full details that followed in a paper placed the next day in the Library of the House, demonstrates that the Government is seeking to provide full information to Parliament, and to act in the spirit of the Select Committee's recommendations.

November 2007

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2006–07

First Report	The Work of the Committee in 2005–06	HC 258
Second Report	Governing the Future	HC 123 (<i>cm 7154</i>)
Third Report	Politics and Administration: Ministers and Civil Servants	HC 122
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121 (<i>HC 88</i>)
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523 (<i>HC 922</i>)
Sixth Report	The Business Appointment Rules	HC 651 (<i>HC 1087</i>)
Seventh Report	Machinery of Government Changes	HC 672 (<i>HC 90</i>)
Eighth Report	The Pensions Bill and the FAS: An Update, Including the Government Response to the Fifth Report of Session 2006–07	HC 922 (<i>HC 1048</i>)
Ninth Report	Skills for Government	HC 93 (<i>HC 89</i>)
First Special Report	The Governance of Britain	HC 901

Session 2005–06

First Report	A Debt of Honour	HC 735
Second Report	Tax Credits: putting things right	HC 577 (<i>HC 1076</i>)
Third Report	Legislative and Regulatory Reform Bill	HC 1033 (<i>HC 1205</i>)
Fourth Report	Propriety and Honours: Interim Findings	HC 1119
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689 (<i>HC 91, Session 2007–08</i>)
Sixth Report	The Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications	HC 1081
Seventh Report	The Ministerial Code: the case for Independent Investigation	HC 1457 (<i>HC 1088, Session 2006–07</i>)
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690